



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, RR, MNR, MNSD, FF

Introduction

This was the hearing of applications by the tenant and by the landlord. the tenant applied for a monetary order and other relief, including a rent reduction. The landlord applied for a monetary order and an order to retain the security deposit. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing. Because the tenancy has ended I will not consider the tenant's request for a rent reduction, but I will address his claim for a monetary order.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and if so, in what amount?

Is the landlord entitled to a monetary order and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began on October 1, 2010. Monthly rent was \$950.00. The tenant paid a security deposit of \$475.00 at the commencement of the tenancy.

The tenant testified that when he first viewed the apartment he noticed that the balcony was in poor shape. He testified that the balcony was covered with old and rotten mould covered plywood. The tenant said that he agreed to move in based on the landlord's representative's assurances that the balcony would be repaired March of 2011.

The tenant testified that although the landlord sent him a letter dated August 8, 2011 which said that the landlord would start work on the balconies in the second week of August, the landlord did no work to the balcony until December, 2011. According to a Notice to the tenant from the landlord, the landlord intended to enter the rental unit on December 12, 2011 to carry out repairs to his deck. The Notice requested that he: "ensure that his deck is cleared off so work can be carried out in a timely fashion". The Notice also said: "Depending on rot and water damage we may remove the sliding door

or window to properly do repairs. However a 24 hour notice will be given if this is necessary.”

The tenant said that he rented the apartment in reliance upon the landlord’s promise that the deck would be repaired by the spring of 2011. He testified that the balcony was in such a state of disrepair that it was unusable. He submitted witness statements from several friends and from his mother who commented on the state of the balcony. One of the tenant’s witnesses stated that he saw the balcony in November, 2010 and saw that there was a rotting piece of plywood lying on the deck which was covering a large hole. He said that it was unsafe and it worsened over the course of the tenancy.

The tenant said that construction started on his deck on December 29th and work continued until the last week of January. He said that during this period his home was a construction zone and for a good part of January he could not live in the rental unit. The tenant complained about the dust and debris left by the construction workers. Several of the witnesses commented in their statements about the dust and debris that covered his artwork, stereo and electronic equipment. The tenant submitted photographs of the interior of his apartment during the course of the construction work and pictures showing the extent of the work to the balcony. He noted that the main support beam under his balcony was rotten and had to be replaced.

The tenant moved out of the rental unit at the end of February. He did not pay rent for February. The tenant claimed a monetary order for the loss of use of his balcony based on his estimate of the square footage of the balcony. He estimated the square footage of the balcony to be 80 square feet or 13% of the 600 square feet of useable living area of the apartment. The tenant claimed 13% of his rent, or \$123.50 for 15.5 months of his tenancy for a total of \$1,914.00. He claimed a further \$475.00 because he said he was deprived of a place to live due to construction for more than two weeks. He claimed a further \$240.00 for cleaning furniture and personal belongings for a total of \$2,629.00.

The landlord claimed payment of January rent of \$950.00, late fees and NSF fees totalling \$50.00 and a carpet cleaning charge of \$84.00. The landlord requested an order to retain the security deposit and claimed a balance of \$609.00. The landlord submitted a copy of the tenancy agreement and a ledger of rent payments. The landlord did not submit any other evidence in response to the tenant’s claim.

The landlord’s representative denied that there was a promise made to the tenant when he signed the tenancy agreement. She said that the balcony repairs took only a few days, not almost a full month as claimed by the tenant. She said that the landlord was prepared to clean the tenant’s apartment, but when she came on December 31st the

tenant refused to answer the door. The tenant did not pay rent for January and the landlord has claimed for unpaid rent, a late fee and a cleaning charge. The landlord did not submit evidence to support the claim for carpet cleaning or a claim for an NSF cheque charge.

Analysis

Section 28 of the *Residential Tenancy Act*, (Act) provides that a tenant is entitled to quiet enjoyment including, but not limited to rights to reasonable privacy and freedom from unreasonable disturbance. Section 32 of the Act obliges a landlord to keep residential property in a state of decoration and repair that complies with health, safety and housing standards and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In order to prove an action for a breach of the covenant of quiet enjoyment, a tenant must show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. 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, however, a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

With respect to the tenant's claim for loss of use of the balcony, I accept his evidence that he rented the apartment based on the assurance of the landlord's representative that the balcony would be fixed by spring. The tenant testified that the balcony was important to him and it was a significant factor in his choice to rent the unit. I accept as well, that the dilapidated condition of the balcony was an embarrassment to him and dampened his enthusiasm for cooking and entertaining guests at his apartment, which he loved to do. I find that the repairs did significantly interfere with his use and enjoyment of the rental unit and I prefer the tenant's evidence to the evidence of the landlord's representative as to the extent and duration of that disruption. I find the tenant's evidence to be more credible because it accords with the photographic evidence and the witness statements that he submitted. I accept the tenant's calculations as to the square footage of his apartment and patio, but I do not accept his contention that, for the purpose of compensation the patio area should be treated as

though it was equivalent to the interior space of his rental unit. I reject the tenant's position that he should be compensated on a proportionate square footage basis. An award to the tenant should include compensation for the noise and disruption during construction as well as for loss of use. I find, based on the tenant's testimony, that he had to vacate the rental unit during some of the repair period and he had to spend a significant amount of time cleaning his belongings and furniture of the dust and debris created by the repairs. I must have regard to the fact that the tenant ordinarily would use the patio to a lesser extent during the winter months and the rainy season. Having considered the factors mentioned, I have arrived at a global assessment of the tenant's loss which I place at 1,500.00. The tenant is entitled to recover his filing fee for this application for a total award of \$1,550.00.

Turning to the landlord's claim, the tenant did not pay rent for January. He had no right under the *Residential Tenancy Act* to withhold January rent and the award to the tenant includes an amount to compensate him for loss of use of the rental unit in January. The landlord is entitled to recover January rent in the amount of \$950.00. The landlord is entitled to recover a \$25.00 late fee for January, but not an NSF charge because I was not provided with evidence to show that the landlord incurred such a charge. The landlord did not provide evidence to show that it paid an amount for carpet cleaning and, given the dust and debris that was created by the balcony repairs, I find that the landlord should bear the cost of carpet cleaning in any event. The landlord is entitled to recover the \$50.00 filing fee for its application for a total award of \$1,025.00. I order that the landlord retain the tenant's security deposit of \$475.00 in partial satisfaction of this award for a new award of \$550.00. Pursuant to section 72 for the *Residential Tenancy Act* I set off the award to the landlord against the amount awarded to the tenant; this leaves a net amount of \$1,000.00 that is due to the tenant and I grant the tenant a monetary order under section 67 in the said amount. 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: April 30, 2012.

Residential Tenancy Branch