



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding InterRent Reit dba CLV
Group

and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- A monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (“Regulation”) or tenancy agreement pursuant to section 67 of the Act.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing is a continuation of a hearing which began on April 24, 2022, and was adjourned after 1.5 hours. The total hearing time was 2.5 hours.

The terms of the adjournment are set out in my Interim Decision of April 25, 2023, which required each party to provide written submissions.

As acknowledged by them, I find the parties were each served in compliance with the Act.

The parties are referenced in the singular.

Preliminary Issue – Evidence

The parties submitted substantial conflicting information and testimony in 2.5 hours of hearings. This included audio files and hundreds of pages of documents such as timelines, arguments (factual and legal), statements, emails, reports, cases and so on. The parties disagreed on what took place, whether there was any loss of quiet enjoyment, and whether the landlord's actions complied with the Act.

In this Decision, I will not summarize or address all documentary evidence and testimony. I will only address admissible, relevant, essential evidence which underpins my findings.

Issue(s) to be Decided

- Is the tenant entitled to compensation for monetary loss/other money owed pursuant to s. 67 of the *act*?
- Is the tenant entitled to reimbursement of the application filing fee pursuant to s. 72 of the *act*?

Background and Evidence

Overview

The tenant claims loss of quiet enjoyment during a tenancy because of construction in the building in which their apartment was located. In their Application for Dispute Resolution, the tenant claimed:

| ITEM | AMOUNT |
|--|--------------------|
| Rent reduction for loss of quiet enjoyment | \$13,728.00 |
| Loss of use of common areas | \$2,496.00 |
| Moving costs | \$913.50 |
| Reimbursement filing fee | \$100.00 |
| TOTAL | \$17,237.50 |

The tenant clarified that their claim for loss of quiet enjoyment was for 25% of rent for the 6-month period, September 2021 to February 2022.

The landlord asserted the tenant has not established any significant interference of their right to quiet enjoyment. They also claimed they took all reasonable steps to reduce the impact of the construction and loss of use of services. The repairs were necessary because of the age of the building and for the landlord to comply with their obligations under the Act.

Tenancy Background

The parties agreed as follows. The tenancy started November 30, 2014, and ended May 31, 2022. The tenant moved out May 15, 2022. Rent was \$1,664.00 monthly.

The rental unit is on the fifth floor of a six-floor rental unit building, one of 30 units. The landlord testified the building was constructed in 1964.

The tenant stated they worked from the unit.

Previous Decisions

The parties referred to previous relevant Decisions regarding the building, the file numbers for which are on the first page.

In July 2021, an Arbitrator ordered the landlord to comply with local area bylaws by completing work within the building within set hours. The applicant was a different tenant.

Several tenants, including the applicant, requested their applications for loss of quiet enjoyment be joined. On September 27, 2022, the Arbitrator dismissed the application as each tenant would have to be heard separately.

On May 9, 2023, an Arbitrator dismissed an application for loss of quiet enjoyment relating to the same construction situation. The applicant was a different tenant (WO). The Arbitrator found the applicant had not established their claim and the landlord did not breach their obligations under the Act.

Tenant's Claims

The tenant testified to key events:

| Date | Description |
|--------------------|--|
| April 27, 2021 | Renovations began in building. |
| June 21, 2021 | Notice of lobby renovations estimated 8-10 weeks (took 34 weeks). |
| September 26, 2021 | The elevator failed to work properly; not replaced until tenant moved out. |
| May 15, 2022 | Tenant moved out |

Noise

1. From the beginning of construction until the tenant moved out a year later, the construction noise seriously disturbed the tenant. The tenant never knew when they would have to work elsewhere because of the disturbance. Some periods were worse than others.
2. The tenant submitted audio recordings of the construction noise. For example, one recording illustrated the loud and disturbing sound of renovations in the adjacent apartment.
3. The tenant informed the landlord about the noise and asked for advance notification of any serious disruption. This request was ignored.
4. In July 2021, an RTB decision following an application by another tenant required the landlord to comply with municipal noise bylaws. Nevertheless, the landlord allowed loud construction noises outside permissible hours.
5. The tenant was disturbed many times by loud noise. For example, on July 30, 2021, there was unexpected construction noise interrupting the tenant's work. As well as other times, on January 31, 2022, a recording reflects the sound of construction noise that reverberated throughout the building.
6. The tenant learned that construction and the accompanying noise and inconvenience continued to July 2021, after they moved out.

Common Areas

7. From the beginning of construction until the tenant moved out a year later, the loss of services in common areas – repair and renovations to lobby, hallways, and so on - seriously disturbed the tenant and amounted to loss of quiet enjoyment.
8. Construction debris in common areas, such as in hallways and the entrance, created hazards. There was dust and chaos everywhere. This was also a source of inconvenience and disruption amounting to loss of quiet enjoyment.
9. Other tenants repeatedly complained to the landlord.

Elevator

10. For many months, the unreliability of the elevator was a serious inconvenience and was not resolved. The loss of dependable elevator service was a problem and annoyance that amounted to a loss of quiet enjoyment.
11. Beginning September 26, 2021, and continuing for 6 months, the elevator did not always fully function well or consistently. From time to time, the elevator did not work at all. Other times, it did not work on the fifth floor forcing the tenant to descend to the fourth floor for access.
12. The tenant and other occupants were inconvenienced by the lack of a reliable elevator. For example, they would use the elevator to get purchases or sports equipment from the lobby to the fourth floor, and then use the stairs to get to their apartment.
13. The tenant never knew when the elevator would work properly. Service notices and information are not provided by the landlord or were given inadequately.
14. Occupants of the building complained many times to the landlord.

Complaints

15. The tenant, and other building occupants, repeatedly complained to the landlord and asked them for notice of anticipated disruptions, such as loud noise from drilling, so they could plan accordingly. The landlord failed to do so adequately or consistently.
16. For example, on May 11, 2021, the tenant verbally informed landlord's agent MF about noise disturbance and requested notice in advance so they can relocate for work and other activities if necessary. Again, on June 15, 2021, the tenant complained to agent MF about a high- pitched sound. They again requested a heads up when noise was expected. The requests were unheeded.
17. Beginning in July 2021, the building occupants participated in an online group and exchanged information. Many occupants participated and complained to the landlord repeatedly about noise. They notified the landlord when they heard unexpected and unexplained sound. They requested information and warnings. Their efforts were futile.

Response

18. The landlord failed to respond in a timely manner to the tenant's complaints. Their efforts were inadequate. They erred in carrying out repairs competently and created noise in contravention of bylaws. They ignored valid protests and requests for information and warning.
19. Some tenants moved out during the construction. This allowed the landlord to rent the units to new occupants at higher rates.
20. The tenant moved out on May 15, 2022 because of the construction noise and loss of services, particularly the elevator to the fifth floor where their apartment was located. The elevator functioned on move out.

Landlord's Response to Tenant's Claims

The landlord testified as follows.

Background

1. The landlord purchased the 30-unit building in 2021. The building needed significant work to bring it up to acceptable standards.
2. Major systems, such as the elevator, were original to the building and required considerable repairs or replacement.
3. The construction and repairs included:
 - a. Upgrading the security system by replacing the intercom and fob system
 - b. Installing CCTV cameras for increased security in common areas
 - c. Updating the lobby and common areas
 - d. Renovating apartments as they became available, only when occupants voluntarily moved out.
4. The landlord submitted a Building Report recommending detailed building repairs. These included upgrading the security system, light and emergency systems, and the hydronic heating water system.
5. In February 2021, the landlord sent out a newsletter to all tenants which included emergency contact information and information on a communication portal. This allowed residents to communicate with the landlord, submit and track work orders, check rental ledgers, and so on.

Noise

1. There is no question construction took place, which caused some noise and inconvenience. However, the circumstances did not amount to loss of quiet enjoyment. In any event, the tenant never complained and thereby denied the landlord an opportunity to look into their concerns.
2. The landlord made all reasonable efforts to comply with the requirement they protect the tenant's right to quiet enjoyment. All work was carried out in a good and workmanlike manner by knowledgeable, experienced, proficient workers.
3. Any inconvenience to the tenant from the construction was minor and temporary. There is no evidence of a substantial, grave, or permanent interference with quiet enjoyment.

4. The landlord complied with noise bylaws and coordinated work so that it was carried out between 9:30 am to 6:00 pm on weekdays with shorter hours on Saturdays. The landlord made every effort to accommodate the concerns of residents.
5. The landlord said the tenant's audio recordings are unreliable as they are short, and the location of the recording device was unclear. At most, they show temporary inconvenience.
6. The tenant never requested alternate accommodation.

Complaints

7. The tenant never complained to the landlord about construction noise during the period in which they claim loss of quiet enjoyment. Without complaints, the landlord could not address their individual concerns.
8. Work included renovation of the unit adjacent to the tenant. This began April 27, 2021, and was mostly completed in 4 days. During this time, the tenant did not complain about the noise.
9. When other occupants informed the landlord of disruption, the landlord made best efforts to accommodate the concerns. However, the tenant never complained. Accordingly, the landlord could not address their specific concerns.
10. The landlord posted timely and informative notices in the building. The tenant never informed the landlord these were inadequate or requested direct communication.

Common Areas

11. While some construction materials were on site, they were orderly and well cared for. No reasonable person would find it hazardous.
12. In any event, the tenant never complained to the landlord about the common areas.
13. Renovations to the common areas were essential to provide security to the building residents.

Elevator

14. The elevator was 60 years old past its expected life span of 30-35 years.
15. On September 29, 2021, the tenant used the communication portal to notify the landlord of a problem with the building's elevator which would not go to the fifth floor. This required fifth floor occupants to get on the elevator on the fourth floor. No other floors were affected.
16. The landlord made best efforts to repair and replace the elevator in a timely and proficient manner to minimize disruption.
17. The landlord diligently made efforts to locate obsolete parts and fix the elevator on a temporary basis. The elevator was fixed by mid December 2021.
18. The problems with the elevator indicated a need for replacement.
19. The landlord replaced the elevator from June to September 2022, a normal replacement period. During this time, the landlord offered a part time porter service.
20. The delay in finalizing the replacement of the elevator was partially attributable to the responsible technician requiring unexpected heart surgery.
21. The tenant was not significantly inconvenienced by having to walk one flight of stairs.
22. The tenant used the elevator when they moved out.

Moving Costs

23. The landlord is not responsible for the tenant's moving costs. The construction did not contribute to their decision to vacate. No part of the expense is attributable to a non-functioning elevator or to the construction.

Analysis

Both parties provided a substantial amount of conflicting evidence during the lengthy hearing of 2.5 hours.

I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant, admissible and significant evidence in support of my conclusions and the facts as I find them.

Credibility

The landlord submitted convincing testimony primarily from the agent MF. They submitted many well-organized , comprehensive documents. Their version of events was well documented.

I find the landlord's submissions to be persuasive, credible, and forthright. The matter-of-fact testimony was supported in all material aspects by documentary evidence. I accept the landlord's evidence in its totality.

I find the landlord's version of events is the account which a practical and informed person would readily recognize as reasonable and reliable.

Therefore, I give the landlord's evidence the greatest weight. Where the parties' version of events differs, I prefer the landlord's version.

Four-Part Test

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 by the applicant based on the balance of probabilities, that is, something is more likely true than not. These tests are 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?

Each element of this test must be proven on a balance of probabilities. If one element of the test is not proven, then the remainder of the test need not be considered. The tenant bears the standard of proof on a balance of probabilities. In other words, what is more likely than not to have happened.

The tenant argued that the landlord failed to protect their right to quiet enjoyment. The landlord was informed of the circumstances (noise, loss of services, construction debris and so on) and ignored the tenant's repeated complaints. Their abatement actions were insufficient.

The tenant incurred the expenses for moving as set out for which the landlord should compensate them.

Quiet Enjoyment

The tenant's claim for damages is for compensation for loss of quiet enjoyment.

Section 28 of the Act deals with the tenant's right to quiet enjoyment. A tenant is entitled to quiet enjoyment including reasonably privacy, freedom from unreasonable disturbances and use of common areas.

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. A breach of quiet enjoyment is 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 disturbance must be frequent and ongoing.

The Arbitrator is tasked with deciding the seriousness of the situation, the extent of the tenant's loss of use, the time of the interference, the value of the loss to the tenancy and the reasonableness of the landlord's actions.

Findings – Loss of Quiet Enjoyment

Considering the testimony and evidence, the Act, and pursuant to Policy Guideline 6, I find as follows.

The tenant has not met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment.

The landlord had an obligation to repair and renovate the aging apartment system. For example, the elevator was 30 years past its expected life.

I have no doubt that the construction took place as described. Common sense tells me there would be periodic noise and disturbances to the tenant. I accept the elevator did not work perfectly for the period claimed by the tenant and there was some construction debris.

However, I find these conditions were short-lived and temporary. They were not frequent and ongoing. There was not substantial or long-lasting inconvenience.

Where the tenant claims events amounted to substantial interference, I find the tenant's version to be exaggerated or contrived.

I find the tenant complained little or at all. The landlord offered a communication portal for ease of communication which the tenant never used. So the landlord was not aware of an interference or unreasonable disturbance to the tenant. The landlord was therefore not given an opportunity to take reasonable corrective steps.

I accept other tenants complained to the landlord about the construction and various related issues.

However, I find the landlord took all practical steps to investigate their complaints, find solutions, and change circumstances to mitigate disruption.

They conducted a thorough, professional job throughout the construction and carried out all reasonable remediation steps to mitigate and lower the noise levels and disruption. They met all lawful expectations and responsibilities.

In conclusion, I find there was no loss of quiet enjoyment. I find the landlord took all reasonable steps to reduce noise and disruption.

I find the tenant did not move out because of loss of quiet enjoyment or construction disturbances. I deny compensation for moving expenses.

As the tenant has not been successful, I do not award compensation for the filing fee.

Summary

In summary, the tenant's application is dismissed in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: June 14, 2023

Residential Tenancy Branch