

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with an application by the tenant seeking a monetary order as compensation. 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 as compensation?

### Background and Evidence

The tenancy began on or about June 1, 2011. Rent in the amount of \$1000.00 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 \$487.50.

The tenant gave the following evidence; she was informed prior to her move in that all balconies of the apartment complex were to be completely upgraded and that it would take approximately a month to complete, actual completion date was not until early September 2011, and is seeking \$700.00 as compensation. The tenant originally was seeking some compensation for loss of a parking spot as well but the tenant informed that that issue had been resolved and is no longer a matter to be dealt with at this hearing.

The landlord gave the following testimony; on April 13, 2011 an engineering firm inspected the balconies of the building and within 24 hours all tenants were informed that structural repairs due to safety concerns were required, obtained permits from the local municipality on May 5, 2011 to carry out repairs, the subject tenant was informed on May 11, 2011 when she applied for tenancy at this building that repairs were required and that it was expected to take approximately a month, the unit was rented at

a lower than normal amount to compensate for the repairs, and that the engineering company did not allow access to the balconies for any tenant until all repairs were completed and inspected for structural soundness and safety standards.

### Analysis

The tenant submitted some documentary evidence that I have reviewed. It was neither helpful nor relevant. In seeking compensation the tenant must provide evidence that the landlord was negligent or did not exercise their duty to minimize loss. I find that the landlord had exercised their duty to minimize loss by having a professional engineering company come in, inspect, notify tenants within 24 hours that the balconies were unsafe, obtain permits from their local municipality for repairs, lower the market rent by \$75.00-\$100.00 per month for new potential tenants, and not to impose any rental increases on existing tenants. The landlord has shown that they have minimized the loss, compensated and carried out repairs to ensure the safety of the tenants.

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: October 31, 2011.

---

Residential Tenancy Branch