

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with an application by the tenant seeking a monetary order as compensation for loss of quiet enjoyment. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenancy began on or about July 1, 2010 and ended on March 31, 2011. Rent in the amount of \$1030.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$500.00. The tenant testified to the following; he was a night watchman that worked “graveyard” shifts, the apartment building he lived in began a renovation/restoration of the building in November 2010, the men worked 2-3 days per week from the hours of 8am-5pm, the noise bothered him so much that he missed three days of work, feels that he had endured more than he should have, is seeking monetary compensation in the amount of \$1830.00 total for missed work, moving costs and the cost of having to pay rent for two suites for the month of March, and feels he was lied to by the renting agent in June 2010 as he felt he had made it clear that he wanted to live in a quiet building and that the renting agent was fully aware of the large scale renovations that would be occurring in the upcoming fall.

The landlord testified to the following; this is a 471 unit apartment building, engineers became aware of some structural rot in mid September 2010, an emergency meeting was set up with tenants two weeks later to advise them of the type of renovations that

the outer exterior and windows required, tenants were told that it would commence November 1, 2010 and that the re-facing of the building and window replacement would complete by February 1, 2011, the property managers arranged another meeting in February 2011 to inform the tenants that the balconies would be repaired or replaced with a completion date of 3-4 weeks after the work had started, work to take place 2-3 days per week from the hours of 8am-5pm, tenants would not be given a rent increase for the upcoming year as compensation, work would be done unit by unit, and that the renting agent was not aware of the issues of the building at the time she was renting it to the tenant.

Analysis

The landlord was diligent in keeping the tenants informed of an unforeseen circumstance and offered compensation to help mitigate the intrusion on a tenant's quiet enjoyment. They also minimized the intrusion by having the repairs done during the day 2-3 times per week and doing the repairs unit by unit. The tenant testified that he was suffering from great stress by noise on an almost daily basis. I do not accept the tenant's version of the events as it is unreasonable to think that a building of this size and with construction be done in a reasonable manner would cause "complete loss of my freedom and my right to peace and quiet" as the tenant stated. I accept the landlord's version of the events and that the landlord tried to minimize the impact on the tenants as much as possible.

As explained to the parties at the outset of the hearing the onus or burden of proof is on the party making the claim, in this case the tenant. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Conclusion

The tenant's application is dismissed.

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: June 16, 2011.

Residential Tenancy Branch