



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant requesting a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Matter(s)

The Tenant amended her claim at the hearing to remove her request for rent refund/compensation for damages and losses in the form of a rent reduction for the months of July and August 2011, as the construction/renovation had not yet commenced on the side of the building where her rental unit was located. The Tenant stated that she has no evidence for damages and losses for July and August 2011. As a result the Tenant’s portion of her claim for rent reduction or compensation for damages and losses for July and August 2011 is dismissed.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee?

Background and Evidence

The parties agree that they had a tenancy agreement which commenced on October 01, 2005, with a monthly rent of \$790.00 due on the first of the month. The parties agree that the Tenant provided written notice to the Landlord on August 30, 2011 stating that she was ending the tenancy effective September 30, 2011. Neither party provided a copy of the tenancy agreement or the Tenant’s notice to vacate for the hearing.

The Tenant testified that the Landlord invited all tenants in the building to an information meeting in June 2011 about renovations that would be occurring to the balconies on the exterior of the building. The Tenant stated that she attended the information session. The Tenant stated that she did not have a balcony on her rental unit, but she learned that as of September 2011 the renovations would be done on her side of the building to the balconies of the units above hers. The Tenant stated that she decided to give her notice in August 2011 and move out by the end of September 2011, because of the upcoming renovations to the exterior, and she also stated that she also did not get along with the current managers at the building. The Tenant stated that because she did not get along with the current managers of the building she had to communicate with them in writing rather than by phone to ensure that they responded to her concerns.

The Tenant stated that she noticed that the renovation company had set up their scaffolding on her side of the building with a platform and ladder access one meter below the window of her rental unit on September 02, 2011. The Tenant stated that on the weekend there was no work occurring and on Saturday September 03, 2011 she noticed a man had climbed up the ladder to the platform one meter below her window at 1:00 P.M. The Tenant stated that she closed her windows and notified her neighbours that there was a suspicious man outside on the platform. The Tenant stated that on September 06, 2011 she wrote a letter of complaint to the Landlord about the incident and stating that she felt that the renovation company had created an unsafe situation with an unattended platform and ladder and that she has to keep her windows closed as a result, which is causing her discomfort and lack of sleep due to the temperature inside the rental unit when the windows are shut. The Tenant requests in the letter that the Landlord promptly resolve the issues. The Tenant provided a copy of the letter into evidence.

The Tenant stated that the Landlord did not resolve the issues from her letter of September 06, 2011 and the ladder was not removed by the renovation company at the end of each work day, as a result she had to keep her windows shut at night due of the lack of security and during the weekdays due to construction debris. The Tenant stated that she would open the windows when she was home during the day on weekends and during the dinner hour to get a breeze. The Tenant stated that she worked during the weekdays. The Tenant stated that she did not have a fan or air conditioning, as a result she had no way to keep the temperate reduced except to open the windows. The Tenant stated that due to the security risk of the platform and ladder she could not sleep with the windows open anymore. The Tenant stated that she remained in the rental unit and suffered through very high temperatures 30-35 degrees Celsius before she moved out.

The Tenant stated that her peaceful enjoyment of the rental unit was disrupted in September 2011 by the renovations and the Landlord. The Tenant stated that she decided to move out on September 24, 2011 rather than wait until the end of the month. The Tenant stated that she advised the Landlord four days prior to her move out date that she would require the elevator. The Tenant stated that the Landlord was uncooperative with her move out date and declined her request to use the elevator or share use of the elevator as they had already booked it for another move. The Tenant stated that she decided to move as planned as she had already booked the movers. The Tenant stated that the Landlord made her wait 15 minutes on the day of the move but eventually let her use the elevator as the other tenant moving had not yet shown up. The Tenant provided evidence and photographs of the construction outside of her rental unit, the platform and ladder, and temperature readings inside the rental unit and from Environment Canada. The Tenant stated that extreme heat and a lack of security/privacy due to the renovations caused her to end the tenancy. The Tenant is seeking a rent refund, mailing and related supply costs, various supplies, food, packing and moving expenses, time spent related to moving, medicine costs, cellular phone costs, utility transfer costs, cleaning costs, time spent and costs related to for preparing for the application and hearing. The Tenant is requesting \$9,584.47 in compensation for damages and losses and the filing fee for her application.

The Landlord's agent testified that the Tenant gave notice to move out prior to the renovations commencing on the side of the building where the rental unit is located. The Landlord's agent stated that the Tenant occupies a rental unit on the western facing side of the building above the boiler room which operates 24/7. The Landlord's agent stated that they took the Tenant's letter of September 06, 2011 to the superintendent of the exterior renovation project and went to examine the area with him. The superintendent testified for the Landlord as a witness, and he stated that he was satisfied that the area below the Tenant's rental unit was secured with metal fencing and that it would be difficult to get through the fencing to the ladder and the platform outside their working hours. The Landlord's agent and the superintendent stated that it would be very difficult for anyone to try and get inside the Tenant's rental unit from the platform as the Tenant's window only opened 10-12 inches and a person would have to be quite slim and able to hoist themselves up three and a half feet to get inside.

The Landlord's agent stated that all of the tenants were informed of the renovations in June 2011 and the held two days of open house information sessions. The Landlord's agent stated that the Tenant attended an information session. The Landlord's agent stated that the tenants with decks were not able to use them during the renovations, and they provided all tenants lounge area for use during the renovations. The superintendent stated that the debris was kept to a minimum as they used an enclosed

chute on the side of the building they were working on to place the debris so that it would be contained. The Landlord's agent stated that the renovation work occurred Mondays through Fridays excluding weekends and statutory holidays during the hours of 8:00 A.M. to 4:00 P.M. The Landlord's agent testified that they were satisfied with the security of the area and they did not feel any other action was necessary to address the Tenant's complaint and the Tenant made no further complaints to them prior to her move out. The Landlord's agent also stated that the Tenant did not complain to the police about any trespassers on the site, and that no other tenants notified the Landlord of any concerns.

The Landlord's agent confirmed that the Tenant provided them written notice on August 30, 2011 to end the tenancy for September 30, 2011 and that the notice said positive things about the Landlord and her experiences living there as a tenant. The Landlord stated that the Tenant's notice referred to the fact that the building and complex had been through several renovations over the years that she had lived there. The Landlord's agent confirmed that they had renovated the parking area, balconies, and are working on the pool area. The Landlord stated that they had to repair the balconies as they were falling apart and putting tenants at risk. The Landlord's agent stated that the Tenant's notice did not indicate any specific complaints about lack of peaceful enjoyment, security, or temperature issues in the rental unit as her reasons for ending the tenancy. The Landlord stated that the Tenant never requested a fan and did not use a fan during her tenancy if heat was an issue. The Landlord's agent stated that the Tenant gave notice prior to the renovations occurring on her side of the building, so they dispute that the alleged heat or alleged lack of security/privacy caused her to end the tenancy. The Landlord's agent stated that the Tenant let them know four days before her move about elevator booking and tried to book the elevator for the same time as another move was occurring. The Landlord's agent stated that they told the Tenant to pick another date but she refused. The Landlord stated that they had no choice but to let the Tenant use the elevator on September 24, 2011 when her movers showed up. The Landlord stated that the Tenant's claim should be dismissed.

Analysis

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

Section 28 of the Act states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, the balance of probabilities. To prove a loss and have the Respondent pay for the loss, the Applicant must prove the following:

- that the damage or loss exists;

- that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- the actual amount required to compensate for the claimed loss or to repair the damage; and
- that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I note that the Tenant has attempted to claim several items which are not covered by the Act. Costs connected with preparing the application or preparing for the hearing are outside the jurisdiction of the Act. As a result I dismiss these portions of the Tenant's claim.

The Tenant gave notice to end her tenancy on August 30, 2011, prior to the alleged security/trespassing incident on the platform outside the rental unit window on September 03, 2011 which she says caused her to keep her windows shut at night thus increasing the heat and affecting her sleep. The Tenant did not contact the police about a trespasser outside her rental unit window, and delayed notifying the Landlord until three days later doing so only in writing. The Tenant did not prove that rental unit was uninhabitable, lacking in privacy, or that the Landlord was unreasonably disturbing her peaceful enjoyment of the rental unit. The Tenant did not attempt to mitigate the alleged heat issue by requesting or purchasing a fan or fans for use in the rental unit and the Tenant only made no further complaints to the Landlord after her letter of September 06, 2011. The Tenant resided in the rental unit until September 24, 2011, and did not stay in a hotel or elsewhere. The Tenant provided insufficient evidence to support her claim.

I find that the Tenant is not entitled to any compensation for losses or damages under the Act, regulation or tenancy agreement. As a result the Tenant's claim is dismissed.

Conclusion

The Tenant's claim 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: April 11, 2012.

Residential Tenancy Branch