Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Onni Property Management Services Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, OLC, RP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided; for an Order for the Landlord to Comply with the Act or tenancy agreement; for an Order for repairs to the unit, site or property, having contacted the landlord in writing to make repairs, but they have not been completed; and to recover the $100.00 cost of their Application filing fee.

The Tenant, his counsel, M.G. ("Counsel"), and three agents for the Landlord, L.B., J.S., and B.B. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed

these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Before the Parties had testified, I asked Counsel about the Tenant's claims, as they seemed to address the same subject – alleged noise from cooling equipment on the roof above the Tenant's rental unit. Counsel confirmed that the focus of the Tenant's claim is on a rent reduction.

Issue(s) to be Decided

- Should the Tenant be awarded a reduction in rent, and if so, by how much?
- Is the Tenant entitled to recovery of his $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on May 4, 2021, with a monthly rent of $27,500.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $13,750.00, and no pet damage deposit.

The Tenant submitted a monetary order worksheet setting out his claim for $35,000.00, which is comprised of four months of rent reduced by $8,750.00 per month. The Tenant indicated that the relevant months are May, June, July, and August 2021.

Counsel directed my attention to a letter he wrote to the Landlord, setting out the Tenant's claim. The following is included in this letter:

> Further to your letter of August 17, 2021, [the Tenant's] complaint does not relate to the City … Noise Control Bylaw. The complaints relate to the suitability of the unit for occupation by a tenant and the decibel readings are evidence but not the only evidence.
>
> The chiller unit is located on the roof which is the ceiling of the rental unit. The intrusion from the unit is not related only to the noise level but also to the type of noise and vibration that is caused by the machinery. The extent of the problem is

> apparent from the recordings made by [the Tenant] which capture the volume and quality of the disturbance.
>
> In my view, the City… Noise Control Bylaw was never intended to govern this type of situation. The bylaw is aimed at noise coming from one building or location which may disturb others. It seems unlikely that City Council contemplated the impact of a rooftop chiller on the occupants of the penthouse.
>
> Section 32 (1) (b) of the *Residential Tenancy Act* requires a landlord to provide residential property in a state of decoration and repair that having regard to the age, character and location of the rental unit makes it suitable for occupation by a tenant. Only part of the unit is suitable for occupation because of the noise and vibration which is felt and heard in a significant part of the unit.
>
> The rental amount of $27,500.00 per month suggests that the character of the unit is first class and the experience of occupying the unit should not be compromised by noise and vibration.
>
> I understand that the unit was previously occupied, and the former occupants must have noticed the noise and vibration. Your representatives neglected to inform [the Tenant] about the noise and vibration until after he had signed the rental agreement and had moved into the premises. In any event, he was expecting to be able to occupy and use the entire suite and not only the part that is not overly affected by the noise and vibration from the chiller.
> . . .

I asked the Agents what they have done about the Tenant's complaint. They said:

> Once it was brought forth, we inspected, brought it to the concierge, and the Strata. We had a mechanical expert check it and we confirmed that there was not any unreasonable amount of noise.
>
> We found that there were no changes in the noise levels that were unreasonable. See our evidence on pages 27 and 30. This is the analysis showing low level, no deterioration in the equipment. It took time to do these reports – they're not done over night. We wanted to make sure that there was no real issue.

Page 30 of the Landlord's evidence had the following chart:

CONDITION DEFINITIONS		
Condition Level	**Vibration Analysis Indicates**	**Action**
Acceptable	Little or no deterioration in equipment condition	There is no cause for concern. Note for future analysis.
Monitor	Developing Problems	Monitor the vibration levels more frequently to establish a trend and to determine if repairs should be made during next shutdown.
Alarm	The machine is running rough.	Plan for a repair outage at the nearest opportunity. Until repaired, monitor closely.
Danger	A severe problem.	Correct problems immediately or at the first opportunity to avoid machine failure, unscheduled downtime, and secondary damage.

I asked the Agents if the chiller was running when the Tenant viewed the rental unit before agreeing to sign the tenancy agreement. The Agents said that it is a Strata property, and that individual unit owners like themselves have no control over this. They said this works at all times of the year.

In answer to whether it was operating when the Tenant viewed the rental unit, the Agent, J.S., said:

> We did the showings and the move-in inspection, as well as the condition inspection report [“CIR”]. He does have a copy, I sent it in an email. But we don’t have any access to or knowledge of the chiller.
>
> He claimed it being off during previous tenancies? We don’t have that ability. This is for a 40-story building. We don’t control it. We’re the Landlords for a specific unit. The Strata is in control. They inspect it daily. There’s no schedule of when it goes on and off. We passed his complaints to the Strata. We pressured them – we’ve gone as far as getting our own independent contractor in there on our dollar. They conducted their own report. The noise levels are where it should be. We even pressured them to do some preventative maintenance, that it could have been . . .. But all reports state that it was functional.

I then asked the Tenant what he wants the Landlord to do for him in this situation. He said:

> Based on the amount of disruptions in my life, I would like them to compensate me for that financially. In the future, I'd like them to work harder and go up the chain to solve the problem. I'm not an engineer, but the bottom line is there are bedrooms that are impossible to sleep in, in the house, and that's not acceptable; and it's not what I agreed to at the beginning of the tenancy. I can't give technical details, but the noise should fall to a level that is acceptable.

I asked the Tenant how he came to the amount he claims in compensation in this matter. He said:

> I considered the total usable facilities and how much had been moved. Four bedrooms, 75% of bedrooms, and other areas are affected. Based on that 3 of the 4 bedrooms not being usable, a general 25% reduction in rent seemed reasonable. It covers the period of May through mid-September, when the chiller was turned off.
>
> The chiller responds to the weather. It hasn't been active over the winter – intermittently - and all on in the summer.

The Agents responded:

> Regarding the breakdown, I'm a bit confused. The Applicant claimed he can't use 3 of the 4 bedrooms. This means there was excessive noise at night. I've been there … I didn't hear anything other than traffic or construction noise.
>
> $8,750.00 per month for May through August.
>
> On July 14, 2021, at page 61, he was asking for a 60% rent abatement. I'm of the opinion . . . it's not making sense to me.

The Tenant said:

> The critical issue here is the noise itself. I ask you to listen to the USB drives – that evidence. You can make up to your own mind that you can't use the rooms affected. When you read the reports re decibel levels, it's not just the volume but the quality of the noise that's so disturbing. You can definitely hear the noise. Decide if it's unreasonable for yourself.

Counsel said:

> Also, I direct you to a case summary – it sets out in some detail the impact that this has had on [the Tenant]. As well, on page seven of our disclosure is a statement from [P.Y.], his girlfriend and frequent overnight guest. She describes the noise and how it affects their ability to use the unit. The essence of our claim - the evidence is in the USB drives. The rest is discussions between us trying to negotiate a settlement. The Landlord has always taken the position is that the noise isn't that bad.
>
> They said the noise is worse at night. On the USB drive a lot of these recordings were made at night. It's difficult to estimate an amount - to put a dollar figure on how much the rent should be abated. We have a lavish unit that three bedrooms were not available.
>
> Please consider Policy Guideline 16 and also Policy Guideline 22 ["PG #22"], which specially refers to rent reduction. See paragraph C [of PG #22]:
>
> > Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.
>
> An arbitrator may make an order that past or future rent be reduced to compensate the tenant. I appreciate that the Landlord had gone to some effort to investigate the problem. . ..
>
> You do have the jurisdiction to reduce the rent if you find a service or facility has been restricted. Read those two statements – page 3 and page 7 - and play those USB drives.

The Tenant then commented on how the noise and vibration have affected him. He said:

> The first night I stayed there, we went to sleep, and soon after the unit turned on and kicked us awake. We lost sleep that first night, and I was very concerned. See my correspondence the next day. Through the month of May, I tried to sleep in the master bedroom, but now I sleep in the third guest bedroom.
>
> [L.B.] came over and heard it, and we discussed it. It went forward slowly; it would wake me up and my girlfriend – turning on and off – it vibrates though the

walls and the structure.

The nature of the sound is important. Wind or waves or a gentle fan – there are many different frequencies; but when a sound is difficult to ignore - like an alarm or a sharp sound at a signal frequency that can be heard over other sounds - it's more than the decibel level. This is a sound I can hear in the shower with water running, because it's so sharp - like nails on a chalkboard. I'm in the third guest bedroom and have been there ever since.

Also, it varies. I've made comparisons in the middle of the night, and a short distance from each other, when it's off, and when it is on, when it is on making a lot of noise, and less noise. When you look at sounds in the middle of the day, it could be something that would be dismissed. My ultimate conclusion is that if I can't sleep in the bedroom, it's not fit for its purpose.

The Agent said:

Pull up our evidence on page 10 – a statement of the property manager. He points out that we are not taking the tenancy, nor the complaint lightly. I personally dealt with a number of concerns that he brought up in the walk-through. We haven't submitted this document, but we've spent just over $10,000.00 since his tenancy began. Items he brought forth and wasn't happy with. Given the lavish apartment and rental amount, we have done numerous things.

In the third paragraph, the property manager shows what [the Tenant] is like: asking us to fill a 1.5-centimetre-wide gap in the blinds, because he was unable to sleep. He asked us to fill the gap. It brings into context the issues he's bringing forth today.

He had requested Wifi capability and boosters, so that he could use the internet on the deck. He wanted us to disconnect the wine chillers, disconnect a ventilation fan that is part of Strata property. . .. At the end of the day, every part of his complaints have been brought forth to Strata. We've even gone out of pocket over $10,000.00 in repairs. He wanted specific colour codings in his lights, and we provided that.

See all his requests. Everything we have and can do, we did. Re listening to the USB, I suggest you do, as well. We've listened. I cannot hear much, unless he

> opens the door and is hanging off the side of the building with the machine right there.

The Agent, L.B., commented, as follows:

> Re his partner, the reports are from technicians who are trained on these matters and can assess the situation objectively. I listened to the recording at 40 – 49 decibel readings. I do not have faith in these – it's the penthouse on the 44th floor – if windows are open, it affects it. It is a fortified penthouse. It's double glazed – you could hear a pin drop in this unit.
>
> At page 44, is the City's threshold of decibels. This is not a jackhammer… it's a quiet living room in a residential neighbourhood. Again, I've been in there with the windows and door closed, and you could hear a pin drop. It was so quiet, it amplifies noise.

The Landlord submitted some pages from the City's "Noise Control Manual", which included a chart setting out decibel levels typically created by familiar sources of noise in the home and community. These include the following, which I find are useful for context in this matter.

Decibel Scale	**Source**
130	Threshold of pain
120	747 on take off
110	Rock band
100	Jackhammer
90	Heavy truck
80	Medium truck
70	Passenger car
60	Normal conversation at 1 to 2 meters
50	Suburban residential neighbourhood
40	Quiet living room
30	Quiet rural setting
0	Threshold of hearing

The Tenant submitted 35 video recordings showing decibel measurements in the rental

unit in different rooms and at different times of day.

In one recording, the Tenant moves around the rental unit, including going out on the patio, into the bathroom, the closet, the hallway, the bedrooms…. Measurements on the decibel ranged from 35 decibels when the chiller was off, which was very quiet, to 49 decibels in certain locations. I find that the sound of the chiller was a constant hum. The difference in the recordings between when the chiller is on and when it is off is perceptible.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The Tenant has applied for a rent reduction, due to a termination or restriction of a service or facility that is provided by the landlord under a tenancy agreement. Section 1 of the Act includes the following definition of “service or facility”:

> **"service or facility"** includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:
>
> (a) appliances and furnishings;
>
> (b) utilities and related services;
>
> (c) cleaning and maintenance services;
>
> (d) parking spaces and related facilities;
>
> (e) cablevision facilities;
>
> (f) laundry facilities;
>
> (g) storage facilities;
>
> (h) elevator;
>
> (i) common recreational facilities;
>
> (j) intercom systems;
>
> (k) garbage facilities and related services;
>
> (l) heating facilities or services;
>
> (m) housekeeping services;

I find that the noise level in bedrooms of the rental unit is not a “service or facility” under the Act. Rather, I find that the Tenant’s claim is that he was deprived of the quiet

enjoyment of the rental unit, pursuant to section 28 of the Act.

The Tenant asserts that he has lost the use of three of the four bedrooms, as well as other areas of the rental unit due to the noise of the chiller.

> **Protection of tenant's right to quiet enjoyment**
>
> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 states:

> 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.
>
> <u>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</u>.
>
> A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

[emphasis added]

I find that the noise from the chiller is a standard aspect of living in a multi-story apartment building. Machinery is necessary to maintain the structure of the building and the comfort of the occupants, and it is part of the Landlord's right and responsibility to maintain the premises. Further, section 32 of the Act states that:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

. . .

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement. .

[emphasis added]

There is no evidence before me that the Landlord has maintained the residential property in a state of repair that does not comply with health, safety or housing standards required by law. I find that the consistent hum of the chiller in this penthouse suite in the summer months at the decibel levels demonstrated by the Tenant is

consistent with a quiet suburban residential neighbourhood or a living room. It is not silent; however, the Tenant did not provide evidence or authority indicating that a landlord is required to provide utter silence and relief from standard residential noises in a high-rise condominium building.

I find that given the character and location of the residential property - a 40+-story condominium in downtown Vancouver - that it would inevitably have a chiller to maintain the comfort level of the occupants. It just happens that the rental unit that the Tenant occupies is the penthouse suite, which is at the top of the building, and directly beneath the chiller. However, if a tenant rents a unit next to an elevator, the tenant is bound to hear extra noise from the elevator, without warranting compensation from the Landlord. Rather, an elevator, like the chiller, is a standard part of a building and not a deficiency that a landlord can or should correct.

The Tenant said that in addition to a rent reduction that he would like the following from the Landlord: “In the future, I’d like them to work harder and go up the chain to solve the problem.” However, I find from the evidence before me that the Tenant has not demonstrated that there *is* a problem with the chiller. The technical evidence before me indicates that it is functioning normally.

PG #6 states that a tenant ***may*** be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations. However, in this situation, I find that the “disruption” is a standard part of living in a multi-story residential complex.

Counsel said: “You do have the jurisdiction to reduce the rent if you find a service or facility has been restricted. Read those two statements – page 3 and page 7 - and play those USB drives.”

I find that noise at a level of even slightly above “a quiet living room” is not something that should make it impossible to sleep, as the Tenant has claimed. From listening to the Tenant’s recordings, I find that the chiller noise is akin to white noise, such as the hum of a furnace or refrigerator. However, to find that the noise is, “Like nails on a chalkboard”, as the Tenant has claimed, I find to be unreasonable.

I find that the Tenant has failed to establish that the Landlord restricted or reduced a service or facility in the residential property, and I, therefore, dismiss the Tenant’s Application wholly without leave to reapply, pursuant to section 62 of the Act.

Conclusion

The Tenant is unsuccessful in his Application, as he failed to provide sufficient evidence to support his claim that the Landlord has terminated or restricted a service or facility in the residential property.

The Tenant's Application is dismissed wholly without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 16, 2022

Residential Tenancy Branch