

## **Decision**

### **Dispute Codes:**

MNDC, RR

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation of \$660.00 per month for loss of peaceful enjoyment of the rental unit and devalued tenancy which occurred over a two month period during renovation work relating to a flood in the unit. The tenant was also claiming \$80.00 for the four hours of cleaning done by the tenant and \$315.04 loss of wages by having to stay home to give the contractors access to the unit.

Both parties appeared and gave evidence.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence is whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss and possibly a rent abatement. This determination depends upon whether or not the claimant has presented proof of the existence and value of the damage or loss and that the responsibility fell to the respondent. The burden of proof is on the applicant to prove all of the claims and requests contained in the tenant's application.

### **Background and Evidence – Monetary Claim**

The tenancy began in June 2007 and the current rent is \$1,650.00 per month. A security and pet damage deposit of \$1,250.00 was paid. The tenant testified that on June 15, 2009 a flood occurred in the unit due to a water pipe in the wall. The tenant testified that the tenant completed 4 hours of clean-up and is claiming compensation for 4 hours at \$20.00 per hour for a total of \$80.00. The tenant testified that the co-tenant

was required to remain at home to permit access to the contractor losing wages in the amount of \$315.04 which is also being claimed.

The tenant testified that renovations were being done on 4 of the 10 rooms in the unit, including 2 bedrooms, a bathroom and laundry room and that these rooms were not useable from June 15, 2009 until the second week of September 2009. The tenant received a rent abatement of \$660.00 for the month of August 2009 but is claiming an additional \$1,320.00 for loss of enjoyment and devalued tenancy. The tenant testified that, throughout the renovation work, there was a problem with communication. The tenant stated that the landlord and contractors had imposed on the tenant by requiring the tenant to move possessions from the affected area and the tenant's position was that this responsibility did not fall to the tenant.

The landlord disputed the amounts being claimed by the tenant and had submitted a significant amount of evidence to support the landlord's position. The landlord acknowledged that the tenant was inconvenienced by the construction but set the amount at \$330.00 per month. The landlord disputed that the co-tenant was required to remain at home on June 16, 2009 and that other arrangements could be made for access. In fact the plan that was later agreed upon was for the tenant to leave the keys in the mailbox. The landlord clarified that the loss of use only involved 2 weeks in June 2009 and the month of July 2009. The landlord testified that a rent abatement of \$660.00 was already granted to the tenant for August 2009 in the spirit of cooperation. The landlord testified that all of the work was done by August 24, 2009, except for cleaning and that the project was "signed off" on September 1, 2009. The landlord referred to evidence in the form of emails to support this testimony.

The landlord testified that the tenant's refusal to cooperate by moving the tenant's own possessions caused a delay of approximately 4 or five days for each dispute and alternate arrangements had to be made which took extra time.

### **Analysis - Monetary Compensation**

The tenant was requesting monetary compensation or rent reduction for the reduction of value due to ongoing disruptions during construction. In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7 and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove a violation of the Act and a corresponding loss.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: (a) reasonable privacy; **(b) freedom from unreasonable disturbance**; (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*] and; (d) use of common areas for reasonable and lawful

purposes, free from significant interference. I find that section 28 of the Act imposes responsibilities on the landlord to ensure that a tenant's right to freedom from unreasonable disturbance is protected. In this instance, I find that an active renovation project in the building while a rent-paying tenant were still inhabiting would significantly interfere with the tenant's quiet enjoyment of the suite and in particular I accept that there was a loss of use of the four rooms involved.

I find that the pro-rated amount of \$660.00 per month is reasonable compensation and I find that the tenant is entitled to \$330.00 abatement for the month of June 2009. I find that the tenant's claim for entitlement to \$660.00 for the month of July is affected by the fact that the tenant failed to mitigate the loss by acting to prevent the delay over who should move the tenant's possessions. I find that the amount must be reduced by 25% in light of the failure to meet element 4 of the test for damages. The tenant is therefore entitled to \$495.00 compensation for the month of July 2009. I find that the tenant is entitled to be reimbursed for 2 hours cleaning charges in September 2009 and 4 hours cleaning charges in June 2009 for a total of \$120.00. I find that the tenant's claim for reimbursement of \$315.04 for loss of wages did not meet the test for damages and this portion of the application must therefore be dismissed.

### **Conclusion**

Based on the testimony and evidence discussed above, I hereby issue a monetary order in favour of the tenant in the amount of \$995.00 comprised of \$825.00 rent abatement, \$120.00 for cleaning and \$50.00 reimbursement for the filing fee. This order must be served on the landlord or the landlord's agent in person or by registered mail and can be enforced in Small Claims court.

December 2009

Date of Decision

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Dispute Resolution Officer