



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit, for the landlord to comply with the Act; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi unit complex. In her documentary evidence, the tenant provided a copy of an application for tenancy. I have no written tenancy agreement before me; however it was not disputed that the parties entered into a tenancy agreement based on a fixed term. The tenancy started on September 1st, 2010 and ended February 28th, 2011. The rent was \$1300.00 per month and the tenant

paid a security deposit of \$650.00. Condition inspection reports were completed at the start and the end of the tenancy.

The salient portion of the tenant's testimony is as follows:

The tenant submits that the landlord misrepresented the terms of the tenancy, in that the landlord withheld information concerning pre-planned renovations, the subsequent loss of quiet enjoyment, and the use of a gym within the complex. She stated that renovations started in September 2010 and that she was subjected to construction related noise from tools and machinery, and disruptions from various trades workers throughout the tenancy. She stated that security in the complex was compromised and that her roommate, who suffers from a bi-polar disorder, had a negative encounter with some of the workers on January 6th, 2011 which resulted in a stress level that required his hospitalization for several weeks. The tenant provided a medical note dated August 19th, 2011, stating that her roommate's medical condition forced him to move out of the rental unit, and that his condition has since improved. The tenant provided a letter from her roommate's mother who came for a visit between January 24th and February 15th, 2011, wherein she states that the encounter with workers, and the noise level associated with the ongoing renovations made it unsuitable for her son to return to the rental unit upon his release from hospital. The tenant stated that she gave the landlord 30 days notice to end tenancy on January 27th, 2011, and her forwarding address in writing on the move-out condition inspection report of February 28th, 2011.

S.A, witness for the tenant, testified that she moved into the unit in May 2010 and that she experienced the same problems as the tenant, specifically; misrepresentation from the landlord concerning the living conditions; noise and re-piping work lasting for months; renovations that started in July 2010; and continued disruptions that prompted S.A. to move out. S.A. stated that she filed for dispute resolution and referred to two decisions in her favour concerning relocation expenses and the return of her security deposit.

The tenant submitted a statement of calculations for relief as follows:

- Two months of building re-piping:	\$1300.00
- Two months of suite renovations:	\$ 650.00
- Two months of compromised security:	\$1300.00
- Double the security deposit:	\$1300.00
- Relocation expenses:	\$ 446.07
- Total:	\$4996.07

B.T. testified that renovations were already ongoing before the tenant moved in. He stated that the tenant was shown the suite during re-piping work and that construction related equipment, such as a dumpster bin outside the tenant's balcony was already in place. He stated that in September 2010, work was being performed on the 17th floor only, and that the level of disruption to the tenant, who lived on the 2nd floor, would have been minimal. He said that work directly above the tenant's suite started on January 17th, 2011, and that he provided the tenant with three letters forewarning her of that work on January 5th, 6th, and 17th, 2011. He said that the tenant did not respond or addressed any concerns at that time. B.T. stated that work inside the tenant's suite started on October 13th, 2011, that it was completed in 13 days, and that no renovations occurred between November and December 2010. A.W. stated that the major portion of the renovation work was completed before the tenant took occupancy of the rental unit.

Concerning the compromised security, B.T stated that the tenant's roommate had an encounter with labourers contracted by the general contractor to dispose of the garbage during the renovations, that they did not have access inside the complex and that security was never compromised.

Concerning the return of the security deposit, A.W. stated that he believed that he had a verbal understanding with the tenant that he could keep the deposit in exchange for the tenant's break of the lease.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the tenant to prove her claim against the landlord.

Section 7(1) of the Act provides in part that if a landlord does not comply with this Act, the Regulations or the tenancy agreement, the non-complying landlord must compensate the tenant for the damage or loss which results. That being said, Section 7(2) of the Act also states in part that a party who claims for compensation must do whatever is reasonable to minimize the damage or loss.

From the parties testimony and the tenant's witness submissions I am satisfied that renovations were ongoing before the tenant took occupancy in September 2010. It is apparent that the tenant's actions in ending the tenancy were precipitated by the roommate's encounter with the workers and its resulting impact on his health. As explained during the hearing, this incident does not involve the landlord or transpired as a result of the landlord's breach of the Act or tenancy agreement. While the tenant may not have been aware that the landlord was undergoing extensive renovations, I have no evidence before me that the tenant made the landlord aware of any medical condition at the start of this tenancy, or when the tenant received three letters from the landlord notifying her of upcoming renovations in her suite. From the tenant's evidence it is apparent that her roommate's incident and subsequent hospitalization triggered her decision to end the tenancy, and that loss of quiet and enjoyment was also exacerbated by this incident.

Notwithstanding, Section 28 of the *Residential Tenancy Act* provides in part that a tenant is entitled to quiet enjoyment from unreasonable disturbance. To find a breach of quiet enjoyment the tenant must prove that the landlord is responsible for causing a substantial interference with the tenant's ordinary and lawful enjoyment of the property. Temporary discomfort or inconvenience does not necessarily constitute a breach of quiet enjoyment, and I cannot hold the landlord responsible for any or all of the tenants' shift work or medical conditions during those times. Nor can I hold the landlord responsible to exercise his obligation under the Act to maintain and repair the property. However, I do find that the extent of the renovations did impact the tenant's right to quiet enjoyment in October 2010 when renovations were performed inside the tenant's rental unit. Based on the evidence I grant the tenant an entitlement of half a month's rent for October 2010 in the amount of \$650.00.

Concerning the moving expenses, for reasons stated earlier I am not convinced that the tenant's relocating expenses were caused by the landlord's breach of the Act or tenancy agreement, but rather that it was prompted by the tenant's roommate's condition, which was largely aggravated by an incident that does not relate to the terms of this tenancy. I find insufficient evidence to prove that the tenant moved solely because of the ongoing renovations. While I agreed that the tenant was entitled to some compensation for the loss of some quiet enjoyment, I am not persuaded that this entitlement also provides the tenant with sufficient grounds to claim relocating expenses. Therefore I dismiss this portion of the tenant's claim.

Concerning the security deposit; Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing. Section 38(6) of the *Residential Tenancy Act* also provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

In this matter the landlord received the tenants' forwarding address, but the security deposit was not returned and the landlord did not apply for dispute resolution as required by statute. Therefore the tenant is entitled to the return of double the amount of the security deposit.

I also reviewed S.A.'s decisions and orders in relation to her dispute with this landlord; I found that an informal resolution was reached between the parties and that the landlord compensated the tenant for relocating expenses. I note, based on the landlord's evidence, that S.A. was compensated during a tenancy under which the major portion of the renovations took place. During that time frame, it may very well be that tenants in the complex suffered a greater or longer loss of quiet enjoyment; I had no specific evidence in this hearing to establish that this tenant endured the same level of noise, disruption and discomfort during the term of her tenancy.

Conclusion

I have determined a claim of \$1950.00 in favour of the tenant. Since she was partially successful, the tenant is entitled to partial recovery of the filing fee for \$25.00 and pursuant to Section 67 of the Act, I grant the tenant a monetary order for the sum of \$1975.00.

This Order may be registered in the Small Claims Court 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: September 1, 2011.

Residential Tenancy Branch