

DECISION

Dispute Codes DRI, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application disputing an additional rent increase, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the landlord for the cost of this application.

The parties each gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Is the tenant's application to cancel an additional rent increase justified?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on June 1, 2005 in this particular unit. The tenant had resided in other units within the complex prior. Rent in the amount of \$1,107.00 is payable in advance at the end of the month, and there are no rental arrears. The landlord collected a security deposit from the tenant on June 1, 2005 in the amount of \$472.00.

The tenant testified that a renovation project had been undertaken in the apartment building that he feels was not handled professionally, other repairs have not been completed, and is therefore disputing an additional rental increase. A copy of the rental increases from June 2005 to date were provided by the landlord in advance of the hearing, which show that increases were effective annually, with the latest Notice of

Rent Increase dated February 22, 2010 which raises the rent the amount of \$30.00, or 2.79% starting in June, 2010.

The tenant further testified that the renovations by the landlord caused inconvenience to the tenant and the loss of the use of his sun deck more than it ought to have, because some of the work had to be done twice. A leak existed that caused the landlord to do some renovations. Firstly, they had to cover the deck and then discovered it was a bigger problem, and the landlord then decided to do all siding and decks on the building. The job started in the fall of 2009 but didn't finish. The tradespersons told the tenant that they would return in the New Year and would start with his unit and would need a couple of weeks to finish. When they returned in the New Year, however, they started the work on the opposite side of the building instead, and did not complete the work until the end of April or early May, 2010. He further testified that the building has a south facing sundeck and that provides the view, which is why the tenant lives there. He was inconvenienced by tarps, tools left on the deck during the week and over weekends, workers going through his apartment to get to the deck, fumes, noise, and the tenant was not warned about cancer causing toxins required to water-proof the deck. He stated that half of that work had to be re-done after the siding was replaced.

The landlord's agent testified that it took a few attempts to find where the water was coming into the building, and the owner finally decided to fix the entire building starting in November, 2009. She further testified that it was a large project in which all decks and siding was replaced in a building with 48 suites. Some walls between decks required replacing or repair as well as some windows, and most of the work done to the decks was done from the outside so that the workers did not need to go into a suite, although that was a requirement for a couple of weeks in November. The tenant was not deprived of his unit, but the workers worked 8 hours per day, 5 days per week, and the tenant did not have the use of his balcony from November, 2009 to April, 2010. She further testified that most people don't use their decks in the winter.

When questioned why the decks were repaired in this fashion, the landlord's agent testified that 3 suites were problematic, and once the work had started, a decision was

made to complete repairs on the whole building. The project managers made the decisions on when to do what portions of the building and which portions were done first. When questioned why so many jobs had to be redone, such as the wall in the tenant's living room and deck floor, the landlord's agent replied that the dry-waller had noticed a wet corner, so they re-did it. Then the paint was found not to be of a good standard so she called the painter to return. She's not sure what happened with the membrane on the deck that required it to be redone.

The tenant is claiming 1/3 of his rent paid for the months of November, 2009 through April, 2010.

Analysis

Firstly, dealing with the application disputing the additional rent increase, the landlord is entitled to increase the rent annually, so long as it is done in accordance with the regulations, which I find is justified. An additional rent increase would be a request by the landlord to increase by more than the amount provided for in the regulations, or in addition to an annual increase, which this is not. Therefore, the tenant's application disputing the increase is not justified.

The issue remaining is the tenant's application for rent abatement for the time period when he was not able to use the sundeck and the loss of quiet enjoyment during that same time period. The landlord is entitled to make improvements to the building, and the alternative to the inconvenience on the tenant would be to issue a notice to end tenancy in order to complete those improvements. If the landlord had issued a notice to end tenancy for the repairs to be done, the tenant would then be in a position to dispute that notice if he chose to on the grounds that vacating the unit would not be necessary to carry out those renovations. Therefore, i find that the tenant's application for loss of quiet enjoyment cannot be justified. On the other hand, the tenant had every reason to believe that the improvements to his unit would be completed within the first couple of weeks in the New Year however he was clearly without his full rented unit for a period of approximately 6 months. The evidence I have before me is that the trades-persons

advised the tenant that they would start with his unit, or his side of the building early in the New Year, not the landlord. Although I don't condone the actions of the tenant in speaking to the trades-people rather than the landlord, I do find that 6 months worth of improvements and renovations is in excess and the tenant ought to be reimbursed for rent that he paid for the full use of the rental premises.

In order to determine the worth of that loss, I must consider what period of time the tenant would normally have used that sundeck. A person normally sleeps 1/3 of a 24 hour day, and works for 1/3 of a 5 day work week. That leaves 1/3 of a 5 day work week in addition to weekends and holidays that a person might spend using the deck, or looking at a view of tarps and tools as opposed to the view that came with the rental. I find it difficult to believe that the average person would spend all that time enjoying the view or on the sundeck. A person shops, visits other people or places, and some of the time during that time of year, it would have been too dark to enjoy the view. In the circumstances, and considering the time of year, I find that 10% of the rent paid for those months is reasonable.

Conclusion

For the reasons set out above, the tenant's application disputing the additional rent increase is hereby dismissed without leave to reapply.

The tenant will have rent abatement in the amount of 10% of the rent paid for the months of November, 2009 through April, 2010, and the tenant is entitled to recover the filing fee from the landlord in the amount of \$50.00, being a total of \$714.20. I further order that the tenant be permitted to pay a reduced amount of rent for future months until such time as that amount has been paid.

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: June 25, 2010.

Dispute Resolution Officer