Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros Agencies Limited and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, FFT

Introduction

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

- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord was served with the tenants' application for dispute resolution and evidence via registered mail. I find that the above documents were served in accordance with section 89 of the *Act.* The landlord did not submit any documentary evidence.

Preliminary Issue- Amendment of claim sought

The description provided by the tenants in their Application for Dispute Resolution under the claim for a reduction of rent for repairs, services or facilities agreed upon but not provided, states:

> We're requesting this for a loss of quiet enjoyment and privacy due to ongoing construction that was not fully disclosed to us when we signed our lease. This work also had impacts on my job as I was working remotely from home.

I find that the description above is a claim for a Monetary Order for damage or compensation under the *Act* for a loss of quiet enjoyment, pursuant to sections 28 and 67 of the *Act.* While the tenants did not file for the correct claim, I find that the true nature of their claim was patently obvious.

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated the application may be amended at the hearing. I find that since the true nature of the tenants' claim was obvious, it was reasonable for the landlord to have anticipated that the tenants' claim would be amended at the hearing, to correspond with the description provided in the tenants' Application for Dispute Resolution. I therefore amend the tenants' Application for Dispute Resolution to claim:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 20, 2020 and is currently ongoing. Monthly rent in the amount of $1,475.00 is payable on the first day of each month. A security deposit of $737.50 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenants testified that when they signed the tenancy agreement the landlord informed them that there would be some repairs made to the subject rental property but made it seem as though the repairs were going to be minimally disruptive and short lived. The tenants testified that the repairs were extensive, ongoing, and extremely noisy which significantly interfered with their lives.

The agent testified that the tenants were made aware of the upcoming construction of the subject rental property when they signed the lease and at no point in time did the agent tell the tenants that the construction would have a minimal impact on them.

The tenants testified that the subject rental property is a corner unit and that two of the exterior walls of their unit were renovated from April to early July 2020. The tenants testified that the unit above them also became vacant during this time and the landlord elected to renovate it, meaning that noise was coming from three directions.

The agent testified that the landlord purchased the subject rental property approximately 1.5 years ago and that it had not been substantially renovated in 25 years. The agent testified that the landlord wanted to improve the condition of the subject rental property for the benefit of all the tenants and that included completing repairs on the exterior of the building and renovating units on turn over.

The tenants testified that the scope of the construction completed by the landlord was greater than what they were initially told. The agent testified that once the repairs were started, other issues were revealed and the landlord had no choice but to complete all the repairs necessary, now just the ones known at the time the project was started.

The agent testified that the noise levels did not breach City Bylaws.

The tenants testified that the construction workers were onsite in April 2020 for 6.5 hours per day and onsite 8 hours per day from May to June 2020. The tenants testified that the workers were on site Monday to Friday and onsite just under ½ of all Saturdays during the above period. The agent did not dispute the above testimony. The tenants

entered into evidence several video clips taken from inside the subject rental property which show high construction related noise levels.

The tenants testified that windows in the subject rental property were replaced on May 11-12, 2020 and that the workers did not wear masks, social distance, or sanitize their workspace after completing their work, as was promised by the landlord. Tenant W.S. testified that he works from home and was not able to vacate the subject rental property while the windows were being replaced because he required internet access and the pandemic closed any other areas he would normally be able to work out of. Tenant W.S. testified that he had to move from room to room, to stay out of the workers way.

The agent testified that the tenants did not notify her that the workers did not follow pandemic protocol and that she would have rectified this immediately had she known. The agent testified that she could not correct what she was not informed of.

Tenant W.S. testified that the construction work had a serious impact on his work and home life as he works from home and could not go other places due to the pandemic.

Both parties agree that the landlord provided all tenants with a 10% rent reduction for the month of July 2020 as compensation for all of the construction work competed on the building from April to July 2020. The tenants testified that they paid their full rent for July 2020. The agent testified that the credit was still applied to the tenants' account.

The tenants are seeking the following compensation for loss of quiet enjoyment due to construction noise and repairs:

Month	**Amount**
April – 6.5 hrs of construction per day	$276.56 (18.75% of rent)
May- 8 hrs of construction per day	$368.00 (25% of rent)
June- 8 hrs of construction per day	$368.00 (25% of rent)
May 11- unit empty for window installation	$47.50 (pro-rated daily rate)
May 12- unit empty for window installation	$47.50 (pro-rated daily rate)
Total	**$1,107.56**

The tenants testified that the requested amounts are based on the disruption caused to their lives.

Analysis

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> (a)reasonable privacy;
> (b)freedom from unreasonable disturbance;
> (c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
> (d)use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Policy Guideline 6 states that a landlord is obligated to ensure that the tenants' 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 tenants' right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

Section 67 of the Act states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the testimony of both parties, and the video evidence provided by the tenants, I find that the tenants lived with high levels of noise due to the landlord's construction,

from April to early July 2020. I find that the noise was not a temporary discomfort or inconvenience but was frequent and ongoing for months. I find that while the landlord has a right to maintain the subject rental property, this does not override the tenants' right to quiet enjoyment and the tenants are entitled to compensation for their loss of quiet enjoyment.

Given the level of the noise I find were present during construction, the undisputed daily hours in which construction crews were on-site, and the length of the construction project, I find that the construction noise constitutes an unreasonable disturbance to the tenants in breach of section 28(b) of the *Act.*

Having made this finding, I will now turn to the amount of compensation sought by the tenants for the landlords' breach of section 28 of the *Act*. Pursuant to the tenants' undisputed testimony, I accept as fact that tenant W.S. works from home and suffered significant disruption to this work life and both tenants suffered significant disruption to their home life, as a result of the ongoing construction noise which occurred from April to July 2020.

Although the landlord made some effort to compensate the tenants for their loss of quiet enjoyment by way of providing a 10% rent reduction for the month of July 2020, I find that the agent has not proved that the landlord made any efforts to actually reduce the amount or duration of construction noise and thereby the impact of this noise of the tenants' right to quiet enjoyment of the rental unit.

As I have found that the construction noise had a significant negative impact on the tenants' work and home life, I find that the tenant is entitled to the requested compensation for April to June 2020, in the amount of $1,112.56 less the 10% rent credit already applied to the tenants' account in the amount of $147.50, for a total of $965.06.

I find that the disruption suffered by the tenants for the installation of windows on May 11-12, 2020 was a temporary inconvenience and does not constitute a breach of section 28(b) of the *Act.* The landlord has a right to maintain the subject rental property. I dismiss the tenants' claim for compensation for May 11-12, 2020.

As the tenants were successful in this application for dispute resolution, I find that they are entitled to recover the $100.00 filing fee from the landlord, pursuant to section 72 of the *Act.*

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenants, the amount may be deducted from any rent due to the landlord. I find that the tenants are entitled to deduct $1,065.06, on one occasion, from rent due to the landlord.

Conclusion

The tenants are entitled to deduct $1,065.06, on one occasion, from rent due to the landlord.

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 09, 2020

Residential Tenancy Branch