Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT OLC RP RR

Introduction

The Tenant seeks an order for landlord compliance, an order for repairs, an order for the reduction of rent, and a claim for compensation, pursuant to sections 62, 32 and 62, 65, and 67 of the Act, respectively, of the *Residential Tenancy Act* (the "Act").

Dispute resolution hearings were held on January 31 and April 6, 2023. The Tenant, their legal advocate, and the Landlord's representative attended both hearings.

Preliminary Issue: Completion/Compliance with Interim Order

In my Interim Decision of January 31, 2023, I made the following order:

> Pursuant to section 62(3) of the Act it is my order that the landlord complete the necessary and adequate repairs and/or maintenance to the large elevator no later than March 17, 2023. The landlord is requested to submit documentary proof of those repairs and/or maintenance being completed before the next dispute resolution hearing.

At the hearing on April 6, the Landlord's representative testified that Richmond Elevator completed the necessary and adequate repairs and maintenance on both the large and the small elevators. Copies of Richmond's report and invoices were submitted into evidence.

The Tenant's advocate did not dispute that Richmond Elevator carried out the work, but they raised an issue with a discrepancy of time purportedly versus reportedly spent on those repairs. They also noted that Richmond Elevator did not recommend or feel that soundproofing the elevator mechanical room would assist in getting rid of noise. However, Richmond Elevator on a previous had made such a recommendation.

Issues

1. Is the Tenant entitled to an order for the reduction of rent or for compensation?
2. Are any further orders for Landlord compliance or repairs required?

Evidence and Analysis

In this type of administrative proceeding, the applicant must prove their claim on a balance of probabilities (meaning "it is more likely than not to be true"). I have carefully reviewed the parties' submissions and have weighed the evidence, but only refer to the relevant information necessary to explain my decision.

The Tenant rents an apartment on the 21st floor of a multi-unit building. They complain of ongoing noises caused by the elevator. They seek an order requiring the Landlord to fix the issues with the elevator noise, and request not only that the elevator be fixed, but that the rental unit be insulated. They seek a sound barrier. There is an elevator mechanical room on the rooftop that sits directly above the rental unit. There is also a large elevator adjacent to the rental unit's wall. There are two elevators.

The Tenant first brought the noises to the Landlord's attention in 2017. Over the years, maintenance work was undertaken. The noise was decreased. But it was temporary and further complaints were forthcoming and more maintenance done. In 2020 the Residential Tenancy Branch issued an order requiring certain elevator deficiencies to be addressed. The Tenant argues that the order was not done by a mandated deadline.

The Landlord offered to move the Tenant to another rental unit on a different floor. The Tenant declined, owing to concerns over the safety on the different floor. A further offer to let the Tenant move to another rental unit on the same floor was made, but this was never completed.

The Tenant submits that they have experienced "substantial interference" resulting in distress, pain, and suffering. The Tenant argues that the noise has been so sever that it is "enough to lose [one's] sense of self." The Tenant seeks compensation of $35,000 (the maximum amount allowable under the Act, the Tenant's advocate pointed out) for "all expenses", for 80% of the rent, and for loss of quiet enjoyment, comprising of 12 years residency in the rental unit. It is noted that the Tenant's claims for compensation and for rent reduction—rent is currently $539—seem to be fused into one claim.

Is the Tenant entitled to an order for the reduction of rent or to compensation?

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. 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 if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to freedom from unreasonable disturbance.

Based on the evidence before me, including the Landlord's agreement that there is a noise, it is my finding that the Landlord breached section 28 of the Act. The Landlord disputes the severity of the noise but admits that there is or was a problem. That the Landlord has repeatedly attempted to have the elevator issues fixed since 2017 is evidence of there being a problem.

Given the Landlord's responsive to previous complaints and taking into consideration staffing and supply chain issues with elevator servicing, I am not inclined to conclude that the Landlord was negligent. However, the Landlord does have an obligation under the Act to ensure the Tenant enjoys quiet enjoyment and freedom from unreasonable disturbance. But for the Landlord's breach of the Act the Tenant would not have suffered a loss of quiet enjoyment.

However, I am not persuaded that the Tenant has proven the amount of the loss. The amount claimed, $35,000, appears to be based on nothing more than the fact that it "is for the maximum allowable amount." The claim is for compensation not just for loss of quiet enjoyment, but for "long-term damage to a person, including both physical and mental loss" and for "pain and suffering, stress, sleep deprivation and the inability to have a normal life." What is missing from the Tenant's case is any medical evidence to support the claim for mental and physical injuries.

The Tenant included a Monetary Order Worksheet in their application, which lists various amounts, including various purchases for various matters. There is also non-specific amount for items such as “my time spent the time I left of this file” along with a notation “whatever the court decides”. The seven-page worksheet comes to a total of $60,876.80. The worksheet also includes calculations of pain and suffering equating to 80% of the rent for the years 2018 to 2023, inclusive.

Despite the lengthy and detailed calculations, the amounts sought are ultimately arbitrary. There is no explanation as to how or why 80% was applied to the total amount sought for pain and suffering. In short, I am not satisfied that the Tenant has proven, on a balance of probabilities, the amount of the loss.

Last, I am not satisfied that the Tenant took reasonable steps to minimize their loss, whatever the loss, because the Tenant declined a reasonable offer from the Landlord to move into another rental unit on a different floor away from the elevator. The Tenant submits that they refused the Landlord’s offer because of “a history of the surrounding tenant’s” but there is nothing to substantiate this explanation.

In summary, in taking into careful consideration all of the evidence before me, it is my finding that the Tenant has not proven two required components of the above-noted test for compensation, or, for compensation in the form of a rent reduction. Those aspects of the Tenant’s application are dismissed without leave to reapply.

Are any further orders for Landlord compliance or repairs required?

Section 62(3) of the Act permits an arbitrator to order that a Landlord comply with the Act, the regulations, or the tenancy agreement. A section 62(3) order may be applied to section 32(1) of the Act.

Section 32(1) requires landlords to provide and maintain residential property in a state of decoration and repair that (a) complies with health, safety, and housing standards required by law, and (b) considering the age, character, and location of the rental unit, makes it suitable for occupation by a tenant.

Two orders were sought. One was for the Landlord to make adequate and proper repairs to the elevator or elevators. This order was made in the Interim Decision and reproduced on page 2 of this Decision. Based on the elevator company’s report it is my finding that the Landlord has complied with and completed the order regarding the large elevator. No further order in this regard is therefore warranted.

Although I acknowledge the discrepancy in Richmond Elevator's recommendation regarding soundproofing the mechanical room, the crucial point to consider is that the Tenant has not provided evidence to prove that the elevator mechanical room violates the *Safety Standards Act,* SBC 2003, c. 39, its associated regulations, or the CSA B44-16 Safety Code. As a result, I am unable to issue an order for the Landlord to rectify a situation that does not contravene any laws or applicable safety standards.

The Tenant desires soundproofing insulation in the rental unit, but they have not provided evidence of any health, safety, or housing standard violations required by law. The Tenant has lived in the unit for over 12 years, indicating that it is suitable for occupation, despite the elevator noise.

Last, it cannot be overlooked that the *location* of the rental unit must be a factor in determining compliance with section 32(1) of the Act: the rental unit is located directly underneath an elevator mechanical room. It would, in my opinion, my unreasonable to expect that an apartment located directly under an elevator mechanical room would be consistently quiet and free from elevator noise. As reports from Richmond Elevator would suggest, the ambient noise from the elevators is within an acceptable range.

For these reasons, I do not find that the Landlord has breached, or continues to breach, section 32(1) of the Act. Accordingly, the Tenant is not entitled to any further orders under section 62 of the Act. This aspect of the Tenant's application is thus dismissed.

Conclusion

The Tenant's application is hereby dismissed without leave to reapply.

This decision 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 under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: April 12, 2023

Residential Tenancy Branch