



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OLC FF

Introduction

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

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

Issues

Should an order be issued requiring the landlord to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The rental unit is a one-bedroom apartment in a thirteen-story building. There are two separate towers on the property each containing 103 units. The tenants reside on the 5th floor of one of the towers. The towers were built in 1971. The rental property is in a very busy area and there are various construction projects ongoing in the vicinity. A firehall and police station are also located nearby. The landlord is upgrading the units as they become vacant. The upgrades include new cabinet installations and new flooring.

The tenancy began April 1, 2019 and the current monthly rent is \$1650.00.

The tenant is seeking the landlord be ordered to comply with their entitlement to quiet enjoyment of the rental unit. The tenant testified that constant construction noise over a 2–3-month period during business hours is affecting their ability to enjoy day to day lives causing huge amounts of stress. The tenant testified that he works graveyards so the noise affects his sleep. The tenant testified the noise has been ongoing since February 2022 but to a much lesser extent at the time of the hearing.

The landlord submits that they post notices when renovation work is to be completed and all work is done during business hours. The landlord submits they do not even permit contractors to do work on the weekends. The landlord testified that certain stages of the work are noisier for example when demolishing old cabinets and removing old flooring, other than which noise is minimal. The landlord testified that Shaw cable on their own initiative undertook a cable upgrade which consisted of work on the outside of the building for a six-week period but that has been completed. The landlord submits the rental property is in a very busy area and there is also noise from nearby construction. The landlord submits they are within their right to upgrade the units. The landlord submits they have not received any other such complaints from any of the other residents.

Analysis

Subsection 32(1) of the Act requires a landlord to maintain residential property 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, makes it suitable for occupation by the tenant.

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 "Entitlement to Quiet Enjoyment" provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section.

As per section 32 of the Act, I find that the landlord not only has the legal right but also the obligation to maintain and repair the residential property. The rental units were built in 1971. The landlord is upgrading the units as they become vacant. The work is being done during business hours on weekdays only. The landlord is providing sufficient notice to the tenants of the impending renovation work. I find the landlord is operating within its rights and obligations under the Act. As per Policy Guideline #6, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. The tenants are residing in a multi-unit complex and unfortunately some temporary discomfort and inconvenience from renovation work of this magnitude is to be expected.

The tenants' application is dismissed without leave to reapply. The tenants are not entitled to recover the filing fee.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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: June 06, 2022

Residential Tenancy Branch