

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC RR FF

Introduction

This matter dealt with an application by the tenant for a monetary order and a rent reduction related to the reduction in size of the rental unit patio and a loss of privacy. The tenant also seeks to recover the filing fee of \$50.00 for the cost of this application.

Both parties appeared at the hearing and were afforded a full opportunity to present evidence. I have also considered any documentation submitted by both parties prior to the hearing date.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and a rent reduction, and if so in what amount?

Background and Evidence

The agreed to facts by both parties are as follows:

- the tenancy commenced in January 2003
- the current monthly rent is \$690.00
- the patio of this rental unit is a rooftop patio
- the building underwent renovations in mid 2008 and that included roof repairs and changes to the patio of the tenant's rental unit, and this work was completed at the end of July 2008

- the patio was reduced in size from 22' x 22' to 22' x 16', a reduction of approximately 120 square feet
- the walls on either side of the patio were also modified and are now shorter in some of the sections

The evidence of the tenant is that the size and location of the patio, i.e., rooftop, were significant factors in her selecting this unit. She stated that she had looked at similar units on other floors, but the patio was a deciding factor. The tenant states that the loss of approximately 120 square feet is significant and that she has also suffered a loss of privacy with the lower dividing fences between her and her neighbours. The tenant also states that she has lost a significant portion of area that normally received sun exposure as well. The tenant has requested in writing, a rent reduction for this loss, and the landlord has replied that they are not willing to agree to a rent reduction.

The agent for the landlord did not dispute the basic facts of the size of the patio reduction or of the size of the dividing fences. The position of the landlord is that other units rent for much more than this unit, and they are not willing to agree to any rent reduction.

Analysis

I have heard the evidence of the tenant and the landlord, and reviewed the documents and photographs submitted. I find that the reduction of the size of the patio and the loss of the privacy that the tenant has had for the past five years, is a significant part of the tenancy. The tenant's evidence is that the size of the patio played a significant part in her selection of this particular rental unit.

When the landlord makes changes or alterations which result in a reduction to the size of any part of the rental unit and when that reduction is significant, the landlord is required to notify the tenant in writing and to compensate the tenant accordingly. The landlord in this matter has steadfastly denied any offer of compensation to the tenant.

The tenant seeks a reduction based upon her calculations in the amount of \$83.00 per month. I have considered that even though we live in a temperate climate, that the use of an open patio on a regular basis is not a year round probability.

Conclusion

In summary I find that an appropriate amount of rent reduction would be \$40.00 per month. The monthly rent payable effective January 1, 2009 will be \$650.00. The rent must remain at that amount unless the landlord obtains a rent increase which is permitted under the legislation.

I further find that the tenant is entitled to a retroactive rent reduction of \$40.00 per month starting on August 1, 2008 to December 31, 2008 and to recover the \$50.00 filing fee for the cost of this application for a total of \$250.00. The tenant may deduct the amount of \$250.00 from the \$650.00 rent payable on January 1, 2009.

Dated: December 9, 2008