

DECISION AND REASONS

Dispute Codes

MNDC, FF, O

Introduction

This hearing for dispute resolution was requested by the Tenant, claiming a monetary Order for compensation, plus filing fee costs. Each party attended the hearing, acknowledged receipt of all evidence submissions and had the opportunity to be heard.

Issues to be Decided

The Tenant has requested a monetary Order in relation to filing fee costs and compensation for loss of use of the following:

- A shower
- Vanity cabinet shelving
- Half of the kitchen cabinets
- Loss of quiet enjoyment
- Intermittent loss of water

This decision will determine what, if any, compensation is due to the Tenant by the Landlord.

Background and Evidence

Both parties agree to the following:

- This fixed-term tenancy commenced on January 1 2008, terminated on December 31, rent was \$950.00 per month
- The Tenants were given prior notice of the bathroom renovations that were to take place
- That on October 15 2008 the Landlord held a social event in order to provide tenants with information on the plumbing renovations and that the Tenant attended this event
- The water in the rental unit was shut off during business hours for a period of three days (October 22, October 27, December 3)
- That during construction plastic sheeting was placed on the walls of the shower units
- That the Tenant was asked by the Landlord to empty the bathroom vanity shelves and several kitchen cabinets
- That the bathroom sink and bathtub were operational throughout the period of renovation
- That the Tenant made one written complaint to the Landlord, dated November 13 2008

The Tenant testified that the renovation work was to take approximately 20 days to complete and that the work in fact occurred between October 30 and December 10, a period of forty-two days. The Tenant testified that he did not have use of the shower during the period of construction and that the bathtub and bathroom sink were left full of debris from construction activity. The Tenant evidence and oral testimony also referenced a loss of quiet enjoyment due to on-going construction noise.

The following outlines the loss of use of services presented by the Tenant through testimony and submitted evidence:

October 30 in-suite construction commenced
 November 14 – 20 no plastic sheeting in shower stall, drywall installed
 November 20 – 28 tiling completed in shower stall, no shower curtain

The Tenant submits that on November 29 he was given written notice that his rental unit water was to be shut off during business hours on December 2. The Tenant testified that on December 2 another notice was posted indicating that his water would instead be shut off on December 3. The Tenant testified that this was an inconvenience as he had planned to vacate his unit for the day on December 2 and then had to make plans to remain out of the unit on a different date. The Tenant testified that during the construction there was also intermittent loss of water.

The Tenant submitted a copy of a letter dated November 13 2008 which he sent to the Landlord. This letter outlines the concerns that the Tenant had in relation to the renovations. The Tenant pointed out that the hours of renovation changed from 830 – 430 to 730 – 430. The Tenant letter indicates that the use of his bathroom sink and kitchen have been restricted and that his bathroom has a layer of plaster and debris on the floor, toilet, sink and shower following each day that construction takes place in his unit. The Tenant testified that he had to leave his kitchen plates on the counter for the duration of the renovation and that he was unable to use his bathroom vanity shelves.

The Tenant testified that he lost use of the shower stall for a period of ten days. The Tenant submits that he should be reimbursed his November rent paid and provided with abatement for one half of December rent.

Landlord evidence submitted indicates that on September 15 a notice was posted to all residents that plumbing renovations would commence in the common areas on September 23. The Landlord then posted a notice to all residents (date unclear) requesting that all residents attend a wine and cheese social on October 15 in order to receive information on upcoming in-suite renovations. The renovations were to commence in the Tenant rental unit on October 30 2008.

A notice provided to the Tenant by the Landlord dated October 28 indicates details related specifically to the Tenant's unit renovations. This notice indicated that during the period of time that the bathtub was retiled it would be desirable for the Tenant to refrain from using the shower, in order to allow the tile material to properly cure. During the hearing the Landlord did not deny that the Tenant faced some level of inconvenience but pointed out that of twenty-two units that were renovated only one Tenant complained. The Landlord testified that if the Tenant had requested his bathroom be cleaned that this would have been arranged by the Landlord. The Tenant countered that his letter of November 13 implied the need for cleaning.

Prior to the hearing the Landlord offered the Tenant compensation of the equivalent of \$35.00 per month for the next twelve months tenancy; essentially the cancellation of a legal rent increase which tenants were given. The Tenant vacated the rental unit on December 31. The Landlord also had offered the Tenant \$35.00 of laundry tokens.

During the hearing the Landlord testified that they would be willing to provide the Tenant with \$200.00 compensation, his filing fee costs and registered mail costs. The Landlord also apologized for inadvertently deducting a late fee from the returned deposit and offered to immediately mail this to the Tenant.

Analysis

Residential Tenancy Branch policy determines that a Landlord must not restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit. If a Landlord is to restrict the use of a service or facility the Landlord must:

- give the tenant 30 days written notice in the approved form, and
- reduce the rent to compensate the tenant for loss of the service or facility

The Landlord did provide written notices, but they were not in the approved form. The approved form details the service to be restricted and includes information regarding a rent reduction that will result due to the restriction of services. The burden of proof that the service was denied falls to the Tenant, however, in this case both parties agree that the Tenant did suffer some loss of service.

I have determined that the loss of bathroom vanity shelves and the kitchen cabinets fail to constitute a material term of the tenancy and were more of a minor, temporary inconvenience and not an indispensable service essential to the Tenant's use of the rental unit. The Tenant continued to have use of the bathroom vanity mirror, bathroom sink, bathtub and some kitchen cabinets.

I have determined that the Tenant continued to have use of the shower, except for the days during which the tiling was installed and curing and the period of time when a shower curtain rod was not installed. The failure of the Landlord to arrange cleaning of the tub and sink is unfortunate, and the November 13 letter from the Tenant to the Landlord does state that debris is being left following each day work occurs in the rental unit. I have taken the issue of clean-up into account and the Tenant's one letter of complaint provided to the Landlord. In relation to the loss of quiet enjoyment I have determined that the construction noise which occurred during the day would not constitute an unreasonable and on-going loss. In order to establish a claim of loss of enjoyment Residential Tenancy Branch policy states that the Tenant must show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the Landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. The construction within the unit was intermittent and construction in hallways and other units would not be considered a breach of the covenant of quiet enjoyment. I have also considered the timing of the Tenant's written complaint, which occurred 2 weeks after the renovations commenced. Therefore, I find that the Tenant is entitled to compensation for the following:

Service	Number of days loss	Amount
Loss of water	3 during business hours	75.00
Loss of use of shower	10 November 14 ,15 & 20 - 27	62.50
Intermittent loss of water		40.00

Conclusion

I find that the Tenant has established a total monetary claim of \$227.50 comprised of \$177.50 for loss of services and the \$50.00 fee paid for this application. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Dated January 23, 2009.