Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH 415 & 435 Michigan Apartments c/o Starlight Investments and Devon Properties Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

RR, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant has applied for a rent reduction and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on August 06, 2017 the Application for Dispute Resolution, the Notice of Hearing, and 24 pages of evidence that was submitted to the Residential Tenancy Branch on August 09, 2017 were sent to the Landlord, via registered mail. Legal Counsel for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On August 10, 2017 the Landlord submitted 29 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was served to the Tenant, via registered mail, on August 10, 2017. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On October 19, 2017 the Landlord submitted an 8-page submission to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was served to the Tenant, via regular mail, on October 19, 2017. The Tenant acknowledged receiving these submissions and they will be considered during these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

Legal Counsel for the Landlord stated that the Landlord has not been properly named in the Tenant's Application for Dispute Resolution. With the consent of both parties, the Application

for Dispute Resolution has been amended to reflect the correct name of the Landlord, as provided at the hearing.

Issue(s) to be Decided

Is the Tenant entitled to a rent reduction in compensation for a loss of quiet enjoyment?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2014.

The Tenant stated that his rent was increased to $1,190.00 on October 01, 2015. The Landlord does not dispute this testimony, as the building was being managed by a different management company at the time of this rent increase.

The Landlord and the Tenant agree that the rent was increased to $1,224.51 on October 01, 2016 and that the rent was increased to $1,269.82 on October 01, 2017.

The Landlord and the Tenant agree that renovations to the interior of the residential complex began in January of 2016 and renovations to the exterior of the residential complex began in June of 2016.

The Tenant is seeking compensation, in part, because the exterior of the building was covered. He stated that:

- sometime in June of 2016 the exterior of his building was wrapped in plastic and a blue transparent cover, which prevented him from using his balcony and opening his windows;
- the plastic wrapping was removed in September of 2016 but the scaffolding and blue cover remained until early in October of 2017;
- the dense plastic wrapping prevented light and air from entering his rental unit;
- he was not able to use his balcony or open his windows until October of 2017;
- the exterior coverings made his rental unit uncomfortable during the entire year because there was no airflow in the unit;
- the temperature in his rental unit was a minimum of 24 degrees at all times; and
- during the warmer days the temperature was between 25-26 degrees.

The Landlord does not dispute any of the Tenant's testimony regarding the scaffolding and building coverings.

The Tenant is seeking compensation, in part, because he was disturbed by construction noise. The Tenant stated that:

- between June of 2016 and early December of 2016 he was disturbed by the construction on weekdays between approximately 7:30 a.m. and 4:30 p.m.;
- workers were drilling and grinding concrete on the exterior of the building which was dirty and excessively loud;
- he is retired so he was often home during the construction;
- there were two "stop work orders" between June and September of 2016; and
- there was no construction noise for a period of approximately three weeks as a result of the "stop work orders".

In the Tenant's written submission he declared that he wore ear protection between 8:00 a.m. and 4:00 p.m.

The Landlord does not dispute any of the Tenant's testimony regarding the nature of the noise disturbances. The Landlord contends that:

- construction on the exterior of the building began in mid to late June of 2016 and stopped on December 12, 2016;
- construction on the exterior of the building occurred between 7:00 a.m. and 7:00 p.m. on weekdays;
- construction on the exterior of the building occurred between 10:00 a.m. and 7:00 p.m. on Saturdays; and
- work on the balconies occurred between 8:00 a.m. and 3:30 p.m.

The Tenant is seeking compensation, in part, because he has experienced "undue stress" caused by "possible exposure" to "elevated levels of asbestos". He contends that:

- in December of 2016 drywall was removed from the interior of his rental unit;
- the site supervisor told him that protective measures would be taken when the drywall was removed to prevent the spreading of asbestos;
- no precautions were taken to avoid spreading asbestos when the drywall was removed;
- the area where drywall was removed was covered with duct tape;
- in January of 2017 the management company advised him there were elevated levels of asbestos in the residential complex; and
- he does not know if anything is being done to address the asbestos in his rental unit.

The Landlord contends that:

- on December 12, 2016 a "stop work order" was issued for a neighbouring building that is owned by the same Landlord;
- after receiving this "stop work order" the Landlord also stopped working in the Tenant's residential complex;
- testing for asbestos in this residential complex and in the neighbouring building commenced in December of 2016;
- on January 24, 2017 residents were informed that lab tests revealed "elevated levels of asbestos" in dust that had settled in the residential complex;

- on January 27, 2017 residents were informed that they were being temporarily relocated to facilitate further testing and clean-up; and
- on March 07, 2017 the local health authority informed tenants that the “chance of exposure to airborne asbestos was not elevated at the time and locations of sampling”.

The Landlord submitted a copy of the letter from the local health authority, dated March 07, 2017. This letter declares, in part, that samples were taken from several floors in the building, including the floor the Tenant lives on. The letter declares, in part, that asbestos fibres were found on 4 of the 44 dust samples taken and a single asbestos fibre was found on 4 of the 58 air samples that were taken. The letter declares, in part, that the “chance of exposure to airborne asbestos was not elevated at the time and location of sampling”, although it cannot be determined with certainty if the samples are representative of each suite at various times in the past.

The Landlord submitted an information sheet regarding health problems related to exposure to asbestos.

The Landlord and the Tenant agree that:

- the Tenant was required to vacate the rental unit once asbestos was detected in the residential complex;
- the Tenant was relocated to a local hotel, at the expense of the Landlord;
- transportation to the hotel was available for tenants;
- there was a fridge and microwave in the hotel room;
- breakfast was provided to the Tenant while he was in the hotel;
- the Tenant was provided with $1,400.00 in gift cards to compensate him for expenses associated to being displaced;
- the Tenant was offered a new vacuum if he was concerned with construction dust accumulating in his vacuum;
- the Tenant returned to his rental unit on March 10, 2017;
- the Tenant paid full rent for January of 2017;
- the Tenant was not required to pay rent for February of 2017; and
- the Tenant paid pro-rated rent for March of 2017.

The Tenant contends that he vacated the rental unit on January 24, 2017 and the Landlord contends that he vacated his unit on January 29, 2017. The Landlord submitted a letter, dated January 27, 2017, in which the Landlord informs occupants of the residential complex that they must move out of their units between January 27, 2017 and January 29, 2017.
The Tenant is seeking compensation, in part, because the Landlord did not repair a hole in his wall in a timely manner. The Tenant stated that:

- on December 08, 2016 the contractor made a hole in the drywall in his rental unit;
- the hole is approximately 4’X18”;
- the hole was covered with duct tape;
- the hole has never been repaired; and
- he has not reminded the Landlord of the need to repair this hole.

The Landlord does not dispute any of the Tenant’s testimony regarding the hole in the drywall.

The Tenant submitted a photograph of the area that is covered with duct tape.

Analysis

Section 28 of the *Residential Tenancy Act (Act*) stipulates that a tenant is entitled to quiet enjoyment of a rental unit including, but not limited to, the right to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, and freedom from significant interference.

Residential Tenancy Branch Policy Guideline #6, with which I concur, reads, in part:

> 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 breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.
>
> A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Landlords have an obligation to maintain their rental property and the right to upgrade the property.

On the basis of the undisputed evidence I find that renovations to the exterior of the building began in June of 2016 and that the exterior of the building was covered with plastic, a blue cover, and/or scaffolding until October of 2017. I find that the exterior renovations prevented the Tenant from using his balcony and opening his windows, which significantly interfered with his ability to ventilate the unit and enjoy natural light.

I find that the inability to use the balcony reduced the value of this tenancy by $50.00 per month and the inability to open windows and enjoy natural light further reduced the value of this tenancy by $100.00. I therefore award the Tenant:

- a rent reduction of $1050.00 for the period between June 01, 2016 and December 31, 2016;
- a pro-rated rent reduction of $116.16 for the period between January 01, 2017 and January 24, 2017;
- a pro-rated rent reduction of $101.64 for the period between March 10, 2017 and March 31, 2017;
- a rent reduction of $900.00 for the period between April 01, 2017 and September 30, 2017; and
- a pro-rated rent reduction of $125.84 for the period between October 01, 2017 and October 26, 2017.

I note that the rent reduction for the period between June 01, 2016 and December 31, 2016 was somewhat speculative, as neither party provided the exact date the exterior coverings were erected.

I note that the pro-rated rent reduction for the period between October 01, 2017 and October 26, 2017 was also speculative, as neither party provided the exact date the exterior coverings were removed.

I note that a rent reduction was not awarded for the period between January 25, 2017 and March 09, 2017, as the rental unit was not occupied during that period.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that his right to the quiet enjoyment of the rental unit was breach by the noise and dust that is typically associated to drilling and grinding concrete. I therefore find that the Tenant is entitled to compensation of $150.00 per month between mid-June of 2016 and mid-December of 2016, which is $900.00, less $112.50 for the three weeks when there was no noise due to the "stop work orders".

On the basis of the evidence submitted by the Landlord I find that a small amount of asbestos was located in the residential complex. I find there is no absence that establishes the Tenant was exposed to unsafe levels of asbestos or that his health was compromised as a result of asbestos in the residential complex. While I accept that the Tenant was concerned about the presence of asbestos, I find that the Landlord acted reasonably and responsibly regarding the concern about asbestos. I therefore cannot conclude that the Tenant is entitled to compensation on the basis of the asbestos.

On the basis of the undisputed evidence I find that the Tenant was dislocated for between five and six seeks during this tenancy while the Landlord was addressing asbestos issues. I find that the Landlord compensated the Tenant for this dislocation by paying for alternate accommodations; providing a full rent reduction for February of 2017 and a partial rent reduction for March of 2017; providing complimentary breakfasts; and providing $1,400.00 in gift cards. I find that the Landlord has adequately compensated the Tenant for the inconvenience of being relocated and I do not find further compensation is warranted.

On the basis of the undisputed evidence I find that there has been a hole in the Tenant's drywall for over 10 months, which has been covered with duct tape. On the basis of the photograph submitted in evidence I find that this hole has reduced the aesthetic value of the rental unit by $100.00 and I grant the Tenant compensation in that amount. In determining the amount of

compensation I was influenced by my conclusion that the hole did not impact the Tenant's ability to use the rental unit and by the fact the Tenant did not attempt to mitigate the impact of the hole by reminding the Landlord of the need to repair the hole.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion

The Tenant has established a monetary claim, in the amount of $3,281.14 which includes $2,293.64 in compensation because the exterior of the building was covered with shrouding/scaffolding; $787.50 in compensation for construction noise, $100.00 in compensation for the hole in the wall, and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for $3,281.14. This Order may be served on the Landlord, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of that Court.

In the event the Tenant does not wish to file this Order with the Province of British Columbia Small Claims Court, he may, pursuant to section 72 of the *Act,* withhold rent from any upcoming rent payment until such time as he has recovered the amount due to him.

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: November 08, 2017

Residential Tenancy Branch