



# Dispute Resolution Services

Page: Page: 3

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT OLC FFT

### Introduction

This hearing was convened as a result of a Tenants' Application for Dispute Resolution, filed on October 12, 2020 wherein the Tenant requested:

- A monetary award in the amount of \$30,000.00 for damages and loss pursuant to section 67;
- An order that the landlords comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

The matter was originally joined to be heard together with two other applications under the file numbers on the first page of this decision. A hearing of the combined applications occurred on December 9, 2020 wherein the presiding arbitrator ordered that the matters be severed and heard separately.

The present hearing occurred over the span of two days January 7, 2021 and April 15, 2021.

The parties attended both days of the hearing and were each given a full opportunity to be heard, present sworn testimony, to make submissions and to call witnesses. The corporate respondents were primarily represented by its agent DM (the "Landlord").

As both parties were present service of documents was confirmed. The parties each testified that they had been served with the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the Landlord questioned the standing of the applicant KT who the parties agree is an occupant of the rental unit and not as a tenant. I have reviewed the documentary tenancy agreement submitted into evidence by the parties



# Dispute Resolution Services

Page: 4

Residential Tenancy Branch  
Office of Housing and Construction Standards

and it is clear that the applicant KT is referenced throughout as an “occupant”. I accept the evidence of the parties that the tenancy agreement was never amended to add KT as a tenant and they remained an occupant of the rental unit at all relevant times. Based on the evidence I find KT is an occupant of the rental unit and therefore, pursuant to Residential Tenancy Policy Guideline 13 has no rights or obligations under the Act. Accordingly KT is removed as a party from the proceeding.

## Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Should the landlords be ordered to comply with the Act, regulations or tenancy agreement?

is the tenant entitled to recover the filing fee from the landlords?

## Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The background details are not in dispute. The rental unit is a suite in a multi-unit heritage building. The applicant NC began their tenancy in March 2015, originally with another co-tenant. The tenancy agreement was amended in July 2019 to remove the previous co-tenant, add KT as an occupant and shift the tenancy into a different unit in the building. The monthly rent was \$1,475.00 in the unit occupied prior to August 2019 and \$1,900.00 thereafter.

In August 2018 the landlords began construction on the rental building. The landlords’ contractor testified that the initial scope of the work was minor patching of the exterior of the building but they soon discovered that there was major structural damage requiring the load-bearing columns to be replaced and reinforced. The witness testified that what was initially intended to be a project that would take 3 weeks became major work which ultimately took approximately 23-months to complete.

The witness gave evidence that the work was not merely cosmetic but necessary to ensure that the rental building remained habitable and safe. The witness said that the work was conducted in accordance with municipal and industry standards. The witness



# Dispute Resolution Services

Page: 5

## Residential Tenancy Branch Office of Housing and Construction Standards

detailed how work would need to be conducted in phases with each portion of the building being reinforced prior to other areas being addressed. They testified that they limited specific types of work such as heavy chipping to certain hours on specific days of the week. The witness gave evidence that the work was delayed due to the Covid pandemic and restrictions on the number of workers permitted on a worksite.

In their application for dispute resolution the tenant seeks a monetary award in the amount of \$30,000.00 and submits that:

[The landlord] did not make reasonable efforts to minimize the disruption of repairs nor were they transparent about the scope of work required. We are seeking compensation for breach of section 28 as we have been deprived of the right to quiet enjoyment of our two units for 24+ months. [The landlord] has subjected us to harmful noise, toxic debris, loss of privacy, loss of window use and obstructed views. Their lack of transparency rendered us unable to make informed decisions and unable work from home.

I note that the tenant has also submitted a Monetary Order worksheet wherein the provide calculations for a monetary award of \$25,618.75 on the basis of a 75% total reduction of rent for a period of 23 months.

The tenant submits that the ongoing construction on the rental building was accompanied by loud noise, ingress of dust and particles into the rental unit and workers attending outside of the building. The tenant says that the noise was at a level that was physically harmful and prevented them from normal activities such as making phone calls, watching television, or having conversations inside of the rental unit. The tenant submitted into evidence some recordings of the work audible from their rental unit as well as recordings of decibel readings.

The tenant submits that the dust from the ongoing construction entered into the rental unit so that their belongings were coated with particulates. The tenant says that the measures taken by the landlord to prevent ingress were inadequate to ensure their rental unit was free from particles and that the landlords refused to take additional measures when requested. The tenant submitted into evidence photographs of the rental unit in support of their position.

The tenant testified that the interior of the rental unit was visible to workers outside of the building and they felt uneasy due to their presence. The tenant submits that the



# Dispute Resolution Services

Page: 6

## Residential Tenancy Branch Office of Housing and Construction Standards

landlord took no action in response to their complaints about the presence of workers and simply advised the tenant to put curtains up.

The tenant submits that there was insufficient information provided by the landlord regarding the construction schedule with the nature of work changing rapidly making it difficult to prepare for the disruption. The tenant says that work would occur and noise would be great on days where they were expecting no work to be conducted. The tenant says that the landlords and their agents failed to provide accurate information on the duration of the work and were unaware that the work would take many months to complete.

The tenant called as witnesses two other occupants of the rental building who said they are the applicants for the other hearing listed on the first page of this decision. The witnesses gave evidence echoing the tenant's complaints of noise, workers outside of the building and dust caused by the ongoing work. The tenant also submitted into evidence a statement from an individual whom the tenant says was another occupant of the rental building.

The parties agree that the landlord provided some financial compensation to the tenant totalling approximately \$3,400.00 by way of rent abatements over the course of the construction. The tenant submits that they did not understand how the amount of the abatements were calculated by the landlord and feel that the amount provided is not sufficient for the disruption they experienced.

The tenant characterizes their relationship with the landlords as poor and describes the response of the landlord's agent as terrible and downplaying the situation. The tenant also raises in their written submissions incidents of break-ins to their storage locker and mail box.

### Analysis

The tenant seeks compensation for loss in the value of the tenancy due to the ongoing construction. I note that the tenant has already received some financial compensation from the landlords and their present application is seeking a monetary award consisting of new money.



# Dispute Resolution Services

Page: 7

Residential Tenancy Branch  
Office of Housing and Construction Standards

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

Section 28 of the Residential Tenancy Act speaks to a tenant's right to quiet enjoyment, and provides as follows:

**28** 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.

Further section 7 of the Residential Tenancy Act states:

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

While I find that the ongoing work performed by the landlords have had some impact on the tenant, I find that the evidence does not support the full amount of the monetary



# Dispute Resolution Services

Page: 8

Residential Tenancy Branch  
Office of Housing and Construction Standards

claim. I find that the tenant's suggestion of an appropriate monetary award to be wholly out of proportion with the evidence. I find that the tenant's complaints pertain to the impact of construction and repair work. I find that there is insufficient evidence that work was not conducted in a reasonable and timely manner.

The multi-year duration of the work is to be expected from a project of this scope and the age and nature of the rental building. I accept the evidence of the landlord and their witnesses that this was not simply cosmetic restoration but major structural work which was determined to be necessary for the continued use of the building. I further accept that due to the ongoing Covid pandemic and the provincial health orders, the work was significantly delayed as there were limitation on the number of workers permitted on site.

Additionally, the work was carried on without terminating the existing tenancies and allowing the tenant and other occupants of the rental building to remain in the rental property. I find it reasonable that accommodating the existing tenancies would cause the timeline of the work to be extended.

I find that the measures taken by the landlords and their agents to be reasonable to minimize the impact of the work including restricting the hours when certain types of construction work would occur, providing financial compensation to the tenants, and providing some updates on the nature and duration of the work being performed. While I accept that the tenant feels the information provided by the landlord to be inadequate and inaccurate, I find that construction work of this nature is often subject to rapid scheduling changes as new deficiencies in the building are discovered. I further find that ongoing work of this nature, when performed in the midst of a pandemic and while allowing for residents to remain housed in the rental property, will last longer to complete and be subject to ongoing delays and schedule changes.

While the tenant submits that the level of the noise of ongoing construction was above acceptable levels and have provided some recordings as a representative sample of what they experienced, I find that the noises heard are what would be expected for work of this nature. While I accept that the tenant faced additional challenges due to the ongoing pandemic and health orders advising them to limit their time outside of home, I find that I further accept that the landlords instructed that their agents to limit work to certain hours and days of the week in an attempt to accommodate the residents of the



# Dispute Resolution Services

Page: 9

## Residential Tenancy Branch Office of Housing and Construction Standards

building. I find that the evidence shows work was conducted during reasonable hours in accordance with municipal and industry standards.

I find the photographs submitted by the tenants of dust in the rental unit to be noticeable but no greater than would be expected given the description of the construction work undertaken and the age and characteristic of the building. Both parties gave evidence of the measures the landlord's agents took to minimize the ingress of dust particles. While the tenant submits that these measures were inadequate, I accept that the shielding provided to be in accordance with industry standards and appropriate for the work performed.

Similarly, I find the presence of scaffolding and workers outside of the rental building to be a necessary and reasonable aspect of performing the construction work. I find that the presence of workers during scheduled work hours does not constitute a breach that would give rise to a monetary award.

A landlord has a duty to balance the right of a tenant to quiet enjoyment of their rental unit with their duty to maintain the residential property in a state of repair. I accept the landlords' submission that the work undertaken was initially expected to be minor cosmetic repairs but quickly grew in scope when the actual level of deficiencies in the building was determined. I accept that the work performed was necessary to ensure the safety and habitability of the property.

While I accept the evidence of the parties that the ongoing construction is accompanied by noise and dust, based on the evidence submitted I find that the level of disturbance is the reasonable level as to be expected from a project of this nature and size. I find that there is insufficient evidence that the nature, duration or level of the disturbance has been at a level that is not reasonable.

Based on the evidence submitted I do find that there was some impact on the tenancy due to the ongoing work performed by the landlords. I accept the evidence of the tenant that their ability to enjoy the rental unit was diminished due to the ongoing work.

Residential Tenancy Policy Guideline 16 provides guidance in determining the value of the damage or loss under such circumstances.

The tenant submits that a 75% deduction of the rent paid under the tenancy agreement for the 23-month period of work to be appropriate. The tenant's submissions include lengthy subjective complaints about the noise, presence of dust, and presence of





## Dispute Resolution Services

Page 10

### Residential Tenancy Branch Office of Housing and Construction Standards

workers on and about the rental unit. In addition, in their written submissions the tenant references break-ins at the rental building, and how they believe the subject and tone of the landlords' correspondence were rude and inappropriate. I find the tenant's submission and suggestion on an appropriate monetary award to be so hyperbolic as to lack credibility and their calculation of losses to be wholly out of proportion with the evidence.

The tenants continued to reside in the rental unit during the majority of the construction work. The tenant gave evidence of a few weeks when they chose to find alternate accommodations. While the tenant complains about the noise levels and gave some testimony about being unable to make phone calls or watch television while work was ongoing, I find that insufficient evidence that this was anything more than an inconvenience. I find insufficient evidence that the dust encroaching into the rental unit had a significant impact on the tenant's daily schedule or routines that it gives rise to a reduction in the value of the tenancy to the extent suggested.

I find the tenant's complaints about break-ins to their storage unit or mailboxes to have little relation to the ongoing construction work. I find the tenant's characterization of the landlords' agents as rude or dishonest to not be sufficiently supported in the documentary materials submitted.

I find the testimony of the tenant's witnesses and the unsigned written submissions attributed to other occupants of the rental building to be of limited probative value. The loss of value in a tenancy is different for each individual and I find the subjective experience of others to be of little assistance in determining the impact on the tenant. I find an unsworn statement from an individual who was not present at the hearing and prepared for a separate application to not be persuasive evidence of the tenant's experiences.

Under the circumstances, I find that a nominal monetary award which reflects that the tenant did suffer some loss in the value of the tenancy agreement is appropriate. Based on the evidence, I find that the loss was not as significant as the tenant suggests, had little impact on the tenant's ability to occupy the rental unit and that much of the complaints are unreasonable given the nature of the work the landlord conducted.

I also note that the tenant has already received a monetary amount of \$3,400.00 from the landlords by way of rent abatements in consideration of the inconvenience caused





# Dispute Resolution Services

Page 11

Residential Tenancy Branch  
Office of Housing and Construction Standards

by the ongoing work. While the tenant submits that they have little understanding of how the amounts of the abatements were calculated, I accept that these amounts were paid for specific months of the tenancy when the landlord felt the loss of value in the tenancy was highest due to the nature of the work conducted.

Based on the foregoing, I find that a nominal monetary award in the amount of \$1,951.25, the equivalent of approximately 5% of the monthly rent for the duration of the work from August 2018 to August 2020 to be appropriate.

As the tenant was partially successful in their application, the tenant is also entitled to recovery of the \$100.00 filing fee for this application.

## Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,051.25. The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 19, 2021

---

Residential Tenancy Branch