



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, LRE, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

One of the named tenants and the landlord attended the hearing, and the tenant also represented the other named tenant. The parties each gave affirmed testimony, and the landlord called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

At the commencement of the hearing, the parties agreed that the tenants vacated the rental unit on September 30, 2023. Therefore, the tenants' applications for an order cancelling a notice to end the tenancy, and the application for an order limiting or setting conditions on the landlord's right to enter the rental unit; and the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement are dismissed without leave to reapply.

The parties agreed that all evidence has been exchanged, all of which has been reviewed, and the evidence I find relevant to the application for a monetary order for

money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment of the rental unit?

Background and Evidence

The tenant testified that this 2-year fixed-term tenancy began on May 15, 2020, and the tenants vacated the rental unit on September 29, 2023. Rent in the amount of \$5,500.00 was payable on the 15th day of each month. At the outset of the tenancy the tenants paid a deposit to the landlord in the amount of \$5,500.00, said to be a combined security deposit and pet damage deposit, which is still held in trust by the landlord. The rental unit is a condominium apartment on the 28th floor, or penthouse. The landlord also resides on the property. The tenants have not provided the landlord with a forwarding address in writing.

The tenant further testified that he became aware that the landlord had purchased the rental unit in mid-October, 2022. The landlord served a Two Month Notice to End Tenancy For Landlord's Use of Property, which was rescinded because the purchaser was a numbered company. The tenants received another Two Month Notice to End Tenancy For Landlord's use of Property in November, 2022, however the landlord already had a principle residence in the building. A new tenancy agreement was signed by the parties on March 3, 2023 for a fixed term until September 15, 2023, which was extended to September 30, 2023.

During the tenancy, the landlord hired a contractor to do some work on the membrane of the roof, and the tenants were told it would cause noise. However, the membrane was only a portion of the work done. Concrete planters had to be removed, which involved sawing, jackhammering, and hammer drilling, without notice to the tenants. The tenant and the tenant's spouse both work from home, and the jackhammering above their unit made it impossible to work. Work was done in short bursts of about 20 minutes with no schedule given to the tenants. It commenced on June 29, 2023 and lasted until July 17, 2023. The tenants had no privacy, and the landlord should have known it would be for an extended period. The landlord had an option to delay the

work, but ignored a number of requests from the tenant for a schedule. The contractor said it would be reduced noise by July 5, but it intensified.

On July 14, 2023 a Stop Work Order was issued by the strata for unapproved membrane work. The City also issued a Stop Work Order on the same project.

The tenant had communication with the contractor on July 13 asking if the work they were doing on the planters had been approved by the strata, and if that what was causing the noise. The tenants were told about the membrane, but not the concrete, and the tenant told the contractor how it was impacting the tenants. The tenant contacted the landlord about his responsibilities, and the tenant was told to complain to the strata. Based on the landlord's intentions and lack of communication, and how it impacted the tenants' lives, the tenant felt he had to withhold rent to show how it impacted the tenants. The landlord said he had no obligation to cooperate with the strata, including cleaning up, ignoring the strata bylaw. From June 29 to August 11, 2023 the tenants lived in construction. Although the tenant insisted that the hallways be vacuumed daily, the landlord ignored it. Photographs have been provided for this hearing.

By issuing the previous notices to end the tenancy, the landlord has no knowledge of the *Residential Tenancy Act*. The tenants knew the landlord needed to give 4 months' notice after obtaining permits.

The tenants had to change their month-to-month tenancy to a fixed term. The tenants claim compensation for the amount of time the tenants had to vacate due to loud renovations and the period of time that the tenants lived with the messy hallway and living in a construction zone. The tenants seek \$4,225.00, which is a 50% reduction in rent as compensation, and return of the security/pet damage deposit.

The landlord testified that the landlord's contractor and witness negotiated with the tenants on the landlord's behalf to stay, and the tenant was told about noise that would take place. A lot of communication went back and forth, not about withholding rent.

The tenants were made well aware, including approximate times. A failed membrane under the landlord's suite and the rental unit was needed, and the strata did not want to pay for it; it was done for a reason. There were days of a lot of noise, and the landlord offered the tenants \$183.00 per day for days that jackhammering took place; 13 days for less than half a day each, which amounts to \$1,189.50.

The landlord disagrees that it was like living in a construction zone; the floors to the elevator were covered with cardboard, and the tenant's wife said she understood that the work needed to be done. A garbage bin was placed in front of the tenants' doorway that contained building material, tools and debris.

The landlord's witness testified that his role was to act for the landlord about noise until June 29. There was concern for the tenants about dust and stuff in the hallway, and from time to time some had built up, but the witness asked the contractor to keep up with cleaning and try to maintain the material to the rooftop. However some stuff had to stay off the roof and was placed in a bin outside the tenants' suite.

In order to get a better membrane, planters had to be removed, and that was noisy work. The witness tried to provide notice to the tenants about it as he could.

The strata was aware of the roof membrane work, but was not made aware of the disciples of the noise the other work made. The witness does not believe that the tenants were made aware of the jackhammering to happen, which was certainly a big component, including sledge hammering.

Analysis

Firstly, a landlord must return a security deposit and/or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make a claim against the deposit(s) within that 15 day period by applying for dispute resolution. If the landlord fails to do either, the landlord must repay the tenant double the amount(s). If the tenant does not provide the landlord with a forwarding address in writing within 1 year of the date the tenancy ends, the landlord may simply keep the deposit(s), without setting off any claims the landlord may have for unpaid rent or utilities or damages. In this case, the tenants have not provided the landlord with a forwarding address in writing, and therefore I decline to order that the tenants recover it now.

The tenants also apply for compensation in the amount of \$4,225.00 for loss of quiet enjoyment of the rental unit. A landlord has an obligation by law to provide quiet enjoyment of a rental unit to a tenant, free from unreasonable disturbances. In this case, the landlord does not dispute the tenants' testimony regarding noise and the loss of quiet enjoyment that continued despite requests from the tenants. The tenant testified that neither the landlord nor the contractor ever provided any schedule to alert the tenants that they may have to work elsewhere. The landlord testified that the

tenants were made well aware, including approximate times, which is disputed by the tenants. However, that does not take the place of the requirement to provide quiet enjoyment of the rental unit, free from unreasonable disturbance.

I find that the tenants have established a claim.

With respect to quantum, the landlord suggested that he would be willing to remove \$1,189.50 from the outstanding rent, which is 13 days for less than half a day. The tenants testified that the jackhammering and hammer drilling occurred from June 29 to July 17, 2023 and that the tenants continued to live with the construction debris in the hall until August 11, 2023. I have also reviewed all of the photographs and other evidence, and I am satisfied that the tenants have established that their rental unit was devalued by the landlord's actions from June 29 to July 17, 2023, which is 19 days, or \$3,483.27 ($\$5,500.00 / 30 = \$183.33 \times 19 = \$3,483.27$).

With respect to the debris remaining in the hallway, I find that matter also lead to a loss of enjoyment, while entering and exiting the rental unit only, from June 29 to August 11, 2023, and the tenants have established a further claim of \$741.73, for a total of \$4,225.00.

Since the tenants have been successful with the application the tenants are also entitled to recover the \$100.00 filing fee from the landlord.

I grant a monetary order in favour of the tenants as against the landlord in the amount of \$4,325.00. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, the tenants' application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is hereby dismissed without leave to reapply.

The tenants' application for an order limiting or setting conditions on the landlord's right to enter the rental unit is hereby dismissed without leave to reapply.

The tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,325.00.

This order is final and binding and may be enforced.

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: October 26, 2023

Residential Tenancy Branch