

## **DECISION**

Dispute Codes      MNDC, RR, O

### Introduction

This hearing dealt with the tenant's application for compensation under the Act, regulations or tenancy agreement, damage to the tenant's personal property and authorization to reduce rent. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other party's submissions.

### Issues(s) to be Decided

1. Has the tenant established an entitlement to compensation from the landlord, and if so, the amount?
2. Is the tenant entitled to reduce rent?

### Background and Evidence

Based on undisputed testimony from the parties, I make the following findings. The tenancy commenced in 2001 and the tenant is currently paying rent of \$1,106.70 per month. The rental unit is located in an older strata building. Starting March 15, 2009, the water lines in the building were being replaced which necessitated drilling through concrete. Drilling took place for a couple of hours between 8 a.m. and noon on weekdays but not on weekends or evenings. Drilling did not take place everyday and occupants were given notice prior to drillings. In addition, water had to be disconnected at times for a few hours. Tradesmen had to enter units to run new water lines. Occupants were asked to relocate possessions away from certain areas in order to accommodate tradesmen working in the kitchen and bathroom.

I also heard that on April 22, 2009 a water line leaked and soaked the tenant's bathroom and bedroom floor. Drying machines were brought in by a restoration crew hired by the strata council and were in place for 5 days. Work in the tenant's unit was completed May 20, 2009. Painting and fitting continued in other parts of the building throughout May and into June 2009.

The tenant is seeking compensation equivalent to 80% of his rent for 2.5 months plus \$450.00 for damage to a silk carpet located in the bathroom that was damaged when the water line leaked. The tenant described the noise and vibration from the drilling as unbearable to the point where he would leave the rental unit to walk his dog but while in the unit he could not watch TV, talk on the telephone or have guests. The tenant acknowledged he did not make an insurance claim with respect to his carpet as he does not carry tenant's insurance.

The landlord submitted that the replacement of the water lines was necessary due to the age of the lines and previous issues with the plumbing and that with replacement of the lines the water pressure is better and the toilets are not prone to plugging. In addition, occupants were given advance notice as to when drilling and temporary water disconnection would take place. The landlord submitted that drilling occurred for a few days at a time and was not daily. Water was shut down temporarily to test the systems for a few hours at a time but not frequently.

With respect to the tenant's personal carpet, the landlord claims to have had no knowledge of any damage until being served with the hearing package. The landlord asked if the tenant had attempted to clean the carpet, to which the tenant replied he had not. The landlord contended that the strata council acted promptly to dry the rental unit when the water line leaked. Finally, the landlord testified that the tenant did not contact her to express concerns which would have provided the landlord the opportunity to assist the tenant with the situation.

The landlord did not offer to compensate the tenant as the landlord was of the position that the tenant's rent was already below market value and that the landlord had no choice in replacing the water lines at a substantial cost to the landlord. The tenant did not agree that his rent is below market value and was of the belief that other tenants in the building had received up to 80% of a rent reduction in recognition of the work being done in the building. The landlord was unaware of such compensation being given to other tenants by other landlords.

### Analysis

In order for the tenant to be successful in obtaining compensation from the landlord, it must be shown that the landlord violated the Act, regulations or tenancy agreement. The Act provides that a tenant is entitled to quiet enjoyment which includes freedom from unreasonable disturbance and use of the property being rented. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. A tenant may be entitled to compensation for a breach of quiet enjoyment even if the landlord has made every effort to minimize the disruption to the tenant in making the repairs. Temporary discomfort or inconvenience does not constitute a basis for breach of the covenant of quiet enjoyment so a disturbance or loss of use would have to be frequent and ongoing to constitute a breach of quiet enjoyment.

In this case, I find the Act and the tenancy agreement were breached by the landlord, through no fault of the landlord, by the frequent disturbances caused by the drilling and loss of use of a portion of the rental unit in order to accommodate workmen.

In determining the amount by which the value of the tenancy has been reduced, I have considered the seriousness of the situation and the degree to which the tenant

was unable to use the premises and the length of time over which the situation existed. Having heard the tenant would leave the rental unit during much of the drilling to walk his dog and that drilling was limited to a few hours during weekdays, I do not find the tenant endured a great degree of inconvenience. I also find the water disconnection to be temporary in nature. Upon review of the diagram provided to the tenant by the strata, I do not find the area required to be kept clear for workmen was a large area. Therefore, I find the tenant's claim for 80% compensation to be excessive considering the tenant was able to use the majority of his rental unit for daily activities for the majority of the time during repairs. I find that a reasonable award to the tenant is 20% of his rent from March 15, 2009 through May 20, 2009 which I calculate to be \$480.00 (rounded).

With respect to the tenant's claim for damage to his silk carpet, I do not find the landlord liable to compensate the tenant for its devaluation. Damage to the tenant's personal property is not recoverable from a landlord unless the tenant can show that the landlord knew there was a likelihood that the rental unit would be adversely affected by something the landlord should have remedied and the landlord chose not to do so. However, in this case, I do not find sufficient evidence the landlord knew of an impending water leak and did not take action to rectify the situation. Rather, leaks and floods do occur on occasion without prior knowledge or fault of either party and in such cases the landlord is only responsible for restoring the rental unit, not the tenant's personal possessions. The tenant has already been compensated for loss of quiet enjoyment and loss of use of a portion of the property and I do not award further compensation to the tenant for the damaged silk carpet. As the tenant was informed during the hearing, it may be very beneficial to the tenant to obtain tenant's insurance to cover replacement of his personal belongings.

At the time of this hearing the pipe refitting has been completed and I do not authorize a rent reduction to the tenant for future months except for a one-time deduction of \$480.00 in satisfaction of the loss of quiet enjoyment for the period of March 15, 2009 through May 20, 2009.

### Conclusion

The tenant suffered a loss of quiet enjoyment of the rental unit; however, the tenant's claim for an 80% rent abatement is excessive and I have awarded the tenant the equivalent of 20% of rent paid for March 15, 2009 through May 20, 2009. The tenant is authorized to make a one-time deduction of \$480.00 from a subsequent month's rent in satisfaction of this award.

The tenant's claim for damage to his personal property is dismissed without leave to reapply.

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 07, 2009.

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Dispute Resolution Officer