Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC, MNDCT, LRE, FFT

Introduction

The tenants applied for various relief under the *Residential Tenancy Act* ("Act"). It should be noted that the tenancy has ended and as such only the tenants' claim for compensation, including recovery of the application filing fee, remains a live issue. The remaining claims for an order for landlord compliance (section 62 of the Act) and an order restricting the landlord's right to enter the rental unit (section 70 of the Act) are accordingly dismissed without leave to reapply.

A dispute resolution was first held on April 14, 2022 at which time there arose service of evidence issued. The matter was adjourned to permit the parties an additional opportunity to serve and exchange. The adjournment also permitted the parties to provide written submissions, which they have.

As noted in the Interim Decision the written submissions would be considered in lieu of oral testimony and submissions, if the parties agreed to this approach to having the application be considered. Both the tenants and the landlord agreed to this approach. The parties were affirmed as to the truthfulness of evidence submitted, including any statements and assertions made within their written submissions.

Issue

Are the tenants entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant documentary evidence, including relevant portions of the written submissions, needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

By way of a brief background, the tenancy began on June 1, 2013 and ended on February 15, 2022 after the tenants gave the landlord a notice that they were ending the tenancy. Monthly rent was $1,530.00 and the tenants paid a security deposit of $1,530.00. No copy of any written tenancy agreement was submitted into evidence by either party.

The tenants seek $39,489.25 (or, in the alternative, $55,819.25) in compensation against the respondent landlord. As section 58(2)(a) of the Act limits compensation to the monetary limit for claims under the *Small Claims Act* of $35,000.00 for claims made under the Act (excluding claims made under section 51), the tenants have reduced the amount claimed to $35,000.00.

The particulars of the claim, as set out in the Description section of their application for dispute resolution, are as follows”

> Reimbursement for two years of rent during non-stop loud, invasive, and often likely illegal renovations above and below, workers not following COVID safety guidelines or hazardous material guidelines, constant renovation trash in front and back yard including hazardous materials, plumbing repairs left exposed, noise, evasive unreliable often unresponsive and rude landlord, frequent seeping water on windows and walls, no maintenance to property, unaddressed rats in the walls and in the property

Breaking the claim down, tenants seek compensation for four matters (as set out in the applicants’ written submission and summary):

1. Dispute resolution fee: $100.

2. Half rent for 2 years in compensation for extremely poor, disruptive, and unsafe condition of rental and ensuing disruptions and loss of business and income: $18,360.

3. Losses due to move before earliest legal eviction date. We began another rental on 2 February. At the time of the notice served by the landlord, the landlord had not begun either hazardous materials testing, nor had they filed any of the permits they would need for the work they had been conducting for years, and were using as the reason to evict us. Even if they had already had secured all of the necessary permits and issued a proper 4 month eviction notice, the very earliest we would have had to vacate would have been June 30, and until that

time, we would have had a right to expect “quiet enjoyment” of the unit at the existing rent. Forced to move to a more expensive rental, for these 4 1/2 months, we incurred a financial loss, caused by the difference in rent, of $6,390. Realistically at a minimum, if the permitting process takes as long as the city suggests, at the very minimum, the difference in rent would be $22,720 (1 year to complete hazardous materials and be approved for all permits plus 4 month eviction notice. Difference in rent for 4.5 or 16 months: $6,390 or $22,720 respectively.

4. Air BNBs to allow [tenant L.K.] to work from “home” (Jan-Apr 2020, Jan-Apr 2022)— $14,639.25. Had conditions been at all reasonable, [L.K.] would have been resident in Unit B during these times. Air BNBs: $14,639.25

The following sets out (reproduced as written from the applicants’ written submission) the specific aspects and background narrative of the tenancy which led to the dispute:

Loss of ‘quiet enjoyment’ affective all aspects of life and work for more than two years

We were tenants in Unit B, main floor, of [rental unit address]. Some years ago following a change in landlords, the tenant in Unit A on the top two floors was evicted under the premise that the unit would be occupied by a family member of the owner/landlords. The unit remained unoccupied since that eviction, and a series of extremely loud, invasive, and unsafe renovations and demolitions occurred constantly over the course of several years. In January 2020 [tenant L.K.]’s virtual teaching and meetings at UBC were impossible to conduct due to the demolition/renovation work and he was forced to work from an Air B&B for 3½ months, thus incurring a significant expense that would have been completely avoidable had Unit B provided reasonable “quiet enjoyment.” The same issue presented in January 2022 and another Air B&B had to be rented for the final 6 weeks of our tenancy under the same circumstances. [Tenant E.K.]’s work was also entirely online for the duration of the rental and involves lengthy online meetings with clients from across the world. The continual construction noise routinely made those meetings very difficult and many had to be canceled due to noise and severely impinged on her work.

Unsafe living conditions for years from landlord’s failure to conduct repairs, constant demolitions/renovations of yard and all other units with no hazardous materials inspections and missing many key permits

Since the change in landlords, this rental property has been subject to persistent deferred maintenance. Routine failure to address gutter issues and breaches of the building envelope due to rats, demolition, and long-term water damage resulted in incidences of water incursion into Unit B from Unit A. At times [E]'s bed was continually saturated with leaks from the ceiling and it took nearly a year for the landlord to begin to partially address the issue. The landlords have been slow to address these conditions, even in their most acute phases. Cracks in the ceiling where water drained revealed the presence of black mold. For many prolonged periods the southern bedroom was unsafe to inhabit. Similar issues resulting from uncleared gutters have resulted in persistent saturation of windows and sills and wet interior walls and have also resulted in rat infestation in the walls, compromising the livability of spaces and posing health threats. The north wall of the kitchen area has been for many years completely damp and saturated with black mold.

These conditions are documented extensively in the photographs and videos submitted with this dispute; and the house can easily be viewed from the street today in severely dilapidated condition.

Demolitions and renovations outside, upstairs, and downstairs occurred constantly between 2018 - early 2022 with constant unsafe debris and pits in the front and backyards making it extremely difficult to walk through the front and back yards safely (documented heavily in submission photographs and videos). The work was so extreme it was hard to have conversations in the apartment and picture frames smashed off of the walls. For years the front door upstairs was left completely open in the winter and summer resulting in extremely high hydro bills to heat and cool the apartment.

Forced entry with no notice, intent to conduct extensive and unsafe demolition while we were residing in Unit B

On December 2, 2020, the landlord called [tenant L.K.] telling him that [tenant E.K.] had requested an electrical outlet be added to the exterior of the apartment and that workers would be arriving in approximately an hour to conduct this work. [E.] had requested no such work and had no idea workers would be coming. When [E.] arrived at the site a team of unmasked workers demanded access to the unit and pushed their way in without masks and told [E.] that at the landlord's request they would be immediately beginning extensive demolitions to the

ceilings and walls of our unit, with significant drywall debris and opening of the walls and ceilings to the unit above and to the outdoors, and that this work would begin immediately and continue on for an indeterminate number of weeks, while [the tenants] were still living in the unit. [E.] FaceTimed [L.] and [L.] asked the workers to leave and told them work would not begin. The work that was going to be done included replacement of post and tube wiring and included ripping up asbestos-laden walls and ceilings. No hazardous materials inspections or permits for this work were ever conducted or filed during our tenancy.

Serving of de facto Renoviction, not following the law

The landlords served notice on November 29th 2021 that they would be commencing major, and by their account, very noisy and unremitting renovations that would begin (in fact, continue) on 1 January. They offered December and January rent for free and $5000, but were adamant in this and subsequent communications that the work would begin regardless of our decision on 1 January. They offered half a month of rent if we would leave before January 15th — which was one month, 17 days from the date of the notice letter. We wrote back informing that this was not following tenancy laws and we did not wish to leave suddenly.

No formal eviction procedure was initiated. Upon calling the city permits office, no permits for this extensive work had been filed. We were told by the city bylaws officer that became involved that the landlord would need to first conduct a hazardous materials inspection, then file proper permits, then wait for these permits to be approved by the city before they could apply for a 4- month eviction notice, none of which did the landlord do.

This offer did not appeal to us because we had lived in the 2-bedroom, over 1,000 square foot unit with access to a large front and back yard for 9 years for $1,500 a month. Currently dwellings of this nature rent for $5-9,000 a month in that neighbourhood. We were also aware the landlord had not even applied for the proper permits to conduct this renovations and upon calling the city permits office we were told it could take up, if not over a year to complete the necessary paperwork prior to any renoviction filings. Only after that process had been completed could the landlord then apply for the 4-month eviction notice. Therefore we expected to have at a minimum 1.5 years remaining in our tenancy at $1,500 a month. We did not want to vacate within 1-2 months.

Continuation of extremely unsafe conditions, difficulty getting help with critical repairs, beginning of extensive demolitions

On 30 December 2021 while we were out of town a neighbour called repeatedly in a panic to tell us that water was gushing out the side of the building. After considerable back and forth by text message, the landlord arranged for the building water main shut-off valve to be closed, an outside wall opened, and the pipe repaired. No attempt was made to insulate this area, leaving it vulnerable to future freezing.

On 5 January, another neighbour informed us that water was flooding the large front yard. With his property threatened, that neighbour arranged to close the street valve with the help of the fire department since the breach was between that valve and the house. It took many stressful communications with the landlord because he was insistent the damage was to the city side. We insisted we had spoke with the city and they said it was on the residential side. It took a lot of work to get the landlord to have someone patch the pipe. When we got home a few days later, the water was shut off, and the front had a gaping hole with the exposed city/residential pipe visible. The pit was filling with water which froze. This hole was remaining when we had to vacate the residency. After some time of the hole being left exposed, right next to the sidewalk, we demanded the hole be covered so that no children, dogs, or people fall in.

Final stages of rental

Despite our not having agreed to the renoviction, a team of workers began complete demolition in Unit A, and of the entire backyard. [E.]’s work was so badly interrupted that she had to completely cancel all clients. [E.] called the city permits office and reported the work and an officer came by and placed a Stop Work Order on Unit A’s door on January 10th. He also remarked that Unit C which the recently-deceased tenant below had lived in for 15-20 years has never been a legal unit.

For some Ume after the stop work order notice, workers continued to access Unit A and Unit C and work on demolition. The permits officer when called said that he could not come by to monitor or stop the work because it was unsafe to do so as a hazardous materials inspection had not yet begun. [E.]’s security camera documents the coming and going of workers with no masks or safety equipment to Unit A and Unit C throughout this time (footage submitted in filing). A team

showed up daily from morning to evening for demolition of the backyard. Huge pits were dug and when [E.] went into the backyard to take out the trash she fell badly and almost slipped into one of the unmarked holes in the dark backyard. No safety tape or any measures were taken to mark large, very deep pits (video and photographs submitted). Many neighbours complained as fence post holes were left for two weeks unmarked in the alley.

Under extreme duress and after all of these incidents, we felt no choice but to vacate the property and informed the landlord of our decision. We began another rental on 2 February. It was extremely unsafe to remain living in Unit B and we could no longer endure the losses to our work, especially [E.]'s work as she could not afford an Air BNB solely for the conduct of her work. In January 2022 [E.] could only find a 500 square foot one bedroom unit not in the same neighbourhood with no yard in Vancouver that would accept a pet. The rent for this unit is for $2,950, nearly double the rent of 1986 W 13th. This change in locations was not of our choosing or the result of an orderly, legal process, and has resulted in considerable financial loss. As noted above, in a legal process, the very earliest we would have had to leave would have been the end of June.

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The tenants submitted additional copies of photographs of the interior and exterior of the rental unit and surrounding property.

The following excerpt from the landlord respondent's written submission sets out his version of events (reproduced as written, edited and slightly formatter where necessary for brevity and privacy reasons):

Background and tenancy challenges.

The tenants appear to have sensitivity to noise and other issues, going beyond what is reasonable. The following are a few examples of the kinds of complaints the landlords received from the tenants:

a) A bathroom fan running in a neighboring unit was described as "a machine running" and when identified as a bathroom fan, the tenants thought it might be "dangerous". Exhibit A (page 5).

b) Someone quietly dropped off a single sheet of drywall to the entrance of a neighboring unit. The person was there for less than 5 minutes, and did not go up the stairs to the other unit. The tenants described this as making “a lot of noise”. Exhibit B (page 6)

c) The tenants described pine cones and sticks on the front lawn as trip hazards, and leaves as a slip hazard. Exhibit C (page 7-8).

d) The tenants complained about a sound from the hood fan, which was an ordinary noise, and tried to assert that the motor had failed, when in fact it was just the noise of the flap on the damper closing when the hood fan was turned off.

All of these issues were responded to and addressed even if we disagreed with the severity expressed by the tenant.

The tenants also complained about various reasonable repair items and these issues were addressed in reasonable timeframes.

One of the larger repair items that was taken care of but continued to be referenced was a leak in the ceiling of the tenants bedroom. This leak occurred in May of 2019. The exterior deck of unit A is above the bedroom. Petals from an elm seed tree bloom accumulated and clogged the drain of the deck above. The water pooled and came into the unit above. In order to fix this issue, the deck was completely re-done. The drain was enlarged, an overflow drain was added, framing was adjusted so the slope of the deck would go away from the house wall, a new membrane was installed with a lap of the membrane going up the exterior wall which required siding to be adjusted, a new hand-rail had to be added. This was a very expensive repair that was done to prevent a future leak of this type from ever happening again but the response is what you see before you today - complaints about renovations and disruption to quiet enjoyment. Another separate leak occurred due to chimney flashing and that was addressed by a roofer. Exhibit D (page 9-10).

Efforts were made to look into the claim of rats. No evidence was found to suggest that rats had entered the unit above them. The exterior deck as referenced above does have access via power lines and squirrels have been known to use these lines as a pathway on to the house. It is possible that the

activity reported was just squirrels. Offers to have an exterminator Page 1 scheduled and put out poison were declined. Exhibit E (page 11)

Generally, the work the tenants complained about was work that was not associated with the rental unit, and most of the work would have had no impact on the Tenants. The backyard, which the tenants complained about work being done in, wasn't included as part of the rental unit.

The home containing the rental unit is an older home, and did have issues from time to time. The landlords did their best to address those issues as they came up.

On or about December 30, 2021, during the record-breaking cold snap that occurred this winter which saw many Vancouver properties with frozen pipes, the pipes in the rental unit froze and burst while the tenants were away.

The Tenants advised the landlords that a neighbour had told them about the pipes bursting. The tenants told the landlord they were away and did not consent to the landlords going into the rental unit.

The tenants had not given notice to the landlords that they were leaving the property vacant for a period of time. They refused to tell the landlords when they would be back so the landlords could enter the suite to see what damage had been done by the burst pipe. Finally, after many requests, the tenants replied to the landlords the evening of January 3 that they would be back to the suite on January 6. Exhibit F (page 12-17)

During this time, the landlords were concerned about their property, but nevertheless, abided by the tenants' request that they not enter the suite.

Clearly this was a troubled tenancy. We tried to accommodate the tenants' many requests and deal with their complaints but ultimately nothing we did could be enough.

Ultimately, the tenants decided to move out. They were not evicted, so any claims for times following the end of the tenancy are not viable.

Response to compensation summary

Item 2. This was a residential rental not a commercial rental. There should be no consideration for business loss. There is nothing in their lease that says they can run a business. Even if you were to consider business losses, no evidence has been presented to corroborate business losses.

Item 3. The tenants appear to be making some sort of claim for compensation due to illegal renoviction. The tenants were not evicted or renovicted. They made a choice to move out, as evidenced by their notice on February 1, which is attached as Exhibit X

Item 4. The tenants have made a claim for [tenant L.K.]'s use of an Airbnb while [tenant E.K.] continued to stay in the unit. There is no justification for the suite being suitable for one of the tenants and not for the other, that could possibly require the landlord to be responsible for the tenants staying or using a different residence, while continuing to occupy the rental unit.
The tenants have a responsibility to mitigate their losses. [L.K.] made a choice to rent an Airbnb while [E.K.] continued to live in the rental suite. There is no evidence to suggest that only one of the bedrooms in the rental suite was usable while the other was not.

There were very few instances during the construction activities, if any, which would have reached a level to warrant compensation. This is an older house, repairs are a necessary part of maintaining a residence.

The tenants' noise sensitivities made getting anything done very difficult.

The tenants' demands about repairs being done only on certain days and at certain times made things even more difficult. Nevertheless, the landlords did their best to accommodate the tenants' requests, whenever possible, and worked within the restrictions set out by the City of Vancouver Bylaws at all times with respect to construction noise.

Notes on the Tenants' Evidence

Some of the evidence in the tenant's evidence package is clearly without prejudice communication including the offer and should not be reviewed as part of these proceedings.

Further any issues concerning units A and C are not relevant to this hearing and should not be considered. There are all kinds of unsubstantiated allegations and conjecture in their evidence that have nothing to do with their tenancy, which should not be considered. This includes, but is not limited to allegations of someone else being wrongly evicted, asbestos being present in the house, etc.

The stop work order should also not be considered as it doesn't have anything to do with their unit. The tenants calling the city and finding anomalies with permits on units that aren't their own has nothing to do with them or their tenancy and should not be considered.

Many of the tenants' statements are false, misleading, mischaracterizations or misrepresentations, or are completely irrelevant to their tenancy, and should not be considered.

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The landlord's documentary evidence was included with his 18-page evidence package.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss. Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable in minimizing their loss?

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.

At the outset, I note that, despite the tenants' lengthy, detailed, and well-articulated written submission (which, as the tenants' agreed would be considered in lieu of their providing oral testimony), there is insufficient evidence proving that the landlord breached the Act.

Certainly, there are in evidence numerous photographs and video of the property, but this evidence does not support a finding that the landlord somehow breached the Act through, as described in the particulars of this claim, "non-stop loud, invasive, and often likely illegal renovations above and below, workers not following COVID safety guidelines or hazardous material guidelines, constant renovation trash in front and back yard including hazardous materials, plumbing repairs left exposed, noise, evasive unreliable often unresponsive and rude landlord, frequent seeping water on windows and walls, no maintenance to property, unaddressed rats in the walls and in the property". Moreover, there is, I find, not sufficient, persuasive evidence that the landlord engaged his contractors (or himself) in what would amount to this behavior. This is not to say that the photograph and video evidence does not show that *something* was not occurring, but this evidence merely provides what may amount to an extremely narrow snapshot in time. The evidence does not, with respect, establish a lengthy, continuous, month-after-month scenario as described in the written submission. The parties should be aware that I have reread the submissions several times, have examined all of the evidence, including the correspondence between the parties[1], and am, quite simply, not persuaded on a balance of probabilities that the landlord breached the Act, the regulations, or the tenancy agreement.

This is not to say that the tenants did not suffer from disruption on occasion or from time to time, but there is no evidence before me to be satisfied that it resulted in a breach of the Act, the regulations, or the tenancy agreement from which compensation may flow. Nor is there is there sufficiently persuasive evidence for me to find that the landlord caused there to be unsafe conditions that would give rise to a breach of the Act.

It follows, from this finding, that the landlord did not breach the Act that resulted in the tenants having to be forcibly moved. No compensation arises from that aspect of the claim. Similarly, I am not persuaded, based on the evidence provided by the applicants, that the landlord breached the Act, the regulations, or the tenancy agreement that somehow led to the purported business losses.

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[1] There is, despite the landlord's argument to the contrary, no privilege or evidentiary exclusion that attaches to "without prejudice" communication between a landlord and a tenant.

In summary, taking into careful consideration all the oral, written, and documentary evidence before me, it is my finding that the tenants have not proven on a balance of probabilities that they are entitled to compensation. Having found that no breach of the Act, the regulations, or the tenancy agreement occurred, I need not consider the remaining three parts of the above-noted four-part criteria for assessing a claim for compensation.

Conclusion

For the reasons given above the tenants' application is hereby dismissed, without leave to reapply.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: August 9, 2022

Residential Tenancy Branch