

DECISION

Dispute Codes MNDC, RR, O, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation for damage or loss, allow the tenant to reduce rent for repairs, other and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started August 7, 2010 with rent of \$1275.00, the tenant paid a security deposit of \$637.50.

The tenant testified that during the months of August, September, October and November of 2010 that her peace and quiet enjoyment was disrupted on a daily basis due to the renovation work being completed in the building. The tenant stated that it was too noisy for her young son to be able to take naps and that she often had to leave her apartment to get away from the noise. The tenant testified that she also had to leave her apartment and eat her meals out in restaurants due to the noise and the water being shut off.

The tenant stated that the noise typically started around 9:00AM and went until 3:00PM. The tenant testified that the noise was a very loud hammering and drilling sounds associated with the re-piping of the building and renovation of suites. The tenant stated that she had contractors in her suite 'for at least a month' completing renovations. The tenant also notes that during the entire time of her tenancy the swimming pool in the building has been unavailable for use.

The tenant testified that she was not informed of the building renovations prior to moving into the unit and would have not rented this suite had she known. Evidence submitted by the tenant which was an email communication between the tenant and the landlord shows that the landlord in #1 states that the tenant may be released from the lease but potentially responsible for any loss of rent; #6 the landlord refuses to provide compensation for moving costs but offers to relocate the tenant to a building that better suits the tenant's needs.

The tenant is claiming \$3825.00 for breach of quiet enjoyment, \$474.32 for meals and a rent reduction of \$150.00 per month for the closure of the swimming pool.

The landlord's agent testified that the core drilling for the re-piping had been completed on both the second and third floors by August 7, 2010. The landlord's agent stated that renovations to the tenant's suite were undertaken during the time of October 25 through November 9, for a total duration of 15 days, and that on one occasion during this time the water in the suite had been shut off. The landlord's agent stated that work continued in other areas of the building but not near the tenant's suite.

The landlord's agent stated that use of the swimming pool was not part of the tenant's tenancy agreement as the landlord had already closed the pool due to it requiring extensive repair. The landlord's agent did mention in this hearing that the landlord intends to repair all of the balconies in the coming year and this renovation will be completed within a 2 week period.

During this hearing the landlord's counsel attempted to reach a settlement with the tenant and agreed to release the tenant from the fixed term lease if the tenant ceased all/any claim of compensation against the landlord. The tenant initially agreed to the settlement and then changed her mind and requested to proceed with this application. It was clearly explained to the tenant that should she break her lease the landlord would enforce the liquidated damages clause in the tenancy agreement and that the tenant could potentially be liable for any loss of rent incurred by the landlord.

Law

Section 28 of the Act speaks to Protection of tenant's right to quiet enjoyment, and provides as follows:

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

reasonable privacy;

freedom from unreasonable disturbance;

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*];

use of common areas for reasonable and lawful purposes, free from significant interference.

Section 7 of the Act speaks to Liability for not complying with this Act or a tenancy agreement, and provides:

(1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline # 5 speaks to the “Duty to Minimize Loss,” and provides in part as follows:

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord’s breach, where the tenant can substantiate such a claim.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that there was a breach to the tenants’ right to quiet enjoyment, and a reduction in the full use of the facilities provided in the rental unit, during the period from October 25, 2010 to November 9, 2010.

While the tenant had the option of applying for dispute resolution in order to seek an order instructing the landlord to complete repairs in a timely manner, or to seek a reduction in rent for repairs, services or facilities agreed upon but not provided, there is no evidence that they did so. Accordingly, I find that the tenant has established entitlement to compensation in the limited amount of \$282.19, calculated on the basis of \$14.00 per day for 15 days and \$72.19 in compensation for meals out during this time.

As the tenant has achieved some success with their application, I find that they are also entitled to recover the \$50.00 filing fee.

Conclusion

The tenant may deduct \$332.19 from future rent owed to the landlord for the compensation awarded and recovery of the filing fee paid to bring their application.

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: January 6, 2011

Dispute Resolution Officer