

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with joined Applications for Dispute Resolution for tenants who are seeking a monetary order from the landlord.

The hearing was conducted via teleconference and was attended by 4 of the 5 tenants, their witness, the landlord and their witness.

The parties both provided testimony with the tenant's testimony primarily provided by the lead applicant, but all tenants were given an opportunity to make any statements they wanted. The witnesses both provided testimony and each party was given an opportunity to ask the witnesses questions.

Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to sections 28, 32, 33, 67 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree that in late 2009 the landlord undertook repairs to the roof to remove and replace the existing tar and gravel roof. On October 13, 2009 a storm caused extensive damage to the residential property resulting from a failure of the exterior and ventilation system. The repairs are still underway.

The tenants acknowledge that the repairs required were more extensive than was originally considered by the landlord. They contend that there was little, no, or inconsistent communication and very little in writing. They state they were not given adequate notice when access to their rental unit was required.

The tenants go on to say their privacy was interrupted, their unit doors were left open, some belongings were left in hallways, their Christmases were disrupted, and one of the tenants slept on her couch for over a month. They complain the work was not organized and that there is still work to be completed.

The landlord testified that offers of compensation and alternate living arrangements were provided to all tenants who requested anything. For example, the landlord stated that the lead tenant (306) in this dispute stayed in a local hotel for 8 nights for which the landlord paid and the same tenant was supplied with storage for some of her possessions.

Tenant 304 indicated, through her witness, that while she did access some meals through the arrangements the landlord had provided she could not take her evening meals there due to her difficulty in walking on the streets in winter after dark. She also noted that the tenant chose to stay in her rental unit because she understood the room at the hotel was to be shared with other tenants and she decided to sleep on her couch to safe guard her belongings.

Tenant 303 testified that he could not stay elsewhere or go elsewhere during the day because he required access to his landline phone and internet for dealing with his affairs, so he remained in the rental unit.

The landlord had arranged for meals to be available at a local seniors' complex and for a room that tenants could use for quiet if the noise in the residential property became too much. The landlord also noted that for one tenant whose husband was hospitalized, taxis were paid for by the landlord while she stayed in her own alternate accommodation.

The tenants note that no offers of compensation were ever provided in writing and that not all tenants were aware they could ask for compensation. The tenants that are party to this dispute did not indicate when or how they were informed of the landlord's offers. The tenants are seeking individual compensation, in the form of ½ month's rent for each of 9 months of construction as follows:

Tenant	Amount
Unit # 306	\$1,995.75
Unit # 303	\$2,014.00
Unit # 304	\$2,877.93
Unit # 104	\$2,743.74
Unit # 302	\$2,272.92
Total	\$11,904.34

The landlord and the landlord's witness confirm that the remaining work, including the work noted by each tenant in their own units will be completed within 2 to 3 weeks. The tenants raised concerns that this may not be accomplished.

The lead tenant noted that some of the repairs to furniture that had been promised have not yet been completed. The landlord confirmed those repairs will be made.

The tenants contend that the building had been neglected and that is why these repairs were required and that they should not have had to be inconvenienced and in particular for this length of time.

The landlord testified that consideration had been given to end the tenancies for the duration of the repairs but felt as many of the tenants had been at the property for such long tenancies and that because the property had not been condemned they could not end the tenancies.

Analysis

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including rights to reasonable privacy; freedom from unreasonable disturbance and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29.

Section 29 states that a landlord must not enter a rental unit subject to a tenancy agreement unless, among other things, the tenant agrees, a notice is provided at least 24 hours in advance; an emergency exists and the entry is necessary to protect life or property.

Section 32 requires a landlord to provide and maintain residential property in state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit makes it suitable for occupation by the tenant.

And Section 33 of the *Act* defines emergency repairs as those that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property and made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; or the primary heating system.

From the evidence presented I accept the repairs undertaken by the landlord were required and fit both the requirements under Section 32 and 33 of the *Act*. I also accept that the landlord/contractors may have had some reason to enter rental units without proper notice in effecting those repairs until such time that the emergency aspects were no longer applicable.

Having said that, I also accept that the entire project was not planned and as a result of requirements placed on the landlord from external sources (i.e. the landlord's insurance provider), the project became much larger than the landlord anticipated. I also accept that the scope of the project continued to grow as work undertaken discovered new issues to resolve.

As a result, I accept that the landlord recognized the enormity of the project and the potential impact on the tenants and the landlord's willingness to compensate and accommodate any issues for tenants. I also recognize the landlord gave due consideration to all their obligations and rights would have under the *Act*, including the possibility to end the tenancy of impacted tenants.

I also accept that the landlord failed to provide adequate communication with the tenants from the throughout the duration of the project to date. Communication should have included information regarding the status of the project, the next steps for tenants

to expect (including notice to enter specific units), and the landlord's willingness to compensate tenants.

I accept, as likely, that the landlord will have completed all of the work, including completion of the individual lists of items for each tenant in their own units, within 2 to 3 weeks as stipulated by the landlord and her witness. However, as shown by the submissions and testimony in this hearing there have been several delays, as such, I order the landlord to ensure all repairs are completed no later than August 15, 2010.

In the landlord's testimony, she indicated that she had visited with applicant tenant 304 during the period of time and the tenant never mentioned any concerns. While negating the tenant's responsibility to mitigate her losses, I find the onus of determining if the tenants needed anything was on the landlord and it should have been the landlord asking the tenant if she needed anything or if the alternate accommodations were meeting her needs.

When one party makes a claim of loss or damage against another party, the applicant party must provide sufficient evidence to support:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the loss or damage; and
4. The applicant took reasonable steps to mitigate the loss.

I find that despite the landlord's offers for compensation, the very nature of the work that was required impacted the value of each of the tenancies at least to some degree during some or all of the duration of the reparations.

I find the landlord was in violation of Section 28 of the *Act* as the tenants were not provided with exclusive possession of the rental unit for at least part of the reparations however this resulted from the landlord trying to fulfill their obligations under Section 32 and 33.

On first look the tenant's valuation of the loss of the value of their tenancy by ½ month's rent for the duration of the project could be considered reasonable, however, I find the entire project has taken several months and has included work to that has not impacted the value of individual tenancies.

In addition, I find the landlord's offers for compensation or to make alternate arrangements for tenants to stay in a local hotel; for a quiet space and for meals reduces the value of that loss. Since the landlord did not provide adequate communication regarding their offers I find the value of the loss is not reduced completely.

I find compensation in the amount equivalent to 1 month's current rent recognizes both the inconvenience and loss of quiet enjoyment suffered by tenants and the duration of these events and the landlord's willingness to accommodate the tenants. In addition, this amount of compensation is equivalent to an amount the tenants would have been entitled to had the landlord chosen to end the tenancies in accordance with Section 49 of the *Act* to complete renovations.

As to the individual claims I find as follows:

1. Tenant 306, as this tenant did mitigate losses by accepting the landlord's alternate living arrangements and access to storage of some of her belongings I find this tenant sufficiently took all reasonable steps to mitigate her loss of quiet enjoyment and is entitled to compensation equivalent to 1 month's rent.
2. Tenant 303, as the tenant failed, by his own choice, to accept any of the landlord's alternate arrangements for either accommodation or meals, I find this tenant has failed to take any reasonable steps to mitigate his loss of quiet enjoyment during these events. I therefore find this tenant is entitled to compensation equivalent to 1/3 of a month's rent.
3. Tenant 304, as this tenant attempted to use the alternate arrangements provided by the landlord but found them to not meet her needs I find she took some reasonable steps to mitigate her loss of quiet enjoyment. However, as this tenant did fail to advise the landlord that the arrangements were not meeting her needs and by her own choice did not access those offers made by the landlord, I find the tenant is entitled to compensation equivalent to 2/3 of a month's rent.
4. Tenant 104, as there was no testimony or evidence provided regarding any mitigation of this tenant's loss of quiet enjoyment, I cannot determine, if the tenant took all, some or any reasonable steps to mitigate her loss of quiet enjoyment and therefore find this tenant entitled to compensation equivalent to 1/3 of a month's rent.
5. Tenant 302, as there was no testimony or evidence provided regarding any mitigation of this tenant's loss of quiet enjoyment, I cannot determine, if the tenant took all, some or any reasonable steps to mitigate her loss of quiet enjoyment and therefore find this tenant entitled to compensation equivalent to 1/3 of a month's rent.

Conclusion

I find that the tenants are entitled to monetary compensation pursuant to Section 67 in the amounts outlined in the following table:

Tenant	Amount
Unit # 306	\$577.89
Unit # 303	\$194.73
Unit # 304	\$477.30
Unit # 104	\$275.00
Unit # 302	\$219.38
Total	\$1,744.30

I order the tenants may deduct the amount granted to them from their next rent payment in accordance with Section 72(2)(b).

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: July 20, 2010.

Dispute Resolution Officer