Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNDCT, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on March 23, 2023 seeking:

- cancellation of a One Month Notice to End Tenancy for Cause (the "One-Month Notice");
- compensation for monetary loss/other money owed;
- the Landlord's compliance with the legislation and/or tenancy agreement;
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on July 7, 2023. Both the Landlord and the Tenants (hereinafter referred to in the singular as "Tenant") attended the hearing and the Landlord confirmed they received notice of this hearing and the Tenants' evidence. Reciprocally, the Tenant confirmed they received the Landlord's evidence for this hearing.

The Tenant and the Landlord attended the conference call hearing. The Tenant confirmed they moved out from the rental unit on March 30, 2023.

Preliminary Matter – end of tenancy

The Tenant confirmed that they would move out from the rental unit on June 30, 2023. Because the tenancy ended prior to this scheduled hearing, I dismiss this piece of the Tenant's Application, without leave to reapply. The Landlord-Tenant relationship has ended; therefore, I dismiss the Tenant's Application concerning the Landlord's compliance with the *Act* and/or tenancy agreement.

Preliminary Matter –timeline for this decision

While the *Act* s. 77(1)(d) sets a 30-day time limit for a decision of the delegated decision make, ss. (2) states that authority is not lost, nor the decision invalidated, if a decision is given past the 30-day period. I reached this decision through review and evaluation of all testimony and evidence.

The parties' right of due process, entailing a thorough consideration of all evidence, and my deliberation on the applicability of the law, outweighs the need for a 30-day time limit. Also, this was a matter of the Tenant's right to compensation for what they alleged were breaches to their quiet enjoyment of their rental unit in a tenancy that had ended by the time of the hearing. This did not concern an eviction, or an end of tenancy that are matters of more immediate human consequence.

Issues to be Decided

- Is the Tenant entitled to compensation for monetary loss/other money owed pursuant to s. 65 of the *Act*?

- Is the Tenant entitled to reimbursement of the Application filing fee pursuant to s. 72 of the *Act*?

Background and Evidence

On my review of the tenancy agreement in the hearing, the parties stated there was nothing remarkable about the basic agreement. This was a rental unit property that was 3 acres in size, with "a lot of trees" according to the Tenant. The tenancy started on March 1, 2019. In a written statement they provided for this hearing, the Landlord stated the rental unit space included the house and a small yard but did not include all of the 3-acre size property.

On the Application, the Tenant provided the amount of $1,535. Based on their claim for 12 months of compensation – provided as $17,940 – the alternate amount is $1,495, as shown on the tenancy agreement.

In the hearing, the Tenant stated there was "never any issues at all" during the first three years of the tenancy. In March 2022 the Landlord "dumped in the backyard" at the rental unit property, set up excavators and bins, and ripped out the garden, the cement that was in place on the rental unit property, and a shed/lean-to, old outhouse that was present on the property,

as well as old wood piles. According to the Tenant, the Landlord had to remove these in order to level out the dirt they brought in, for the purpose of adding more dirt.

The Tenant described the Landlord stating to them at the time that "there would be a couple of dumploads". Their knowledge of the Landlord's plan was for access through the neighbours' property. There was a "same day dumping notice" from the Landlord.

The Tenant stated "this continued for months" and the Landlord didn't really finish this work. Once the dirt moved in was piled in "giant mounds", the Landlord moved on with other projects. The Landlord then proceeded to remove trees from behind the rental unit on the property.

The Tenant cited this as an invasion of privacy, with work continuing on the property in close proximity to their rental unit "right up to our steps". They were told to park their vehicles on the road, and were not able to enter/exit the rental unit property. They also cited the communication issues with the Landlord, who told them the project would be a few weeks, then reassuring them that they were not going to move. There was no mention of an excavator outside the rental unit on the property. As well, the amount of dirt and dust present was "unbelievable."

The Tenant provided a series of photos of work underway:

- photos show the "yard before landlord destroyed with no notice" including tries for privacy and a garden
- many photos show a large excavator working, with the caption by the Tenant reading "no notice"
- an image of a public notice from the municipality shows that the area was being rezoned "from rural . . to light/service industrial . . . in order to allow for a future industrial development. . . "
- many photos are labelled "landlord" and/or "worker(s)" on the property with no notice
- the Tenant labelled a few photos with "new tenant" and show other vehicles at a separate area on the property.

The Tenant also included 19 videos showing miscellaneous states of work, much of which was replicated in the pictures they provided. Many of the videos are labelled "no notice".

In their written statement, the Tenant provided the following points that present a chronology of the work undertaken in the area:

- an excavator arrived in March 2022 “on our property” and started excavating the back portion of the backyard, and “We had no idea who or what was happening.”
- the Landlord arrived after this work started and “we were simply told it would be a couple weeks of dump trucks”
- the excavator within a few days proceeded to demolish the back half of the yard
- the work continued nearly every day for months, with vehicles parked very near to the rental unit/bedroom
- the Landlord visited “several times a week, never with any notice”
- after the dump trucks finished, the Landlord notified the Tenant they were removing the front fence, with no response to the Tenant’s query on whether it would be replaced
- the Landlord removed trees after this, with “No notice or indication this was happening”
- after tree removal, “the hills of dirt that was dumped was then moved towards the back of the property with an excavator and rock truck every day”, effectively making the yard a “work zone”
- the Landlord would frequently meet with workers on the driveway
- once the back of the property was cleared more dump trucks arrived with more loads to fill in the land
- asphalt was laid so facilitate vehicles coming/going into/from the area
- the Landlord excavated the Tenant’s “sandbox, garden, and all grass” – this left a “mud pit and the chewed up driveway”, eliminating privacy they had with the neighbouring property
- all grass and trees at the front of the house was removed.

As to the impact of the project on their day-to-day life, the Tenant added that they were not able to open blinds “for over a year”, with workers able to see clearly inside the rental unit. This complicated the Tenant’s own use of their driveway. The children were unable to play outside since March 2022, with “[the] yard is nothing but a mud pit”. The Tenant was also informed by those arriving that they were campers in place toward the back of the land parcel, renting the back for $2,500 a month as of April 1, 2023.

In closing, the Tenant stated: “We have been good tenants and didn’t want to lose our home so we kept our frustrations to ourselves for the most part.”

The Tenant prepared a Monetary Order Worksheet for this hearing, signed April 6, 2023. They cited the loss of quiet enjoyment and invasion of privacy. The Tenant did not list an amount in total for their claim; however, on the Application they provided the amount of $17,940, representing one full year of rent.

In their written statement, the Landlord described: “Except where the house is located, the property dips down into a gulley.” A pipeline constructed into the wider area diverted a lot of water into the 3-acre property into this gulley area. Many trees were submerged in water; the trees then died, and would have been dangerous to anyone entering the area. The Landlord decided to remove all trees, and completely fill up this “large low spot” on the property. The Landlord stated: “We always kept the tenant informed as to what was happening.”

With reference to a description of the layout of the property, the Landlord described the original problem on the property, close to the main road, (*i.e.*, the highway) was “all trees. There was a significant water issue/flood at the back of the property in early 2022, and this destroyed the tree base requiring their removal. There were truckloads of dirt brought into the property to “reset the levelling of the ground”, and this part of the work was for about 2 weeks. After this, the Landlord continued to fill in the flood-damaged areas, in line with what the neighbours were doing. This was the Landlord attempting to fix the damage to the rental unit property, starting in March 2022.

The Landlord described the area surrounding the rental unit property as “going commercial”, and, in the fall of 2022, they did inform the Tenant that the area was changing into an industrial park area. The Landlord was meeting with contractors on a regular basis, and “most times notice was given”. They did not know the Tenant was upset and assumed that everything was good. They stated that the work was “fairly close” to the rental unit, and they tried to keep the disruption to a minimum and the work was not on a daily basis. They recalled no impact to the Tenant’s “immediate yard” (*i.e.*, the area closely surrounding the rental unit), and there was “minimal” impact to the front of the rental unit property.

The Landlord also described a large part of the disruption due to dust and construction as emanating from the neighbours’ property. On September 18, 2022 the Landlord told the Tenant they would try to access the area from the neighbours’ property. The Landlord’s rationale at that time was that an alternate entry point would not affect this tenancy.

The Tenant in the hearing claimed they did not remember any flood event, and questioned how a pipeline event could affect 3 acres of property, *i.e.*, the full size of the rental unit property.

The Landlord had the chance to clarify in the hearing that the very back area of the area was flooded, being “barely accessible”.

In their written statement the Landlord mentioned the “good friendly positive communication” they had in place with the Tenant. Regarding the subject of this dispute process, they felt

"ambushed because [the Tenant] gave no indication of any disagreement." The work at the property involved "occasional" machinery, was not a daily occurrence, and they provided the Tenant notification of the work involved, with what the Landlord thought was the Tenant's agreement.

In the Landlord's documentary evidence, they provided for this hearing are copies of text messages they had to/from the Tenant, from February 2022 through to March 2023. The Landlord labelled these as showing "good relationship" and miscellaneous messages labelled "notification", such as "fence removal", "logging trucks coming" and "rezoning".

In the Landlord's evidence, messages about pending work/progress, as a sample set, are as follows:

> ". . . just letting you know that a couple of loads of dirt are being dropped off at the back of the property today, the plan is for them to access through neighbours property, so it shouldn't effect you guys" (July 15, 2022)
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> "They [*i.e.*, logging trucks] are going to try and access from next door, if they can't then it will be through your driveway, this is in preparation to rezone the property for commercial use in the future, this does not effect your tenancy for now. . ." (Sept 15, 2022)
>
> ". . .the guys are coming to remove the rest of the trees beside your place and in the front there any questions please call me back ###-###-####" (Feb 18, 2023)
>
> ". . . just letting you know that trees are coming down tomorrow, driveway will be plugged up for a bit, best to move your car onto road in the morning so u don't get blocked in, thanks" (Mar 9, 2023)

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the original agreement does not specify that the rental unit comprises the whole of the Landlord's property on which the rental unit home existed. There is a wide variance between the area set aside as the rental unit home, and what the Tenant occupied and used as home to occupy with a yard. I find the Tenant occupied a sizable portion of the total area owned by the Landlord; however, the "rental unit" (being the *Act* s.1 definition of "living accommodation rented or intended to be rented to a tenant") does not include the surrounding area. To be clear: this was not a 3-acre property for which the Tenant had an exclusive right to possession under the tenancy agreement.

I find the Tenant was aware of the larger work undertaken by the Landlord, beginning in March 2022. I find there was sufficient communication from the Landlord in place to notify the Tenant of each stage, and its required work. This I conclude from the communication provided by the Landlord. The Tenant was aware that the project work would not impact their day-to-day life in the rental unit, and the area designated for their home living space including the front yard and back yard, and driveway. The Tenant provided a photo of a publicly posted sign informing all that the area was transforming into a light industrial area.

More importantly, I find the communication was not one-way, and the Landlord left the channel open for the Tenant to ask questions. This afforded the Tenant the opportunity to raise issues with the Landlord.

There is no evidence the Tenant did raise concerns with the Landlord, at any stage of the project work. The Tenant did not present that they called the Landlord, or otherwise texted or emailed to the Landlord about their concerns. The Tenant in the hearing presented the work as quite invasive and ongoing, but there is no record they presented that as such to the Landlord. It was only when the Landlord ended the tenancy with a notice to the Tenant that the Tenant raised this as an issue worthy of compensation in their Application to the Residential Tenancy Branch. The Tenant did not propose a reduction in rent, or other compensation or the need for any other arrangement to the Landlord in the past. In a summary statement the Tenant stated: "We . . . didn't want to lose our home so we kept our

frustrations to ourselves for the most part." I find this is not sufficient to provide a reason why the Tenant left the matter unaddressed with the Landlord; it varies widely from the degree of harm and impact on quiet enjoyment the Tenant claims they suffered during the project work.

I also question why the Tenant did not raise the issue with the Residential Tenancy Branch in order to have the matter addressed, given its supposed impact.

I find it was impossible for the Landlord to cease work altogether based on the Tenant's claimed lack of quiet enjoyment. I think that is not realistic, although this is not what the Tenant claimed. In terms of day-to-day living, I find it more likely than not that the work did not continue outside of normal working hours, and not in the evenings or on weekends.

I find there was sufficient notice in place, based on the messaging sent by the Landlord. I find the Landlord informed the Tenant about work that would have an immediate impact on their living arrangement in the rental unit. The Tenant labelled most of their photos and videos as "no notice". I don't know what kind of notice could be in place, or what would suffice for the Tenant. I find the Tenant was aware of the large-scale project and given that the work for the most part did not intrude on their living arrangement, there was no need for the Landlord to provide 24-hour notice of entry for each piece of work performed. In sum, I find it unreasonable for the Landlord to provide daily updates or notices as the Tenant seems to have preferred. Again, they did not raise this as an issue with the Landlord through the year-long project term before the tenancy ended.

The reality was that the rental unit was situated in an area with a large-scale project happening in the immediate adjacent area. The Tenant did not raise the issue of intrusion on their quiet enjoyment with the Landlord, who afforded them the opportunity to do so. The Tenant did not raise the issue of insufficient notice of work with the Landlord. That is the principle of mitigation as set out in part 4 of the sequence I set out above.

I find the Tenant was able to adapt to the work around them. It was not clear in a timeline of when work blocked access to the rental unit or limited the Tenant's access. It is not clear from the Tenant's evidence whether the work was being completed on the neighbour's property or that of the rental unit here. It was not clear in a timeline when the Tenant's own yard space was affected; I find it was not the timeline of one complete year as the Tenant claims for compensation of their rent amounts in full.

I find one year's complete rent amount is not reasonable in these circumstances. I find the Tenant raised the issue only once they applied to the Residential Tenancy Branch. I don't

accept that they feared an end to the tenancy if they chose to complain because it was evident throughout that the area was transforming and the Tenant would eventually have to leave.

I find it disingenuous that the Tenant raises the issue as they do only upon applying to the Residential Tenancy Branch. The Landlord really had no notion of the Tenant having any difficulty with the work.

For the reasons above I dismiss the Tenant's Application in its entirety. I find they are not entitled to one year's rent in full where they did not mitigate.

The Tenant was not successful in this Application; therefore, I grant no reimbursement of the Application filing fee.

Conclusion

I dismiss this Application by the Tenant in its entirety, without leave to reapply.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 8, 2023

Residential Tenancy Branch