



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act") or tenancy agreement; an order to have the landlord comply with the Act, an order authorizing a reduction in rent due to ongoing repairs, and to recover the filing fee.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, to make submissions to me and respond each to the other.

The parties each acknowledged receipt of the other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, for a reduction in rent, and for an order requiring the landlord to comply with the *Act*, pursuant to Sections 62, 65, 67, and 72 of the *Act*.

Background and Evidence

This month to month tenancy began on June 1, 2010, monthly rent is \$815.00 for basic living space, and the tenant paid a security deposit of \$407.50 on May 30, 2010.

The rental unit is contained in a residential property of four floors and 126 units. The tenant lives on the 4th floor.

The tenant submitted that in December 2010, a flood occurred on the ground floor due to heavy rains, which resulted in the landlord hiring contractors to fix a blocked drain.

The tenant submitted that the construction noise, which included heavy equipment, jackhammers, saws and drills, caused him to vacate his rental unit during the daytime hours. The tenant submitted that this has caused a hardship due to his working from home.

The tenant stated that the nature of his work, research studies, necessitated him leaving everyday to find a quieter place to work.

The tenant contended that the construction noise has been ongoing since January through at least the day of the filing of his application on October 3, 2011, and that he never knows what to expect any day of the week, with loud, sudden noises occurring at any time.

The tenant's monetary claim is in the amount of \$3,600.90, which he calculated to being out of his rental unit 4 or more days a week, having to use his vehicle, paying for gas, eating and parking, from January 2011 through the end of September, due to the ongoing construction noise.

In response, the landlord contended that the actual construction work, went from January until the end of February, but was required due to the emergency nature of the repair. The landlord stated that the actual excavation work was for just a short period of time.

The landlord submitted that the tenant's rental unit, which was located on the inside of an L shaped building facing the court yard, was on the opposite side of the location of the main construction work. The landlord further contended that the work on the inside courtyard part of the complex wasn't continuous and that most of it was performed by hand, not machinery.

The nature of the work around by the tenant's rental unit was more cosmetic in nature than the street work, which would not impact the tenant's quiet enjoyment of his rental unit, and would not unreasonably impact the tenant's rental unit, according to the landlord.

The landlord stated that he received no complaints from any other tenant in the residential property during the entire construction and repair period, including the tenants on the ground floor who were the most impacted, including removing their patio.

I heard testimony that the construction is now completed.

Analysis

Based on the above, the testimony, evidence and photographs, and on a balance of probabilities, I find as follows:

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 32 of the *Act* requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based upon a balance of probabilities, I find the landlord has taken reasonable steps to complete the required repairs within a reasonable time and is therefore not in breach of Section 32 of the *Act*, regulation or tenancy agreement.

I next considered the tenant's claim for a rent reduction, due to his alleged loss of quiet enjoyment. Section 28 of the *Act* deals with the tenant's right to quiet enjoyment, in this case, freedom from unreasonable disturbance.

Sec. 6 of the Residential Tenancy Branch Policy Guideline deals with the tenant's entitlement to quiet enjoyment. In part the *Act* establishes rights including "freedom from unreasonable disturbance." The policy Guideline goes on to state that the modern trend for a determination of loss of quiet enjoyment is *frequent and ongoing interference by the landlord, or, is preventable by the landlord, he/she stands idly by while others engage in such conduct*.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I accept that the tenant has heard some noise from the construction work which the landlord was required to perform, but I find the tenant submitted insufficient evidence that the necessary construction noise and acts of the landlord rose to the level which deprived the tenant of his right to quiet enjoyment.

The tenant complained of loud and ongoing noise from construction work, but I find the tenant submitted insufficient evidence that he was required to vacate his rental unit most work days and that he incurred costs due to allegedly having to vacate.

Due to the above, I find that any damage or loss complained of by the tenant does not result from the landlord's violation of the *Act*, regulation or tenancy agreement, and I further find the tenant has failed to provide sufficient evidence to support his claim for compensation.

I do not find that the tenant is entitled to an order requiring the landlord to comply with the Act due to the completion of the construction work.

As a result of my findings, I **dismiss** the tenant's application, without leave to reapply. As I have dismissed the tenant's application, I decline to award him recovery of the filing fee.

Conclusion

The tenant's application is dismissed, without leave to reapply.

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: November 02, 2011.

Residential Tenancy Branch