DECISION

Dispute Codes: RR, MNDC and FF

Introduction

This application was brought by the tenant originally seeking to have set aside Notices to End Tenancy for unpaid rent and cause, compensation for loss or damages under the legislation or rental agreement, a rent reduction for loss of services or facilities and recovery of the filing fee for this proceeding.

At the commencement of the hearing, the parties advised a rent payment had extinguished the notice for unpaid rent, and the matter of cause and orders for repairs had been made in error. Therefore, the hearing proceeded on the remaining matters of rent abatement/reduction for loss of facilities.

Issues to be Decided

This application now requires a decision on whether the tenant is entitled to orders for rent reduction and/or rent abatement and recovery of the filing fee for this proceeding.

Background and Evidence

This tenancy began on October 1, 1990. Rent after subsidy is $911 per month plus $20 parking.

This application arises from the fact that the rental unit, one of 105 units in a large complex and one of 15 in a cul-de-sac subsection which are undergoing extensive repairs to the roof and building envelope.

The tenant makes claim that as a result of the remediation work, she was deprived of full use of the rental unit from October 18, 2010 to November 19, 2010. The tenant alleges that during material times, the rental unit was cold, security was compromised for a time when the building envelope had been removed, and she was forced to move her bedroom furnishings to accommodate work in the area of the front wall in her bedroom.

The tenant further alleges that she not fully informed of the time and extent of the work and that little was done by the landlord to alleviate the discomfort. The tenant claims return of the full rent for the period in question.

The landlord submitted copy of a notice to all tenants inviting all tenants to a meeting on January 20, 2010. A memo to all tenants dated April 29, 2010 announced that the commission had obtained the funding to properly remediate water ingress problems in the complex which had previously been addressed as spot repairs and advised that the work would be commencing.

A letter of September 2, 2010 provided notice that the roofing and building envelope work would begin in October and that expected completion would be in November, and

that a meeting was imminent to provide tenants with full details. The time, place and agenda of the September 29, 2010 was circulated to all tenants three days in advance.

The superintendent gave evidence that, at the meeting, the tenants were advised that if their heating bills were in usually high during the work, tenants would be reimbursed for the extra use if they provided the billings from the material time and for the same period a year earlier.

The tenant stated that 72 hours was not sufficient notice and she was unable to attend the meeting.

The area manager gave evidence that the first she had heard of the tenant's complaints about heat in the rental unit was when she received the notice of hearing and evidence.

In addition to the cold, the tenant stated that she had to move some of the furniture in her bedroom to provide access to the outside wall. When one wall had been opened, it revealed mold on some of the framing.

The tenant stated that because of strong drafts, the heat was ineffective so she turned it off. The superintendent stated that the construction company representative had complained to him that, because the tenant would not turn the heat on, the workers had to bring in their own heaters because the mud on the new drywall would not dry.

Analysis

Section 7 of the *Act* requires that either party to a rental agreement making a claim against the other must do whatever is reasonable to minimize their loss.
I do not accept that 72 hours was insufficient notice to the tenant to arrange to attend the meeting at which compensation for higher heating bills was offered. If she was

unable to attend the meeting, it remained open to her to ask a neighbour or the local caretaker what had transpired.

I find also that the tenant failed to act to minimize her loss by turning her heat off and by failing to notify the landlord of the problem in writing.

I find that the tenant's claim for reimbursement of all rent for the period is unreasonable given that she and her family continued to have full use of the vast majority of the facilities in the home throughout the material time.

I find that the landlord was acting prudently in meeting the obligation to repair and maintain the rental unit imposed under section 32 of the *Act* when the long awaited funding became available.

Finally, on balance, I find that the value of the improvement in living conditions resulting from the remediation exceeds the value of the temporary inconvenience experience by the tenant.

Conclusion

Therefore, the application is dismissed on its merits without leave to reapply and the tenant remains responsible for her own filing fee.

December 1, 2010