Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METCAP LIVING MANAGEMENT INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

On July 3, 2020, the Tenant made an Application for Dispute Resolution seeking an Order to comply pursuant to Section 65 of the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant's Application was originally set down for a hearing on October 26, 2020 at 1:30 PM but was subsequently adjourned for reasons set forth in the Interim Decision dated October 26, 2020. This Application was then set down for a final, reconvened hearing on January 26, 2021, at 11:00 AM.

The Tenant attended the final, reconvened hearing with P.D. attending as her advocate. K.W. and G.G. attended the final, reconvened hearing as agents for the Landlord, with A.C. attending as counsel for the Landlord. All in attendance, except A.C., provided a solemn affirmation.

During the original hearing, the parties advised that the Landlord had applied for a Judicial Review of a previous Decision of the Residential Tenancy Branch (the relevant Decision is noted on the first page of this Decision). Both parties agreed that the Tenant's claims in this Application were not related to the previous Decision and that they were willing to proceed with the Tenant's claims on this Application.

Furthermore, all parties agreed that the Tenant's claims in this Application were for compensation in the amount of one month's rent, or $1,756.25, less 10% for the manner with which the Landlord has treated her. As well, the Tenant was seeking compensation for a 10% monthly rent reduction for the months of May to October 2020 as a loss of her quiet enjoyment due to disturbances based on ongoing repairs in the apartment

building. The total Monetary Order that the Tenant was seeking for her loss was **$2,634.38**.

From that original hearing, I was satisfied that the Notice of Hearing and evidence package was sufficiently served to the Landlord. As such, I accepted the Tenant's evidence and have considered it when rendering this Decision. Moreover, I was satisfied that the Landlord's evidence was sufficiently served to the Tenant. Therefore, I accepted the Landlord's evidence and have considered it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2017, that rent was currently established at $1,756.25 per month, and that it was due on the first day of each month. A security deposit of $835.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenant advised that her first claim was for compensation in the amount of one month's rent, or $1,756.25, less 10%, totalling **$1,580.63** because of the manner in which she believes the Landlord has treated her.

P.D. stated that the Tenant received a Monetary Order from a previous Decision, originally dated May 6, 2020 but was later corrected on June 3, 2020. Her rent payments were automatically paid through an online portal system; however, the

Landlord failed to advise her, in a pleasant manner, on how to have this Monetary Order credited to her account. Multiple emails were sent by the Tenant to the Landlord requesting that this credit be applied to her account. Despite this, June 2020 rent was still deducted. In addition, he stated that the Landlord did not properly deal with a government subsidy related to the pandemic, and that K.W. had told her that she should move out. He advised that the amount of time that it has taken the Landlord to complete the renovations to the building has been excessive. He also took issue with the number of pages of evidence that the Landlord submitted on this file as it was difficult to review.

The Tenant advised that she emailed the Landlord on May 15, 2020 requesting instruction on how to change the amount owing in the online portal to reflect the credit she had been awarded through the Monetary Order. She stated that she attempted to fix this, and despite having used this portal system for the last two years, she was unable to. She sent multiple emails to representatives of the Landlord trying to correct this; however, June 2020 rent was still taken by the Landlord. It then took the Landlord 37 days to issue a cheque to the Tenant to credit her for June 2020 rent that should not have been debited in the first place. She submitted multiple emails as documentary evidence to demonstrate the interactions that she had with representatives of the Landlord with respect to this issue.

K.W. advised that the Landlord believed that the amount of the Monetary Order was not correct, but the Tenant's account would be credited. However, as the Tenant is the only person that could access her portal account, she would be required to make some necessary changes to edit how this credit would be applied to her future rent. As per the evidence of the email exchanges submitted as documentary evidence, she was given instruction that only she could make these changes to her account, that the changes were necessary to stop her rent payments from being automatically deducted, and that she could reach out if she needed further assistance. He stated that the Tenant was confused about what amounts she believed she was owed as she had multiple claims for compensation filed with the Residential Tenancy Branch. As a result, she disregarded her responsibility of making the necessary changes to her account, which then led to the June 2020 rent payment being charged. A credit for this rent amount was mailed to the Tenant on June 24, 2020, but the Tenant claims to have received it 37 days later.

A.C. advised that from the emails submitted, it is clear that the Landlord acknowledged that the Tenant was owed a credit, and that the Tenant was informed that in order to avoid being charged for June 2020 rent, she must first make some changes to her account on the online portal system. However, the Tenant disregarded this instruction

and did not make the necessary changes. He stated that there is no evidence in these emails of the representatives of the Landlord ever being rude. Rather, they demonstrated that the representatives were trying to be helpful and they advised the Tenant of what was required to be changed. Despite it being clear that the Tenant ignored these instructions, a cheque for June 2020 rent was issued back to the Tenant. While the Tenant is claiming compensation for stress, she has not submitted any medical documentation to corroborate that she suffered from any health-related issues.

The Tenant also advised that she was also seeking compensation in the amount of 10% of the monthly rent for the months of May 2020 to October 2020 due to a loss of quiet enjoyment because of ongoing repairs in the apartment building. In total, she is seeking **$1,053.75**.

P.D. advised that the Tenant suffered financial loss and a loss of quiet enjoyment from the constant noise. He stated that during this time period, there were 12 days where there was constant, loud noise, and approximately two days per week where there was at least some noise during the day. As such, the Tenant was not able to sleep during the day so she could not commit to night shifts as a security guard. As well, due to the pandemic, she could only teach yoga virtually. However, she was unable to teach these classes during the day due to the noise levels. He submitted that one of the two elevators were constantly out of service for more than a month. As elevator occupancy was reduced due to the pandemic, and as construction workers were often using the one elevator, she was forced to take the stairs often. He referenced the videos submitted to support the Tenant’s position of the noise level on the 12 worst days.

The Tenant advised that there were actually 16 days of loud noise during this time period, that the noise would generally start at around 9 AM, that it would continue for approximately three to four hours throughout the day, and that it would eventually end at approximately 7 PM. Of the two days per week during this time period where the noise was not as significant, the noise would start after 7:30 AM, it would go on throughout the day with some breaks, it would average approximately eight hours per day, and would generally stop at 7 PM. The noise on these days consisted of hammering and the installation of cabinets. With respect to the elevator, she stated that the one elevator stopped working for approximately 10 days between May 2020 to October 2020.

G.G. advised that he was the project manager overseeing the renovations to the building. As the building was built in 1970, renovations were necessary and consisted of updating pipes and wiring that were beyond their useful life. He stated that the units in the building were no longer compliant with the current fire code and were systematically

updated when tenants would vacate. These renovations were not superficial and entailed taking them back to their studs to update.

A.C. referred to the Landlord's list of rental units that were renovated between May 2020 to October 2020, and pointed out that there were only three units being worked on at that time that were in remotely close proximity to the Tenant's rental unit: units 1202, 1207, and 1605. The renovations to units 1207 and 1605 started in March 2020 and ended on May 15, 2020 and the renovation to unit 1202 started on October 13, 2020 and finished on November 30, 2020. He advised that there were six other rental units undergoing renovations between May 2020 and October 2020, but these were on floors 2, 5, 8, 9, and 19.

He referred to documentary evidence which outlined the typical renovation schedule of a unit. Any jackhammering or sawing would only last a few days so at most, there may have been jackhammer noise from these units on the 12th and 16th floor on a few days in May 2020 and October 2020. There may have been noise from sawing during the time period of May 2020 to October 2020; however, based on this construction schedule, the Tenant's complaints of 12 to 16 days of significant noise are not supported. He noted that many of the videos that the Tenant submitted as evidence are not dated and some were all filmed over the same three days.

G.G. advised that the renovation work would typically occur from Monday to Friday, starting at 7:30 AM and ending at 3:30 PM. Sometimes, if the workers started later in the day, they would work later into the day. He advised that much of the work involved flooring and plumbing, which is generally quiet. Occasionally, the construction workers would lay flooring or tile on Saturdays, but this was not noisy work either.

A.C. referred to Policy Guideline # 6 to emphasize that it is necessary to balance the Tenant's right to quiet enjoyment with the Landlord's right and responsibility to maintain the premises. He stated that the renovations were pertinent to ensuring the safety of the residents. He submitted that the level of the noise varied, that it was temporary and intermittent, and that any significant noise would only last a day or so. He cited a number of past Decisions of the Residential Tenancy Branch which supports the Landlord's position that compensation in this instance is not warranted.

P.D. advised that the building is an older building and that any construction noise from more than two floors away would still be audible and disturbing. As well, he questioned the relevance of the past Decisions that were submitted.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

The first issue I will address pertains to the Tenant's claim for a loss in the amount of $1,580.63 because of the manner in which she believes the Landlord, or agents of the Landlord, have treated her.

Section 67 of the *Act* allows for an Arbitrator to determine the amount of compensation to be awarded to a party if a party has not complied with the *Act*.

With respect to claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

In addition, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

When considering the Tenant's claims in her Application, this first issue pertained to how she believed she has been treated generally by the Landlord; however, her submissions during the hearing were primarily related to the Monetary Order she was

awarded and the experience she had in attempting to have that credited to her online portal account.

The undisputed evidence is that the Tenant was awarded a Monetary Order in the amount of $6,027.00, based on a Decision dated June 3, 2020, and that the Tenant was permitted to reduce her future rent payments until this amount was recovered. In reviewing the totality of the evidence before me, it is clear that there were emails between the Tenant and the representatives of the Landlord which indicated that the Tenant was required to make necessary changes to her online portal account in order to facilitate this credit towards her account, that she had difficulty making these changes, and that the representatives of the Landlord attempted to assist her.

While I acknowledge that there were some difficulties that the Tenant had in making the necessary changes to her account, I do not find any evidence that the representatives of the Landlord, were rude, combative, or were intentionally misleading the Tenant. Rather, I am satisfied that the representatives of the Landlord were helpful in conveying to the Tenant that she must make the necessary changes first, and that they advised her to make further contact if she required assistance with any difficulties. Furthermore, when the Tenant did not make these changes, the rent that was inadvertently debited from her account was credited back to the Tenant. In my view, it appeared as if the Tenant was more fixated on additional compensation that she believed she might be owed rather than properly dealing with the Monetary Order that she had already been awarded.

As the burden of proof is on the Tenant to submit evidence that establishes her claim, I do not find that the Tenant has submitted sufficient evidence to demonstrate how she was treated negatively by the representatives of the Landlord. Moreover, there is a lack of compelling or persuasive evidence to document the “stress” that she suffered as a result of her claims, or how those alleged issues were equivalent to the amount of compensation she was seeking. As I am not satisfied that the Tenant has corroborated this claim, I dismiss it in its entirety.

The second issue I will address pertains to the Tenant’s claim for a loss of quiet enjoyment. Section 28 of the *Act* outlines the Tenant’s right to quiet enjoyment and states that the Tenant is entitled 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 section 29, and use of common areas for reasonable and lawful purposes, free from significant interference.”

Section 32 of the *Act* requires that the Landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, make it suitable for occupation by the Tenant.

Policy guideline # 6 outlines the covenant of quiet enjoyment and states the following:

> 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.
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> A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

With respect to the past Residential Tenancy Branch Decisions that were submitted by the Landlord, I confirm that I am familiar with these cases. However, as this is an administrative tribunal where Decisions are rendered on the balance of probabilities, I find these cases to be instructive, but not binding or determinative. Additionally, I find that these cases are distinguishable from the facts of your case. Consequently, I afford them less weight in this Decision.

Regarding the Tenant's claims for compensation in the amount of $1,053.75, there is no dispute that substantial renovations were undertaken to various units of the building. While it is evident that the Landlord understands the requirement of Section 32 of the *Act* to repair and maintain the property, and while the Landlord's position that the renovations will benefit the residents long term is understandable, the residents are still entitled to freedom from unreasonable disturbance for the full duration of their tenancy.

However, when reviewing the Tenant's video evidence, I find it important to note that ten videos have no indication of what year they were filmed. In addition, in this batch of

ten videos, there were videos where the Tenant films the noise in her hallway that is coming from another unit on her floor. As the undisputed evidence is that there was no construction being undertaken on her floor during the time period of May 2020 to October 2020, I find that these videos were not likely of the applicable time period being claimed for. This causes me to question the reliability and the legitimacy of the Tenant's claims on this Application.

The Tenant did submit five other videos from May 2020 to June 2020, and when reviewing these videos, only two of them depict noise that would be considered, in my view, as being significant. The consistent and undisputed evidence is that there were only three rental units in close proximity to the Tenant's unit that were being renovated during the time period between May 2020 and October 2020, and these were done primarily in either the month of May 2020 or the month of October 2020 only.

While there were other rental units in the building that were being renovated during the months of May 2020 to October 2020, these units were on other floors of the building that were a substantial distance away from the Tenant's unit. While I acknowledge that the building is older and that sound may travel easier, I do not find it likely that the Tenant would have been significantly disturbed by the construction work being conducted to these other units. I find this to be consistent with the Tenant's limited number of videos that support any considerable disturbance during the time period between May 2020 and October 2020.

As the burden of proof rests with the Tenant to substantiate the nature and significance of the loss she suffered, I am not satisfied that she has submitted compelling or persuasive evidence to support her claims of significant disturbances. However, I do acknowledge that the ongoing renovations in the building did likely create some disturbances that would inherently cause an interference with the ordinary and lawful enjoyment of the premises. Despite the Landlord notifying and updating the residents throughout the renovation projects, in my mind, given the timeline of these projects, this could not reasonably be considered a temporary discomfort or inconvenience as purported by the Landlord.

Rather, I find that this situation would more likely than not be considered a frequent and ongoing interference or unreasonable disturbance. Therefore, while I am not satisfied from the Tenant's evidence of the severity or frequency of the disturbances, I find, on a balance of probabilities, that the nature of the ongoing renovation projects would have likely had negative effects and impacted her day to day life occasionally. As a result, I am satisfied that the Tenant should be awarded compensation in the amount of

$400.00, which I find to be commensurate with the loss that she established based on her evidence presented.

As the Tenant was partially successful in her claims, I find that the Tenant is entitled to recover $50.00 of the $100.00 filing fee paid for this Application.

Conclusion

The Tenant is provided with a monetary award in the amount of **$450.00** in satisfaction of her claims. Accordingly, the Tenant may deduct this amount from the next month's rent.

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: February 25, 2021

Residential Tenancy Branch