Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRESTVIEW MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

The tenants apply for compensation for disturbance caused by a roof repair to the apartment building in September 2014. They withdrew their claim for a compliance order.

Issue(s) to be Decided

Does the relevant evidence show on a balance of probabilities that the tenants are entitled to the relief requested?

Background and Evidence

The rental unit is a one bedroom, two floor, loft style apartment in a 54 unit apartment building. The tenancy started in February 2013. The rent is $1430.00. The landlord holds a $700.00 security deposit.

The tenants say that between September 8 and 16, 2014 the landlord undertook significant maintenance on the building roof immediately above the upper portion of their apartment and it caused the tenants significant disturbance, reducing the value of the rental unit over that time.

They say the balcony of their apartment was covered daily with debris, tiles, dirt and small pieces of lumber on September 8th, 9th, 10th, 11th and 12th and that on the 15th and 16th the landlord's workmen disturbed them with cleanup work.

They say they were denied the use of the balcony in the evenings on those days and that the tenant Ms. M. who often works at home, was denied that opportunity because of the noise of the workmen and their tools. The tenant Mr. H. works away from home during the day. A smartphone application used by the tenants indicated a noise in excess of 100 decibels at some time.

The tenants complain that there was a lack of notice of the work. They saw a poster on the common area on September 2nd and the work started September 8th. They could not say how the disturbance would have been avoided or of less affect had more notice been given.

The tenant Ms. M. testified that on September 10th she was startled to see a man drop to the balcony, onto their planter, purportedly to retrieve a soda can and then climb over a fence to the neighbour's balcony. She was concerned because she was unsure whether the man might be an intruder of some sort. She took a photo of him.

The landlord's representatives submitted a work schedule to show that the noisy work, the "demolition" portion of the roof repair, occurred on September 8th, 9th, 10th and 11th. After that the work was "rebuilding" and then cleanup to September 16th and only minor work for a few days after.

Upon receiving the tenants' complaint about the balcony, the landlord cleaned it on September 8th and undertook to clean the balcony on September 11th, 12th, 15th and 16th. Apparently, the landlord did not clean the balcony on the 9th or 10th. The tenants say it was cleaned on the 8th only, and then not again until the 16th , though the tenants have a photo of a workman on the deck on September 10th with a broom in his hands.

It's the landlord's view that the roof work was an ordinary upkeep and repair issue and that tenants must be expected to suffer some disturbance and inconvenience as a result of such work. The landlord's representatives point to Residential Tenancy Policy Guideline #6, "Right to Quiet Enjoyment" where it says "[t]emporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment."

The landlords' representatives dispute the tenants' monetary assessment of their loss.

Analysis

The Residential Tenancy Policy Guideline #6 "Right to Quiet Enjoyment" summarized the law relating to the landlord's covenant for quiet enjoyment. It provides:

> The *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* 2 (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:
> - reasonable privacy
> - freedom from unreasonable disturbance,
> - exclusive possession, subject to the landlord's right of entry under the Legislation, and
> - use of common areas for reasonable and lawful purposes, free from significant interference.
>
> Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.
>
> - **Basis for a finding of breach of quiet enjoyment**
>
> Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.
> The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:
> · entering the rental premises frequently, or without notice or permission;
> · unreasonable and ongoing noise;
> · persecution and intimidation;
> · refusing the tenant access to parts of the rental premises;
> preventing the tenant from having guests without cause;
> · intentionally removing or restricting services, or failing to pay bills so that services are cut
> off;
> · forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or, · allowing the property to fall into disrepair so the tenant cannot safely continue to live
> there.
>
> **Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.**
> **It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord**

has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

> A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy.
>
> (*footnotes removed, emphasis added)*

It should be added the covenant for quiet enjoyment has little to do with “quiet” in the acoustic sense.

> The covenant for quiet enjoyment is an assurance against the consequences of a defective title including any disturbance found thereon, and against substantial interference, by the covenantor or those claiming under him with the enjoyment of the premises for all usual purposes....
>
> (Williams & Rhodes, Canadian Law of Landlord and Tenant (6th ed), 1988])

In my view the inconveniences suffered by the tenants were within those that might be expected from the repair or renovation being conducted. The disturbance created was a temporary one and caused only minor inconvenience. The tenant Mr. F. was away most of the day. The tenant Ms. M. could work elsewhere though not near her printer or scanner during the business hours on those days. I note that she rented another workspace during the landlord’s work but did not make a claim for that cost.

The workman on the balcony was, by the photo adduced, obviously not an intruder. He was in a work outfit with a hardhat on and was wielding a broom, cleaning the balcony as had been requested. Technically his presence there may have been a trespass, but the incident was so minor as not to warrant any award of damages.

The tenants were not without use of the balcony. They would have had to sweep it first but made no effort to do so and I take from that they were not particularly inconvenienced by the lack of it during the work period.

I find there was no breach of the landlord's covenant of quiet enjoyment.

That having been said, the work did interfere with the tenants' normal enjoyment of their apartment. It was a nuisance. A landlord may be liable in damages for nuisance though it is not in breach of the covenant for quiet enjoyment. However, to found a claim in damages for the tort of private nuisance the interference with the owner's use or enjoyment of land must be both *substantial* and *unreasonable* (*Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13).

I find that in the circumstances of this case it was not.

Conclusion

The tenants' application must be dismissed.

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: October 30, 2014

Residential Tenancy Branch