



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CLV Group/InterRent Reit
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord company attended the hearing, who was also represented by Legal Counsel. The tenant and a witness for the landlord each gave affirmed testimony and the parties were given the opportunity to question the tenant and the witness, and to give submissions.

Some of the tenant's evidentiary material was uploaded to the Residential Tenancy Branch automated system later than the time prescribed by the Rules of Procedure and the late evidence was not provided to the landlord. The landlord's legal counsel opposed inclusion of that evidence. Where a party wishes to rely on evidence, that evidence must be provided to the other party, and where not provided, it cannot be considered. No further issues with respect to service or delivery of documents or evidence were raised, and all other evidence has been reviewed and is considered in this Decision.

At the commencement of the hearing the tenant indicated that he is seeking monetary compensation, which was also opposed by the landlord's legal counsel. The application before me does not include a monetary claim, and I find that the landlord has not been put on notice that the tenant's application includes monetary compensation, and I decline to hear or consider any such claims.

Legal Counsel for the landlord submitted that the tenant's application revolves around renovations that the landlord had commenced, and now that the renovations are completed, the application is moot. The tenant disagrees, and the hearing commenced.

Issue(s) to be Decided

Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically by providing quiet enjoyment of the rental unit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on July 1, 2011 and reverted to a month-to-month tenancy after the first year, and the tenant still resides in the rental unit. Rent in the amount of \$1,607.00 is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant of approximately \$640.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 6 floors and 30 units in total. A written tenancy agreement exists but a copy has not been provided as evidence for this hearing.

The tenant further testified that a notice was posted to the outside elevator on April 26, 2021 about apartment renovations starting. However, the demolition noise and construction work noise lasted approximately 6 to 8 weeks, with the loudest ending within the first few weeks. Work actually began on April 26 and continued through May and June, and kind of finished on July 8, 2021. Workers started at 8:00 a.m. ending at 7:00 or 8:00 p.m., 7 days per week including statutory holidays in May and July 1. There was continuous drilling, banging, hammering and slamming doors.

Email strings have been provided showing that the tenant was in contact with the property manager about how long it would take to finish. It was not reasonable that there be 12 hours of drilling and noise, making living in the apartment unbearable. The tenant kept receiving emails saying, "2 more weeks," or similar promises, but it kept going on and on.

On June 30, 2021 the building manager served the tenant with legal documents stating that the renovations are substantially done, but at 2:45 until 5:00 p.m. there was more drilling. The tenant called the building manager and his comment was that it would be

done at the end of the day. However on July 8 there was still more drilling. As of the date of this hearing there was no noise.

The tenant agrees that the landlord has rights to reasonable renovations, but this was not reasonable. A new notification was slid under the tenant's door dated June 21, 2021 stating that there will now be common area re-design in the foyer and will take 8 to 10 weeks. That was supposed to start on June 28, but has not yet started.

The tenant lives on the 5th floor and previous drilling was done on the 7th floor and the noise carries. The new renovations will start on the 1st floor, closing the foyer and closing front doors, access to mailboxes and the elevator may or may not be accessible. It's all continuous disruption, and the landlord cannot be closing off doors, elevators and mailboxes from the tenants.

The landlord's witness is the property manager for 17 buildings within the City and he takes care of day-to-day operations, including managing and overseeing renovation jobs. The witness instructs what work needs to be done and the timeline expected, parking, storage, cleanliness, working hours and security of units. The contractors keep hours within the by-law of the city.

General notice is given to tenants about expecting excess noise. When there are vacancies, some of the old floors and appliances are replaced. The foyer is being renovated as a cosmetic upgrade as well as to increase security with cameras and new design with new paint and tiles. When the landlord company takes over buildings, the landlord introduces fob systems and replaces doors for durability and security.

There have been no other complaints of note; a couple of residents were looking for more information, but nothing unusual. The witness has been in contact with the tenant by email, and the witness spoke to a contractor at one time, and they stopped that disturbing work. This tenant is the only one who filed an application with the Residential Tenancy Branch, and the only tenant that the witness had consistent communication with. Others have had conversations with the witness, but not on-going conversations.

While tiles are being replaced in the foyer, it will require taping off the elevators for a few hours, but no long-term restrictions. That work is not yet scheduled. The work started in April was a different scope of work because 5 units were renovated. The foyer and lobby have a different time-line and the landlord has to consider access and pay more attention to detail. Everyone will receive a notice posted to the doors of the individual units. It will break down the time-frame, such as the elevators will not be available between the hours of 12:00 to 2:00, or similar.

The witness further testified that the City by-law specifies that such work can be from 8:00 a.m. to 8:00 p.m. weekdays, and no work on Sundays or statutory holidays. The Saturday hours are from 10:00 a.m. to 6:00 p.m. The contractors are well respected and well aware of the by-laws and worked within the by-laws. If they hadn't, the witness would have received significant letters from other residents. One letter was received from this tenant due to work commencing before 10:00 a.m. on a Saturday.

The witness further testified that it was not 8 to 10 weeks duration, but was substantially completed on June 30, 2021.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL

Renovations were completed reasonably and in accordance with the by-laws. Only 1 incident occurred where there was construction noise at 9:00 a.m. on a Saturday, prior to the time specified in the by-law. Counsel has provided a copy of a Judicial Review Decision dated September 11, 1990, and submits that in order to establish that the tenant's quiet enjoyment was interfered with, the Court found that the contract did "not show any material and permanent interference with access to the premises by anyone," and concluded that the tenant's right to quiet enjoyment was not permanent and was not a breach of the covenant of quiet enjoyment of the lease. Counsel submits that the landlord's right to renovate has to be balanced with the tenant's right to quiet enjoyment. The tenant suffered no hardship or unreasonable disturbance, and the landlord has been complying.

NO SUBMISSIONS OF THE TENANT

Analysis

I have reviewed all of the evidence of the parties except the late evidence of the tenant that was not provided to the landlord. I have also reviewed all of the case law provided in the landlord's evidentiary material.

I agree with the landlord's legal counsel that there has to be a balance between the landlord's right to make repairs or renovations and the tenant's right to quiet enjoyment. In order to determine that balance, it's necessary to consider the scope of work and the duration. It's also necessary to consider the affect on the tenant, and the affect on the landlord's requirement to maintain a rental unit, particularly in an apartment complex setting. It's also necessary to consider future plans for construction or renovation. Counsel for the landlord has also referred to Residential Policy Guideline 6 – Entitlement to Quiet Enjoyment, which states, in part:

“B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT A landlord is obligated to ensure that the tenant’s entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

“Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

“In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises.”

The landlord’s witness testified that the contractors worked within the by-laws except on 1 occasion, and that work was permitted between 8:00 a.m. to 8:00 p.m. weekdays. The landlord’s legal counsel has provided a copy of the by-law which specifies construction work can be between 7:30 a.m. to 8:00 p.m. on any week day that is not a holiday, and between 10:00 a.m. and 8:00 p.m. on any Saturday that is not a holiday. The landlord’s witness testified that he manages 17 buildings and that when tenants move out, the landlord completes upgrades or renovations, but the landlord’s witness does not know the by-law.

The tenant testified that construction noise started at 8:00 a.m. ending at 7:00 or 8:00 p.m., 7 days per week **including statutory holidays in May and July 1**, with continuous drilling, banging, hammering and slamming doors. The tenant also testified that work began on April 26 and continued through May and June, and “kind of” finished on July 8, 2021 and that the tenant kept receiving emails saying, “2 more weeks,” but it kept going on and on. Numerous apologies were made by the landlord’s witness to the tenant in the emails.

I have also reviewed the other cases submitted by the landlord’s legal counsel. One deals with the central issue of “whether the disturbance suffered by the Tenant was “unreasonable in all of the circumstances”.”

I find it unreasonable to continue to make promises about the construction and its duration, considering that the construction took approximately 12 weeks in duration, from April 26 to July 8, 2021, albeit perhaps not consistently.

I also find that the landlord has not consistently complied with the by-law, and I order the landlord to comply with the by-law and the *Residential Tenancy Act*, providing the tenant with quiet enjoyment of the rental unit by working within the by-law.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it, by filing the order as a judgement in the Provincial Court of British Columbia, Small Claims division for enforcement.

Conclusion

For the reasons set out above, I hereby order the landlord to comply with the by-law and the *Residential Tenancy Act*, providing the tenant with quiet enjoyment of the rental unit, by working within the hours specified in the by-law.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 19, 2021

Residential Tenancy Branch