



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC RP RR FF

Preliminary Issues

After reviewing the Tenant's application for dispute resolution and the supporting evidence the Tenant confirmed he was seeking reduced rent to compensate for the removal of the two exterior decks.

The Tenant had indicated this request in the notes written in the details of the dispute; therefore the Landlord was made aware of the Tenant's request in the initial application and would not be prejudiced by the amendment to the application. Based on the aforementioned I amend the application to include "Tenant's action sought to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided"; pursuant to the *Residential Tenancy Policy Guideline # 23*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to Order the Landlord to make repairs to the unit, site or property, to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on December 19, 2010. The Landlord confirmed receipt of the hearing package and the Tenant's evidence.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Tenant met the burden of proof for monetary compensation as a result of that breach?
3. If so, is the Tenant entitled to a reduction of the monthly rent payable or should the Landlord be ordered to conduct repairs?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective May 1, 2009 which switched to a month to month tenancy after April 30, 2010. The tenancy agreement lists rent as \$1,245.00 (\$1,200.00 plus \$45.00 parking) which is payable on the first of each month. The Tenant paid \$600.00 on April 6, 2009 as a security deposit.

The Tenant testified that one day near the end of January 2010, he was at work and received a telephone call from the Landlord advising him that there was water leaking from his south deck into the rental unit below. During that conversation he gave the Landlord approval to remove his possessions from the south deck. These possessions were moved to the hallway for temporary storage. When he came home that evening the south deck and railings were removed and there was a tarp over the roof. The decks were originally of wood construction lying on top of the flat torched-on asphalt roof.

Now when he opens his patio doors there is about a 12 inch drop down to the roof top. There was nothing done to secure the patio doors and there were no railings or fences to prevent anyone from walking off the edge of the roof. He has a sixteen month old daughter so he purchased baby gates to prevent her or any of their guests from going out the patio doors and onto the roof. His unit is a penthouse, rooftop unit four stories above ground level. A month or so later the Tenant asked when the roof repair would start. He continued to question what was going on and finally towards the end of April 2010 a temporary railing was installed on the south side.

Then on May 6, 2010 the Tenant requested a rent reduction, in writing, at \$150.00 per month for the months of February, March, April, and May for having to live without the use of the south deck. The Landlord denied his request stating that when the work is completed they would have much nicer decks, as supported by the copies of letters provided in his evidence.

Then in June 2010 he was advised to remove all of his possessions from the north deck because the entire roof was going to be repaired. He confirmed the roof repair was completed over a three or four week period in June, 2010. Then on August 17, 2010 he received a letter from the Landlord advising him that the decks will not be rebuilt. The letter goes on to say "we offer rent reduction for \$100 or you can give us notice to vacate." He wrote back requesting a rent reduction of \$200.00 per month to which the Landlord responded "just move out".

At the time of his application the Tenant is seeking compensation for the loss of use of decks, loss of floor space, lost views, lost gardens, loss of privacy, and storage of his patio furniture and the arch he was married under which used to be on his decks as follows:

- Rent abatement for loss of south deck of \$1,689.60 from February 2010 to December 2010 at \$153.60 per month

- Rent abatement for loss of north deck of \$612.00 from July 2010 to December 2010 at \$102.00 per month
- Future rent reduction of \$255.60 per month for loss of north and south decks (\$153.60 + 102.00) for duration of tenancy.
- An amount of \$120.00 per month for storages fees to store the patio furniture and archway that they previously enjoyed on their deck.

The Landlord testified and confirmed she did not submit evidence in response to the Tenant's application. She had this building built in 1987 and the roof was the original roof. This was the first time they had to repair it. She states the roofing contractors told her that it was a safety factor to put wood on top of the roof so she was unable to replace the decks. She said that if she put wood on the roof it would remove the guarantee of the roof. She stated that after the roof was repaired the wood fencing and lattice was put up for safety on the south deck and the metal and glass walls and railings were replaced on the north side. She confirmed that the Tenant was advised not to go out onto the roof and that they would no longer have decks.

The Landlord said it was "laughable" that the Tenant is claiming they had \$800.00 worth of plants. They did not even remove their plants once they were told the work would be done they just left them out there to die and did not water them. As for the Tenant's request for storage, she has vacant storage spaces in the building that she could have provided to them but they did not request additional storage. The storage units are about 3' wide x 4' deep x 8' tall. She argued that she would have rebuilt the decks if she was allowed too.

The Landlord's son testified that he does not agree with the Tenant placing equal value to the square footage of the decks as he does to the inside of the rental unit. He feels the living space, inside, has more value to the rent than exterior decks. He disagrees with the Tenants comments about loss of view or obstructed view because there is a shorter fence on the south deck which opens up the view. He feels an appropriate rent reduction would be around \$100.00 to \$150.00 per month and he pointed out how in the

Tenant's May 6, 2010 letter they requested only \$150.00 and now they have raised that to \$255.60.

The Landlord argued that rent should not be reduced at all because \$1,200.00 for a penthouse two bedroom unit in a 15 year old building is very cheap rent for this city.

The Tenant argued that the plants which were left on the roof were his neighbours and not his and that he had already moved all of his plants over to his parent's house along with his patio furniture for storage. He stated that his current view is not better than what they had because they are prevented from going outside and walking to the edge of the patio and looking out. Now their view is obstructed because they have to stay inside. He was not aware that the Landlord had storage space available and argued that his patio table and archway would not fit inside those units. His offer of \$150.00 in the May 6, 2010 letter was for the loss of use of only the south deck. It was not until June sometime that he lost the use of the north deck; therefore his rent reduction should be the higher amount. He clarified that this building was not 15 years old but 23 years old and his rent of \$1,200.00 per month was the agreed amount that included full use of two decks. He confirmed that he has not paid anything to date to store his items as they are currently at his parent's place.

Analysis

I have carefully considered all of the testimony and the Tenant's documentary evidence which included, among other things, photographs of the south and north deck areas, copies of letters and e-mails between the parties between May 6, 2010 and August 30, 2010.

Section 27(2) of the Act provides a landlord may terminate or restrict a service or facility if the landlord gives 30 days written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the

value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The evidence supports the Landlord did not provide the Tenant with one month's advance written notice nor was the notice that was provided given in the proper form as required by section 27 of the Act. I heard undisputed testimony that the parties entered into a tenancy agreement for \$1,200.00 per month which included full private unrestricted use of two decks. The Tenant has lost the opportunity to garden and spend time outside in the open area which he has indicated has been a negative impact on their lifestyle. The location of this rental unit is in a city with a very temperate mild climate which allows for the use of such outdoor decks year round.

Based on the above I find the Landlord has breached section 27 of the Act and the Tenant is entitled to past rent abatement for the past periods he was without the use of his decks plus future rent reduction for the remainder of this tenancy. As of February 2010 the Tenant lost full use of the south deck and as of June 2010 he lost full use of the north deck. After careful consideration of the temperate climate and life style changes this have been imposed on the Tenant and his family I find there to be sufficient evidence to support his claim that his tenancy has been devalued. I have calculated the compensation based on my calculation that on average the Tenant may have spent about 12.5 % of his time out on a deck. I have further considered that 7.5% would be attributed to the loss of the south deck and 5% to the loss of the north deck. Therefore I approve his claim as follows:

Rent abatement of \$1,500.00 as follows:

- 1) \$1,080.00 loss of south deck 12 months, February 2010 to January 2011 @ \$90.00 per month (7.5% of \$1,200.00); plus
- 2) \$420.00 for loss of north deck 7 months, July 2010 to January 2011 @ \$60.00 per month (5% of \$1200.00)

Reduced Rent of \$1, 050.00 from February 1, 2011 onward:

\$1,200.00 less \$90.00 for south deck and less \$60.00 for north deck

(\$1,200.00 – 90.00 – 60.00)

Section 7(1) of the Act provides 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports that up to this date the Tenant has not incurred a loss or expense for storage of his items, nor did he seek additional storage from the Landlord. Therefore I find the Tenant has provided insufficient evidence to meet the burden of proof of the test for loss, as listed above, and I hereby dismiss his claim for storage costs without leave to reapply.

The Tenant has been partially successful with his application, therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenant is entitled to monetary compensation as follows:

Rent abatement from February 2010 to January 31, 2011	\$1,500.00
TOTAL AMOUNT DUE TO THE TENANT	\$1,550.00

Conclusion

I HEREBY ORDER the Tenant's rent to be reduced to **\$1,050.00** effective February 1, 2011 onward.

The Tenant may reduce his future rent by the onetime monetary award of **\$1,550.00** by reducing February 1, 2011 rent by \$775.00 and March 1, 2011 rent by \$775.00. This means the Tenant's rent due for February 1, 2011 will be \$275.00 and for March 1, 2011 will be \$275.00. The Tenant's rent will return to \$1,050.00 effective April 1, 2011, onward.

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 18, 2011.

Residential Tenancy Branch