



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding DEVON PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenant's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on September 23, 2022, Canada Post Tracking Number on cover sheet of decision, the Landlord confirmed receipt, deemed served on September 28, 2022; and,
- the Landlord's evidence package served by registered mail on January 11, 2023, Canada Post Tracking Number on cover sheet of decision, the Tenant confirmed receipt, deemed served on January 16, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on October 1, 2021. The fixed term ended on October 31, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,877.75 payable on the first day of each month. A security deposit of \$925.00 and a pet damage deposit of \$925.00 were collected at the start of the tenancy and are still held by the Landlord.

The Tenant testified that, without any warning, construction noises in the building began in December 2021. She woke up to a hammer drill noise on the underside of her rental unit floor. The Tenant stated the construction noises continued up to August 2022, and ran from Monday to Saturday beginning at 7 a.m. including holidays. The Tenant claimed she was not advised to wear personal protection equipment for the noise levels. Her anxiety and stress levels were pretty high working from home in the noise, and quite a few people moved out during this period.

The Tenant said she had just started a new job from which she was required to work from home. She was not able to effectively do her job with the noise. She said she could not hold a meeting or a phone call from home. The Tenant claimed in the average day there were 50 to 70 disruptions, and a few of those were “*fall off your chair*” disruptions. She did work from home for a few days, but after some time she received permission to work from the office.

The Tenant testified that there seemed to not be any hot work procedures set up, there were numerous fire alarms. People were not leaving the building for the fire alarms, and

on one occasion it was intentional when the fire department was testing the alarms. The Tenant stated she was not informed this was going to happen. She said she was the only person who left the building that day.

The Tenant spoke to the Landlord, her understanding was that the Landlord was to provide freedom from unreasonable disturbance and that she is entitled to quiet enjoyment of her rental unit, but she was told that they are allowed to have construction, but there was no warning, and they said I could only complain if there was loud music playing at 3:00 a.m. Before the Landlord posted notices about the construction, the Tenant asked several times how long the construction was going to last, and she was told "*oh just a few more days*".

The Landlord's Property Manager described the property as an 80 residential unit building sitting atop 7 commercial units on the ground floor. The Owner of the property is the Landlord, and once the construction is complete, then the management of the commercial units and the residential units turns to the property management company. The Landlord's Property Manager does not have instructions to settle this claim.

The Landlord's Property Manager noted that at the time of viewing the rental units, the Tenant would have seen that the entire ground floor was made up of commercial units. The Landlord's Property Manager submitted that the Tenant's preferred floor was a second floor unit and she submitted that the Tenant lived in the rental unit without complaint until April 2022. The Landlord's Property Manager submitted that at that time, they began posting notices so that residents would be kept apprised of the work and the progress of the construction.

The Landlord's Property Manager acknowledges that during some of the time there was construction noise, but a lot of the time there was not. Some of the times, there was painting, floor laying, electrical work, or equipment set up which is not excessively noisy. All work complied with the city bylaws.

The Tenant is seeking monetary compensation equivalent to half off her rent for eight and one-half months totalling \$7,980.44 because she could not fully enjoy her place of residence.

The Landlord's Property Manager requests that the Tenant's file be dismissed because the property management company does not have management of or control over the commercial units, therefore should not be penalized for their actions. The commercial

unit construction would inevitably produce noise and a reasonable person would know that there would be some noise especially when residing on a floor directly above the commercial unit spaces. The Landlord's Property Manager states they are not sure that the Act has jurisdiction over the commercial units.

Analysis

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.

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:*

...

(b) *freedom from unreasonable disturbance;*

...

RTB Policy Guideline #6-Entitlement to Quiet Enjoyment assists parties to understand issues that are likely to be relevant in a breach of quiet enjoyment claim. The basis for a finding of a breach of quiet enjoyment is set out in the guideline as:

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 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.

The property includes 80 residential units above 7 commercial unit spaces. Although the Tenant was required to work from home due to covid restrictions, her tenancy agreement was for a residential tenancy. Pursuant to Section 2(1) of the Act, I find the Act has jurisdiction in these circumstances.

The Tenant seeks compensation for a breach of her quiet enjoyment of her rental unit. When the Tenant moved into the residential property, commercial spaces on the first floor were still under construction. The Tenant's preference was to have a rental unit on the second floor of the residential building; however, this was directly above the construction work which was still an on-going process. The Tenant was required to work from home, but after some period of time while the construction was at a peak, the Tenant received approval to relocate and work from her office.

I find it was inevitable that noise from the construction would be heard in the rental units above the commercial spaces. The Landlord's Property Manager acknowledged there was noise from the construction, but oftentimes, the work did not produce excessive noise. The Tenant said the noise began in December 2021, but the Landlord said the Tenant made her first formal complaint in April 2022. The Tenant complained of high anxiety and stress levels; however, provided no medical proof was provided that supported that claim. After the Tenant's complaint, the Landlord began posting notices so that residents would be kept apprised of the work and the progress of the construction. The Tenant stated the noise stopped sometime in August 2022.

I find sometime after April 2022, the Tenant began working from her employer's office so was not affected by the construction noises. I find the Tenant's quiet enjoyment was disrupted by the construction noises which, for the Tenant, came out of the blue. I find the noise was a substantial interference with the ordinary and lawful enjoyment of the premises, but the construction noise and its affect on the Tenant ended when she began working from her employer's office. Pursuant to Section 62(3) of the Act, I grant the Tenant **\$400.00** for the period from December 1, 2021 to when the Tenant formally complained in April 2022 for the Landlord's breach of the Tenant's quiet enjoyment of her rental unit.

As the Tenant is successful in her claim, she is entitled to recovery of the **\$100.00** application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$500.00 from next month's rent due to the Landlord.

For the benefit of the Tenant, she may wish to discuss with an Information Officer at the RTB the options available to her when filing a dispute resolution claim. An Information Officer can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 604-660-1020 (Lower Mainland)
250-387-1602 (Victoria)
1-800-665-8779
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

The Tenant's application for an Order that the Landlord comply with the Act, Regulation and tenancy agreement is granted.

The Tenant may withhold \$500.00 from next month's rent to recover her monetary award and her application filing fee.

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

Dated: February 26, 2023

Residential Tenancy Branch