



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC; RR

### **Introduction**

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement and to allow the Tenant to reduce rent for repairs, services or facilities agreed upon by not provided.

The parties gave affirmed testimony at the Hearing.

At the outset of the Hearing, it was determined that the Tenant had filed her application naming an agent of the Landlord rather than the Landlord. The Respondent's name was corrected to the corporate Landlord's name.

### **Issues to be Decided**

- Is the Tenant entitled to compensation for loss of use of her balcony and for loss of peaceful enjoyment of the rental unit during construction at the rental property?

### **Background and Evidence**

This tenancy began on January 1, 2011. No copy of the tenancy agreement was provided by either party, but they agreed that the tenancy is a one year lease and that monthly rent is \$711.00 due on the first day of each month.

#### **The Tenant gave the following testimony:**

The Tenant testified that the Landlord did not disclose that there were major renovations to take place when she viewed the rental unit and signed the tenancy agreement.

The Tenant stated that the rental unit included a balcony of approximately 12 ft x 5 ft in size. The Tenant testified that construction began on April 7, 2011, and that there has been scaffolding and green netting surrounding her home ever since. She stated that construction workmen are often just outside her window, 5 days a week from 8:00 a.m. until 4:30 p.m. The Tenant works shift work and sometimes nights. When she works

nights, she has to sleep until later in the morning. She stated that one side of the walkway to the building is inaccessible due to the construction.

Due to the nature of the renovations, the Tenant testified that she has had no use of her balcony; little natural light; very limited privacy; and no peace and quiet during the day time since April 7, 2011. She stated that drywall dust and chemical fumes from the construction is affecting her health. The Tenant provided photographs in evidence.

The Tenant testified that the Landlord does not give her written notice, as required by the Act, to enter the rental unit. She stated that received Notice on a Monday night that the Landlord required access to replace doors and windows the next day at 9:00 a.m., which is not 24 hours notice. In addition, the Tenant claimed that the workmen came at 8:30 a.m., which was ½ hour earlier than they had said on the Notice. The Tenant testified that they also came back the following Tuesday with no Notice at all. The Tenant stated that she allowed access, but that she is concerned that the Landlord is not complying with the Act with regards to 24 hour written notice to access the rental unit.

The Tenant seeks a monetary award in the amount of \$1,250.00 (\$250.00 per month from April to August, 2011) and a reduction in rent of \$250.00 per month from September 1, 2011, until she has regained use of her balcony and the construction has stopped.

The Landlord's agent gave the following testimony:

The Landlord's agent testified that the green netting and scaffolding went up in April, 2011, but actual construction did not start until mid-May, 2011. She testified that the work is not just cosmetic and that the rental property is undergoing necessary upgrades because parts of the building were literally falling down.

The Landlord's agent testified that the Landlord was not aware of the severity of the building's exterior problem until March, 2011. She stated that the Landlord had a meeting with the construction crew and all of the occupants of the rental property in March, 2011, to explain what was going to happen and that it is a necessary and drawn out process. The Landlord's agent testified that the whole building required a "new skin" which was costing the Landlord two million dollars. She stated that the south side of the building (the Tenant's side) was completed in September and that the workmen were now concentrating on the north side. The Landlord's agent testified that there are 137 units in the rental property and that the Tenant was the first one to complain.

The Landlord's agent agreed that the Tenant has not had use of her balcony since April 7, 2011.

The Landlord's agent agreed that the Tenant's balcony is approximately 12 feet x 5 feet. She stated that the Tenant's studio apartment is approximately 400 square feet, not including the balcony.

### **Analysis**

The Landlord is cautioned that it must comply with Section 29 of the Act with respect to notice to enter the rental unit.

The Tenant did not provide sufficient evidence that the Landlord was aware of the need for upcoming construction when the tenancy agreement was signed.

The Landlord has a responsibility under Section 32 of the Act to provide and maintain rental accommodation in a state that complies with the health, safety and housing standards required by law. Section 28 of the Act provides that the Tenant is entitled to quiet enjoyment.

It is necessary to balance the Tenant's right to quiet enjoyment against the Landlord's responsibility to maintain the premises. The onus is on the applicant/Tenant to provide sufficient evidence to support her claim.

The Tenant testified that the scaffolding and the green netting went up on her side of the building on April 7, 2011. The Landlord's agent agreed but stated that construction did not begin until mid-May, 2011, some 5 weeks later. The Tenant testified that the green netting remains on her side of the building as at the date of the Hearing, a fact that the Landlord's agent did not deny. The Landlord's agent testified that the Tenant's side of the building was finished in September, 2011 (more than 7 weeks ago). The Landlord's agent did not provide an explanation with respect to why it took 5 weeks for construction to start after the scaffolding went up, or why the green netting remains around the south side of the building now that construction has stopped.

I have carefully considered the Tenant's application and the Landlord's responsibility to maintain the rental unit, and I find that the Tenant is entitled to some compensation for loss of peaceful enjoyment while the green netting was up and no construction was underway, and for the time the netting remained up after construction was completed (April 7 to Mid-May, 2011 and September 30 to November 16, 2011). I award the Tenant **\$150.00** in compensation for loss of peaceful enjoyment.

The Tenant may be entitled to reimbursement for loss of use of a portion of the rental unit or property even if the Landlord made every effort to minimize that loss during the construction. With respect to the Tenant's claim for a rent reduction for loss of use of her balcony, in calculating her award I have considered that the balcony would have limited use in the spring, fall and winter months and award the Tenant a rent reduction of **\$150.00** for loss of use of her balcony.

The Tenant's application for future rent abatement is dismissed with leave to reapply if the green netting remains in place in front of her rental unit after November 30, 2011, and if she does not have use of her balcony by April 1, 2012.

The Tenant's application had merit and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Further to the provisions of Section 72 of the Act, I order that the Tenant may deduct the sum of **\$350.00** from future rent due to the Landlord.

### **Conclusion**

The Tenant may deduct the sum of **\$350.00** from future rent due to the Landlord.

The Tenant's application for future rent abatement is dismissed with leave to reapply if the green netting remains in place in front of her rental unit after November 30, 2011, and if she does not have use of her balcony by April 1, 2012.

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 22, 2011.

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Residential Tenancy Branch