



Dispute Resolution Services

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

Decision

Dispute Codes: MNSD MNDC OLC RR FF

Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for a monetary order and an order to keep the security deposit in partial compensation of the monetary claim. In the hearing the landlord advised that they were reducing their monetary claim to \$345.40, representing the landlord's actual costs in re-renting the unit after the tenant broke the lease.

The tenant applied for a monetary order for compensation under the Act, regulation or tenancy agreement, an order the landlord comply with the Act, and a reduction in rent. As the tenant had already vacated the rental unit, I dismiss the portions of the tenant's application regarding an order that the landlord comply and a reduction in rent.

The landlord's agent, a witness for the landlord, the tenant and two witnesses for the tenant participated in the teleconference hearing.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on or about October 15, 2008 as a fixed term tenancy to end on October 31, 2009, with monthly rent of \$1350. The tenant resided in the rental unit with her 12 year old son. At the outset of the tenancy the landlord received a security

deposit from the tenant in the amount of \$675. The tenancy agreement includes a liquidated damages clause that requires the tenant to pay \$450 if the tenant breaks the lease before the end of the term. On March 15, 2009, the tenant informed the landlord in writing that she had vacated the rental unit.

The evidence of the landlord on their application was as follows. The landlord made an aggressive effort to re-rent the unit, and was able to do so by April 1, 2009. The landlord incurred costs of \$309.43 for advertising, \$10.97 for a credit check for the prospective new tenant, and \$25 for the landlord's cost to travel to the Residential Tenancy office and file the application for dispute resolution against the tenant.

The response of the tenant was that the tenant was forced to move out because of the toxic air quality in her suite. Therefore, the landlord breached the lease and should not be entitled to claim for the costs of re-renting. The tenant disputed the landlord's amended claim in its entirety.

The evidence of the tenant on her application was as follows. The landlord did not inform the tenant before she signed the lease that they planned to undertake any renovation, construction or major re-piping of the building. During the tenancy there was constant construction going on that was so noisy the tenant was unable to watch TV, listen to the radio or use the phone. The construction work caused extensive dust that affected the eyes and lungs of tenant and her son. The construction workers constantly used foul language in the hearing of the tenant's son. The tenant had to keep the curtains closed to ensure privacy. When the water was shut off in the building, the tenants of all 40 suites were expected to share a washroom with the construction workers in the building. The shared toilet was kept in a filthy, unsanitary condition and was often not available for use. The tenant would never have moved in if she had been told there were to be such extensive renovations, as she had recently moved out of a renovation situation. The tenant emailed the landlord and requested compensation, but the landlord refused. The tenant therefore felt that she had no choice but to move out.

A witness for the tenant, who also resided in the building during the renovations, stated

that she tried once to use the communal toilet but it was filthy and there was no toilet paper. Further, the tenants could not use the laundry room because the workers occupied to the laundry room with their materials. The tenant and both witnesses for the tenant raised concerns about the safety of the building, as doors were left wide open and people were able to freely walk into the building, and the workers did not have any visible identification on them to distinguish them from anyone else.

The tenant has claimed compensation as follows: \$675 for return of her security deposit; \$788.16 for the cost of moving, hotel, address change, prescription for her son, food, photos and DVD evidence for the hearing; and \$16, 200 representing one year of rent at \$1350 per month.

The response of the landlord to the tenant's application was as follows. When the tenant viewed the building and the suite, the landlord's agent showed the tenant where the outside of the building was being renovated. The agent advised the tenant that the building would undertake re-piping in the new year. The re-piping project and exterior renovation were planned and completed in a manner such that the tenants would have access to and be able to continue to reside in their suites. The landlord made every effort to minimize inconvenience to the tenants as a result of the renovations, and in regard to the tenant's suite the landlord purchased an air purification machine for the tenant's exclusive use. The landlord took steps to advise tenants of when specific work would be carried out. The landlord provided two washrooms, one for the use of approximately 20 workers during work hours, and to be accessible for the tenants after work hours, and one washroom for the use of the tenants. The landlord did what they could to keep the washrooms clean. The landlord disputed the tenant's monetary claim in its entirety.

Analysis

In regard to the landlord's application, I find that the landlord's claim for recovery of advertising costs and the cost to do a credit check on the prospective new tenant are reasonable and valid. I do not accept the tenant's argument that the landlord breached

the lease. Under normal circumstances the landlord would be entitled to the full amount of the liquidated damages, but in this matter the landlord instead chose to reduce the amount based on the actual cost of re-renting. I grant the landlord \$340.40 for those costs. I dismiss the \$25 claimed for the cost of traveling to the Residential Tenancy office, as this amount was incurred as a cost of pursuing dispute resolution, not as a cost of re-renting. The only cost of pursuing dispute resolution that I will consider is recovery of the \$50 filing fee for the cost of their application, which I grant to the landlord. The landlord is therefore entitled to a total award of \$370.40.

In regard to the tenant's application, I find that the tenant did suffer a loss of quiet enjoyment and was deprived of the use of toilet, water and laundry facilities, and the tenant is entitled to some compensation for those losses.

I accept the testimony of the tenant regarding the daily noise. The landlord did not dispute that the construction caused noise. I therefore find that the tenant is entitled to compensation regarding the noise. However, I find that the landlord did take reasonable efforts to attempt to reduce the dust problems by providing the tenant with air purification equipment for her exclusive use, and the tenant did not provide sufficient evidence to establish that she or her son suffered health problems exclusively caused by the dust. The tenant did not provide a breakdown of the time periods or extent of the noise on specific occasions but rather generally claimed ongoing noise. I therefore find that for loss of quiet enjoyment, the tenant is entitled to compensation of \$100 per month for five months, for a total of \$500.

In regard to loss of use of the toilet, water and laundry facilities, I find that the landlord did deprive the tenant of essential facilities. I accept the evidence of the tenant and the tenant's witness that the washroom intended for the use of all tenants was not kept clean and was often unavailable. The landlord's attempts to provide alternate washroom facilities were inadequate. The tenant did not provide a breakdown of the specific time period for which the toilet, water and laundry facilities were unavailable, but did provide evidence that the re-piping began in early January 2009, and that the work on the individual suites was being carried out until at least March 9, 2009. I therefore

find that for loss of toilet, water and laundry facilities, the tenant is entitled to compensation of \$300 per month for two months, for a total of \$600.

As the tenant's application was partially successful, I find that the tenant is entitled to partial recovery of her filing fee, in the amount of \$50, for a total of \$1150.

Conclusion

I deduct the landlord's award of \$370.40 from the tenant's award of \$1150, for a balance of \$779.60 owing to the tenant. The landlord must also return the tenant's security deposit and interest of \$677.16. I grant the tenant a monetary order for the balance of \$1456.76. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated July 14, 2009.