Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vantage West Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RR, RP, OLC, LRE, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenants attended ("the tenant"). The agent TG attended for the landlord ("the landlord"). Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

1. *Preliminary matter – recording*

The parties confirmed they were not recording the hearing.

2. *Preliminary matter – service of Decision*

The parties provided the email addresses to which this Decision shall be sent.

Preliminary Issue – Settlement

During the hearing the parties agreed as follows:

1. Throughout the tenancy, the landlord has used and continues to use power from the unit paid for by the tenant and will compensate the tenant for 50% of each bill received until a separate power meter is in place for the house under construction.

2. The landlord will install a breaker switch on the outside of unit for construction use of power by April 1, 2022.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The tenant claimed a rent reduction for loss of quiet enjoyment because of ongoing construction throughout the term of the tenancy. The landlord denied any right to compensation.

Tenancy

The unit is a residence in which the tenant spouses reside. The building contains a suite occupied by their daughter and her two young children, ages 3 and 8.

The parties agreed that an advertisement for the unit, seen by the tenant, included the information that a “carriage house” was being built “in the backyard”. The ad stated,

“Construction will need to be tolerated while it is in progress”. The agreement stated as follows:

> *House construction happening in back yard. So no back yard use during construction phase. After construction is complete, there will be a small space to use in the back yard.*

The parties submitted a copy of the tenancy agreement and agreed on the background of the tenancy as follows.

INFORMATION	**DETAILS**
Type of Tenancy	Fixed term – 1 year
Beginning Date	July 7, 2021
Fixed Term End Date	July 31, 2022
Rent	$3,200.70 plus utilities
Security deposit	$1,600.00
Pet deposit	$1,600.00
Arrears of Rent	none

Parking for two vehicles is included in the agreement. This is a parking area in the front of the unit used by the tenant and a front lawn. There is a driveway to the back of the property which goes to the construction site which was accessed only by contractors.

Construction

The construction project involved a 2-storey residence referred to in the above ad as a “carriage house”. The parties agreed construction is ongoing and the landlord stated he had “no idea” when it would be finished. Later in the hearing, the landlord stated that they plan to complete the work by April 1, 2022.

Previous Hearing

This is the second hearing between the parties. The tenant previously applied for an Order for Emergency Repairs to fix a fuse box and to remove a porta-potty from the

driveway. The tenant had claimed the porta-potty was used by members of the public and “homeless” people were “shooting up” in it.

A Decision dated December 21, 2021 ordered the landlord to fix both items. Reference to the file number appears on the first page.

The Decision stated in part as follows:

I find that the Landlord was notified of the hole in the wall in the wall by texts to the Agent in July 2021 or five months prior to the hearing. I find that the Landlord did not initiate a repair to this hole in the wall until shortly before the hearing on December 17, 2021.

I find that the need to repair the hole properly is urgent, necessary for the health or safety of the Tenants, and for the preservation or use of residential property. I find that the Landlord has been unreasonable in the amount of time he has taken to have this necessary repair completed.

I find that the repair of the wall is necessary to make the rental unit suitable for occupation by the Tenant and for the preservation of the residential property.

I Order the Landlord, at their own cost, to have the hole in the rental unit repaired by a licensed professional by January 7, 2022. I find that this is necessary to maintain the structure and integrity of the residential property, as it could lead to major leaks of rain, and access for rodents into the home.

I find that the porta-potty is a nuisance and a danger to the Tenants, in that it encourages homeless people to be on the property to use the toilet, thereby creating a potential danger and lack of privacy on the property to the Tenants, which includes the Landlord’s grandchildren.

I find that the Tenants have put up with the porta-potty in their driveway for long enough and that it is a danger, a nuisance, and it detracts from the Tenants quiet enjoyment of the property, guaranteed to a Tenant pursuant to section 28 of the Act.

I Order the Landlord to remove the porta-potty from the residential property as soon as possible, and by January 7, 2022 at the latest, pursuant to sections 28 and 33 of the

Act. If the Landlord fails to comply with either of these Orders, I authorize the Tenants to reduce their rent by $250.00 per month until the Landlord complies with both Orders

The parties agreed that the porta-potty was removed by January 7, 2022.

Regarding the fuse box, the landlord testified that they do not know whether the repair was done professionally. They testified it has been “fixed” but likely not by a licensed professional and is sealed, but it “doesn’t look great”. The tenant submitted supporting photographs and stated the work was poorly and inadequately done in non-compliance with the RTB Order of December 21, 2021.

The tenant confirmed that they are not seeking the $250.00 monthly reduction in rent awarded in the previous Decision.

Construction – Loss of Quiet Enjoyment

The tenant acknowledged knowing that a building was being constructed in the back yard of the property when they agreed to rent the unit. The tenant testified that when they moved in, the building was framed, windows were installed, and the roof was on. They anticipated minimum disturbance over a short time while the building was completed. They were prepared to accommodate routine construction noise and disturbance.

When asked to describe the construction project, the landlord stated it “looks like a mansion”. It has “twice the footprint of the rental unit and is taller and wider”.

Instead, the tenant said that they have had no quiet enjoyment from the beginning because of unexpected and disruptive disturbances which continue to destroy their right to quiet enjoyment.

The tenant testified their first complaint was within a week of moving in. The tenant submitted a copy of the text, and the landlord acknowledged receipt.

They submitted many texts to the landlord throughout the tenancy complaining about the disturbances, copies of which were submitted. The landlord acknowledged receipt of the texts.

In their written submissions, the tenant described their perspective of what happened as follows:

> *The owner of the property is building a carriage home on the back, he has given no schedule as to when people are on the property, my parking is constantly interrupted, trucks and cars park in my driveway and on my lawn. Rented pet friendly but yard is dangerous and full of debris. Using my power to power the carriage home while under construction. Had power shut off with no notice, trades on my deck, trades looking in my daughters window, dangerous conditions not repaired. toilet in my drive*
>
> *Hole in side of building allowing elements to get at fuse box, extreme fire hazard and electric shock hazard. Things to be repaired never completed, no working smoke detectors, wall fixed in living room, not done prior to move in and left a mess, no shower, plugged up dryer hose (fire hazard) Request the mess in back yard be cleaned up.*
>
> *Hot work being done with no fire extinguisher in the summer heat, parking in my driveway and my lawn whenever they feel like it after repeated conversations. Blocking me from parking on my property, unreasonable noise from construction day and night and weekends, having people enter the property at random, contractors looking in our windows, up on our deck, side of the house, using our power to power the construction.*
>
> *My driveway is constantly blocked, my front lawn is a parking lot, he has his contractor, brother, contractors friends show up when ever they want, no notice. Contractors bringing their kids over, there dogs, work is done whenever, days, evening, weekends, early morning. Loud noise anytime of the day or night, This does not allow any quiet enjoyment.*

The tenant expressed their key complaints in their testimony. They were “absolute lack of respect for our privacy”, unsafe traffic in the front of the unit endangering the children, the unpredictability of attendance by the contractors and related noise as well as construction debris. The tenant submitted many photographs in support of their claims. They testified to the accuracy of the written submissions.

With respect to their claim of “absolute lack of respect for our privacy”, the tenant testified as follows.

Contractors came and went at “all hours without notice”, usually from 6:00 AM to 6:00 or 7:00 PM. They came on weekends and holidays, including Christmas Eve. They parked “multiple vehicles” on the front lawn taking up all parking spaces and turning it to mud. Their traffic and heavy equipment destroyed the front lawn which had been reseeded by the tenant at their own expense.

Complaints to the contractors were ineffective. One contractor told the tenant the landlord PC told him that he “could park wherever the fuck he wanted.”

With respect to their claim that the comings and goings of the contractors created unsafe traffic in the front of the unit endangering the children, the tenant testified as follows. The contractors were often speeding and would “fly across the lawn”. The heavy equipment and trucks were a danger to little children and the tenant was constantly vigilant to see they were safe.

With respect to their claim that the contractors left unsightly debris, the tenant submitted many photographs of storage of materials and abandoned debris in backyard and along driveway, including crumbling drywall.

The landlord’s agent attending at the hearing testified that he acted for the landlord PC throughout the tenancy. All communication from the tenant was directed to him. In turn, he sought instructions from the landlord PC.

The agent acknowledged the many complaints by the tenant as testified by them. He stated that he had heard the complaints in the tenant’s testimony repeatedly and always relayed them to the landlord PC right away. The agent testified that the tenant’s complaints were accurate and represented what was occurring. The agent said he attempted to correct situation but was “powerless” to fix things. He also acknowledged the debris and stated that the contractor was “not sold on housekeeping”.

The landlord asserted that the tenant was not entitled to any rent reduction. They stated the tenant knew there was construction in the backyard when they agreed to rent the unit. The issues described by the tenant are normal aspects of construction projects and the tenant should not have been surprised when they occurred.

Summary

The tenant requested a 25% reduction in the rent paid from the beginning of the tenancy on July 7, 2021, to March 31, 2022, the period in which they have lost quiet enjoyment of the unit and which the parties agreed was $7,843.75.

The landlord requested the claim be dismissed without leave to reapply.

Analysis

The parties submitted extensive testimony and documentary evidence in a lengthy 85-minute hearing. I only reference key, relevant and admissible evidence in my Decision.

Burden of Proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The claimant (the tenant) bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities all the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act

The relevant sections of the Act are sections 7, 65 and 67 of the Act which state as follows:

> **7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

…

Director's orders: breach of Act, regulations or tenancy agreement

65 (1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(a)…
(b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;
(c) that any money paid by a tenant to a landlord must be
(I) repaid to the tenant,
(ii) deducted from rent, or
(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

…

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Quiet Enjoyment

The tenant’s claim is akin to a claim for compensation for loss of quiet enjoyment.

Section 22 of the Act deals with the tenant’s right to quiet enjoyment. The section states as follows:

22. 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.

The *Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* provides guidance in determination of claims for loss of quiet enjoyment.

The Guideline states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected and defines a breach of the entitlement to quiet enjoyment as substantial interference with the ordinary and lawful enjoyment of the premises. The Policy Guideline states that this includes situations in which the landlord has directly caused the interference, as well as situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

The Guideline states in part as follows:

> *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.*
>
> …
>
> *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.*
>
> [emphasis added]

Credibility

I find that the tenant provided credible evidence well supported by copies of communication and photographs.

There was little dispute in the parties' versions of events. The agent acknowledged that what the tenant described was factual. Where there is any difference between the parties' evidence, I give the tenant's evidence greater weight.

Findings

Considering the testimony and evidence, in consideration of the Act, and pursuant to Policy Guideline 6, I find as follows. The tenant has met the burden of proof on a balance of probabilities that the landlord breached section 28 (b) of the Act by failing to act reasonably and expediently in protecting the tenant's right to quiet enjoyment.

I find the interference with the tenant's quiet enjoyment was substantial and extended throughout the period of the tenancy. I find the interference was frequent, ongoing, and unpredictable. I accept the tenant's testimony and supporting evidence, including photographs and the copies of communication with the landlord. I find the landlord failed in their obligation to the tenant to assure quiet enjoyment.

The tenant submits that the landlord failed to adequately communicate to the tenant the schedule and scope of the work, failed to be accessible to address concerns and complaints and that the landlord allowed the work done in a disruptive manner. I accept the tenant's assessment as being reasonable in the circumstances.

I find the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these and to ensure the tenant could live peacefully. I accept the testimony of the agent that he told the landlord PC about the tenant's concerns, and he received few if any instructions to address the matter. I find the agent did little, if anything, because he had no instructions from the landlord PC. This failure to respond in a timely manner was a dereliction of the landlord's duty.

I find the interference did not relate to improvements to the unit rented by the tenants. Instead, the landlord used the tenant's space as though it were their own, such as by using the tenant's power and parking area which is ongoing.

I find the landlord showed a disregard for any disturbance with the tenancy, not only be ignoring complaints, but by possible poor compliance or noncompliance with a previous RTB Order.

I do not accept the landlord's argument that the tenant rented the unit knowing about the construction and therefore they cannot complain about disturbances related to construction. I find that the facts relayed by the tenant, which I accept, show a level of disturbance and disregard by a landlord which a reasonable person would not expect and would not find acceptable.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

> *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.*

I have considered the history of this matter, the testimony and evidence, the Act and the Guidelines. I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment for the duration of the tenancy.

During the hearing, the parties agreed that 25% of the rent received by the landlord during the tenancy is $7,843.75.

I find it is reasonable that the tenant receive compensation in the amount of $7,843.75.

The tenant is entitled to reimbursement of the filing fee of $100.00.

In summary, I award the tenant a Monetary Order of $7,943.75.

Compliance Enforcement Unit Referral

Residential Tenancy Branch Policy Guideline 41 states:

> *The Residential Tenancy Branch may decide that an administrative penalty should be applied when the evidence shows the respondent has:*
>
> - *Contravened a provision of the Legislation or regulations; or*
> - *Failed to comply with a decision or order of the RTB*.

I have found the tenant provided evidence that the landlord did not comply with the Order of December 21, 2021, made by an Arbitrator in response to the tenant's application for an Order for Emergency Repairs in the file referenced on the first page.

I therefore refer a copy of this Decision to my manager. My manager will review this Decision and may refer the Decision along with any other relevant materials from the dispute resolution file to the Compliance and Enforcement Unit.

Any further communications regarding an investigation or administrative penalties will come directly from the Compliance and Enforcement Unit.

Conclusion

I grant the tenant a Monetary Order of $7,943.75. This Monetary Order must be served on the landlord. The Monetary Order may be filed and enforced as an Order of the Courts of BC.

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: March 15, 2022

Residential Tenancy Branch