



Order under Section 31 Residential Tenancies Act, 2006

Citation: Doss v G.R. Feldman Investments Ltd., 2023 ONLTB 54943

Date: 2023-08-09

File Number: LTB-T-063975-22

In the matter of: 913, 45 Balliol Street
Toronto Ontario M4S1C3

Tenant

Between: Allen Prajwal Doss

And

Landlord

G.R. Feldman Investments Ltd.

Allen Prajwal Doss (the 'Tenant') applied for an order determining that G.R. Feldman Investments Ltd. (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.

This application was heard by videoconference on May 8, 2023.

The Landlord's agent, C. Pharant, the Landlord's legal representative, G. Paine, and the Tenant attended the hearing.

Determinations:

1. The Tenant filed his T2 application alleging that constant, noisy repair work carried out in the residential complex on a regular basis, for months, caused him stress, upset, and impeded his ability to work from home, and it substantially interfered with his reasonable enjoyment of his rental unit and the residential complex.
2. The residential complex is a 17 storey multi-unit apartment building. The Tenant moved into the rental unit July 31, 2020, and he ultimately moved out in July 2021. The monthly rent was \$1,550.00.
3. The Tenant said that undue repair and construction noise commenced in September 2020. However, he said that he was not worried about "minor noise" between September 2020 and December 2020. He said, and he had documentary and recorded evidence to support his allegation, that he began complaining about the undue noise in January 2021.
4. The documentary evidence supported the Tenant's allegation that he received almost no notice about work that commenced in January 2021. He submitted into evidence a notice document dated January 10, 2021, about work that was to commence on January 10,

2021, and it was to continue for 2 weeks. The notice informs the Tenant of “apartment renovations” that may include painting, floor refinishing, replacement of floors, tiles, plumbing, hardware. It also informs the Tenant that the work could cause construction noise including drilling, sanding, and odours from paint, adhesives and refinishing material.

5. The Tenant submitted into evidence a recording of a phone call he made on January 15, 2021, to Tara, a Landlord employee, to complain about short notice about construction, as well as to inform her of the unbearable noise and living conditions. In the call, Tara informs the Tenant that there will be continued construction noise almost every month.
6. It is undisputed that there was constant work being carried out between March 2021, and July 2021, when the Tenant moved out of the rental unit. The Tenant filed his application on March 19, 2021, and he was seeking to end his tenancy as of that time. He did not, in fact, move out until the end of his one year lease in July 2021.
7. The Tenant said that when there was work carried out it was intermittent, but almost every day. He said that there was drilling most of the time, and he had video evidence of loud drilling noise. He said that he was unable to work. He did not have a written log of when noise started or stopped, how loud it was, or when it occurred. He had a number of recordings on different, random days, of noise occurring for a few seconds at a time.
8. The Tenant said that he started working from home at the end of November 2020. His work was to take calls and provide technical support. He said that he wore a head phone, but that the callers could nevertheless hear the noise around him.
9. The Tenant said that his work hours from November to December 2020 were from 11 a.m. to 7 p.m. However, he said he changed his shift to 2:30 p.m. to midnight as of January 2021. He said that the noise had a substantial impact on his work. He said that customers could not hear him, he could not hear them, and he often had to cut his calls short. The Tenant said that he was terminated in April 2021 when his employer noticed that he was cutting calls short. He did not have documentary evidence about the termination of his employment.
10. The Tenant said that he did not find a job until June 3, 2021, when he began work as a sanitation worker on the night shift from 9 p.m. to 4 a.m. He said that he then had to sleep during the day time.
11. The Tenant said that he lost his job because of the construction work and noise, he was unable to sleep when he worked a night shift job, and he ultimately moved because of the constant noise. He said that he would not have moved in to the rental unit if he had known the extent, duration and intensity of the construction work or of the noise it produced.
12. The Tenant admits that the Landlord offered him a quiet room to work in during the day, which he refused because it was not on the same floor as his unit.
13. The Tenant is claiming a substantial rent abatement from December 2020 to July 2021, to impose a fine payable to the Board, and for the Landlord to pay \$600.00 moving expenses.

14. The Landlord's witness T. Lively (TL) is the manager of marketing and leasing. He submitted into evidence a copy of the lease to which was attached a document entitled "Important Notice to All Residents", signed by the Tenant and also signed by an agent of the Landlord. TL said that the Tenant signed this notice prior to entering into the tenancy, and prior to moving in. The notice states that "Management wishes to advise our residents of renovations that will take place in vacant suites, we do our very best to maintain the suites in our buildings, requiring us to renovate outdated suits." The notice continues with the scope of work, which will include use of construction tools generating noise vibration and dust, as well as when noisy work will take place. It also offers the Tenant a "quiet suite".
15. TL said that the document would have been explained to the Tenant before he moved in, i.e. that the Landlord renovates suites from time to time. He said that the Landlord could never be very specific about how much renovation will go on because they would not know in advance. He also said that there was a higher turnover of apartments in the first half of 2021, due to the effect of COVID lockdowns on rentals.
16. The Landlord's witness, C. Pharant (CP), is the on site manager. She said that any noise created by construction work would only happen at the beginning of the month. She said that all noise takes place between 9 a.m. and 5 p.m., and the noise would not happen every day. CP said that the Tenant was offered a quiet room to work, but he refused it. CP said that there was no work being done in January and February 2021.
17. CP said that there were no other complaints from other tenants, and that a lot of people worked from home during COVID. CP admits that there was work going on from March to July 2021.
18. The Tenant submits that the Landlord failed to inform him about the extent, duration, and frequency of the noise caused by construction. He submits that he never received notice about work being done on at least two of the apartments on his own floor. The Tenant submits that he never spoke with TL prior to moving in, and he would never have entered the tenancy if he had been fully informed. He requests a rent abatement of 100% for January to June 2021 for the constant noise and inability to reasonably enjoy his rental unit. He submits he had to move out because of the construction work and its effects, and he seeks \$600.00 in moving costs.
19. The Landlord submits that the Tenant's application should be dismissed. The Landlord submits that the Tenant received and signed an acknowledgement that he was aware of the work that would go on prior to moving in. The Landlord submits that the Tenant failed to prove, on a balance of probabilities, that there was noise every day for lengthy periods, nor that it was constant, and had had no evidence of major construction on the Tenant's floor. The Landlord submits that the Tenant was offered a quiet room, and he refused to accept the offer.
20. The Landlord submits that section 8 of O. Reg. 516/06 limits the ability of Tenant to claim that a landlord's construction work is a substantial interference to a tenant's reasonable enjoyment because its objective is to encourage landlords to carry out repairs and necessary work. The Landlord submits that the Tenant failed to prove that the work could

have been carried out with less noise, and therefore he failed to prove that the work being carried out to renovate suites was unreasonable in the circumstances.

Reasons and Analysis:

21. The Landlord's renovation, repair and construction work falls under section 8 of O. Reg. 516/06 of the *Residential Tenancies Act, 2006* (the 'Act'), which, in subsection 8(1) defines "work" as "maintenance, repairs or capital improvements carried out in a rental unit or a residential complex." This section of the regulation applies to Board determinations that fall under subsections 29(1) and 31(1) of the Act.
22. Subsection 8(3) of the O. Reg. 516/06 discusses how the Board shall consider Tenant applications alleging substantial interference with reasonable enjoyment. It provides that "the Board shall not determine that an interference was substantial unless the carrying out of the work constituted an interference that was unreasonable in the circumstances with the use and enjoyment of the rental unit or residential complex by the tenant or former tenant, or by a member of the household of the tenant or former tenant."
23. In general, section 8 of O. Reg. 516/06 sets a higher bar for a Tenant to prove, on a balance of probabilities, that there was a substantial interference with their reasonable enjoyment as a result of the Landlord carrying out construction work. In essence, section 8 of O. Reg. 516/06 is intended to limit a tenant's ability to obtain an order for an abatement of rent when a landlord does work or repairs. It is there to reflect a public policy to encourage landlords to do necessary repairs. Section 8 of the regulation provides that a tenant must prove, on a balance of probabilities, that the interference was "unreasonable in the circumstances". In addition, even if the interference is found to be unreasonable in the circumstances, the tenant application will fail if a landlord can establish it has met the criteria set out in subsection 8(4).
24. The Landlord's witnesses attempted to suggest that the work could not have badly disrupted the Tenant because he did not have prolonged recordings of noise, and there was no jackhammering. However, the Landlord's witnesses admit that there was work done on replacing and repairing flooring and tiling that cause noise, the Tenant played recordings of substantial noise, and it was undisputed that there was work going on almost every week from January to June 2021. The Tenant complained about the noise as of January 2021, and I find, on a balance of probabilities, that the Tenant was disrupted and bothered by noise caused by the Landlord's construction work.
25. The Tenant said that he lost his customer service job in April 2021 because of his inability to work properly due to the noise. He did not provide any documentary proof of this allegation. He also said that he had changed his shift to the hours of 2:30 p.m. to midnight in January 2021. Since I also find that there was no credible proof that the Landlord's work carried on past 5 p.m., then most of the Tenant's shift would take place after construction work had stopped for the day. The Tenant was offered a quiet room to work, and the only reason he gave for refusing the offer was that it was not convenient for him to travel down a few floors to use the quiet room. This was different than the reason he provided to the Landlord's employees for refusing the quiet room. The Tenant's evidence about how frequently there was noise, and how long the duration, was also inconsistent.

26. In order to meet the bar of section 8 of O. Reg. 516/06, the Tenant must establish that the interference was also “unreasonable in the circumstances”. It is undisputed that there was some renovation work going on in the building that fell under the definition of work in O. Reg. 516/06, but based on my findings in paragraph 25 above, I find that the Tenant has failed to prove that the work was louder, that it lasted longer, or that it had a more excessive impact on the Tenant, than any ongoing renovation work would have done.
27. Essentially, subsection 8(3) of the regulation sets out a combined two part test which is both objective and subjective. Paragraph 8(3)(a) relates to the subjective test. It specifically instructs the Board to consider the effect of the work on the individual tenant involved. In exploring that, one might ask whether or not the effect was disproportionate or particularly severe given the work being done and the Tenant’s particular situation. I have found that the work, when it was noisy, undoubtedly caused the Tenant disruption while speaking on the phone, and it impeded him in doing his job while there was very loud noise going on. However, the Tenant failed to prove how frequently the noise was unduly loud and disruptive. That is, he did not provide convincing evidence of whether the excessive banging occurred once in a day for a few seconds, or whether it occurred for hours at a time? The Tenant refused a quiet room offered by the Landlord which suggests that it was not so disruptive as to make him feel he needed to leave his apartment in order to carry out his work. In addition, the noise, however frequent it was, would only have occurred during less than a third of the Tenant’s work shift. The Tenant failed to provide a clear picture of how frequent, how long in duration, or how loud the noise was, and how much impact it had on his work, nor did he provide evidence that proved, on a balance of probabilities, that he lost his job in April 2021 because of the impact of the Landlord’s construction work. I find, therefore, that he has not therefore proved that the effect of the work was disproportionate to him, considering the type of work that was going on.
28. Paragraph 8(3)(b) of O. Reg. 516/06 imports an objective element into consideration: was the disruption reasonable given the nature and extent of the work that needed to be done? Answering this question is necessarily intertwined with the considerations in subsection 8(3)(a) above. The Landlord’s witnesses said that they knew there would be considerable renovation work being carried out in 2020-2021, and they informed the Tenant about it before he entered into the lease. The Landlord had documentary evidence of the Tenant signing a document attesting to having been informed. It is undisputed that there was, indeed, renovation work being carried out throughout the first half of 2021. It was noisy and disruptive to the Tenant. However, as stated above, there was no clear evidence brought by the Tenant that the banging was of long duration each day, every day, and therefore no evidence that it was unreasonably loud renovation work. He also provided no evidence that the noise was disproportionate compared to any renovation work requiring the Landlord to replace or repair flooring and tiling on some days of the month.
29. As a result, I find that the Tenant’s evidence does not prove, on a balance of probabilities, that the interference was unreasonable in the circumstances so as to meet the bar provided by subsection 8(3) of O. Reg. 516/06, and it cannot therefore be said to be substantial.

30. Although there is some evidence that the Landlord did not always provide 60 days notice before the commencement of work, given my finding in paragraph 29 above, the Tenant's application will be dismissed, and it is not necessary for me to consider subsection 8(4).

It is ordered that:

1. The Tenants application is dismissed.

August 9, 2023

Date Issued

Nancy Morris

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.