



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both parties sought monetary orders.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to retain all or part of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for 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 the Application for Dispute Resolution, pursuant to Sections 28, 32, 67, and 72 of the *Act*.

Background and Evidence

Both parties agree the tenancy began on March 1, 2008 as a 1 year fixed term tenancy for a monthly rent of \$1,500.00 due on the 1st of the month and a security deposit of \$750.00 was paid. The parties agree the tenant vacated the rental unit in mid November 2010.

The tenant provided testimony that at the start of the tenancy she had requested that the rental unit be painted and was told the landlord was not willing to do so but that the landlord's agent could arrange to have one of their handymen complete some painting for her at her own expense. The parties agree the tenant paid \$1,000.00 to have the unit painted at that time.

The parties also agree that in April 2010 work began on reparation and restoration of the exterior envelope of the residential property. The tenant testified that the work began in earnest in June and continued through to the end of the tenancy.

The tenant provided photographic evidence of how the restoration project impacted her unit specifically. The photographs show there were a series of locations, windows and doors that were covered in sheeting and tarps for the duration of the work. She notes also that there was constant noise during the work day from between 7:30 a.m. and 4:30 p.m.

The tenant contends that this work impacted her use of the rental unit and her ability to work from home as had been her practice. Into late September the tenant came home and found dirt from a skylight in the bathroom all over the bathroom and little particles from the ceiling texture scattered about on furniture and flooring.

The tenant testified that she cleaned this up and later found out that it had the potential to contain asbestos. Ultimately the texture and air quality was tested in the rental unit and found to contain contaminants attributed to asbestos. The tenant immediately removed herself and her son and sought alternate accommodation.

While the tenant had paid rent for October 2010 she had applied to have the October rent returned but was able to have her bank reverse the rent payment she had made and therefore did not pay rent for October 2010. On October 8, 2010 the tenant provided the landlord with a letter via email stating her intention to end the tenancy.

During this time there was dialogue between the tenant and the landlord's agent; the tenant and the strata representatives; and the tenant and the contractor. However, no parties seemed to take responsibility until ultimately the tenant's belongings were cleaned in accordance with the recommendations provided by the company that determined there was asbestos in the unit.

The tenant moved out her belongings by mid November 2010. In his application the landlord was seeking to keep the security deposit in compensation for the unpaid rent for October 2010 and for two weeks of November 2010.

Analysis

Section 32 of the *Act* requires a landlord to maintain residential property in a 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 a tenant.

Despite the tenant's testimony that the rental unit needed to be painted at the start of the tenancy, the tenant did not provide any evidence that established that the rental unit was in a condition that rendered it unsuitable for occupation at the start of the tenancy. As such, I find that the tenant chose to have the rental unit painted when she started the tenancy and cannot now hold the landlord responsible for those costs.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to 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 the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

For the period of June 2010 to September 2010, I find it undeniable that the tenant suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of the tenancy for that period. As a result, I find the tenant is entitled to compensation for that loss.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

As such, I make note that the project work was completed Monday to Friday normally from between 7:30 a.m. and 4:30 p.m. leaving the residential property undisturbed for all evenings, nights and weekends.

While the tenant testified that the restoration work disrupted her ability to work from home I note that the tenancy agreement for which I have jurisdiction deals only with the tenant's use of the property for residency and I decline to determine compensation for loss of the ability to work from home.

I note that the loss of quiet enjoyment was from the noise situation for the period of June to September and the tenant provided no evidence or testimony that indicated that she was restricted from cooking; toileting; sleeping or other general uses of the rental unit, as such I find the value of ½ month's rent per month of disturbance to be unreasonable.

As per the landlord's agent testimony the landlord accepts that the rental unit was not suitable for occupation for the period beginning from the first appearance of asbestos in the rental unit and as such no longer seeks to retain the security deposit or seek compensation for rent for October and November 2010.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,209.41** comprised of \$759.41 security deposit and interest owed; \$400.00 for compensation and as the tenant was only partially successful in her application \$50.00 of the \$100.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: February 02, 2011.

Residential Tenancy Branch