



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RR FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss under the Act, authorization for the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee.

The tenant and the landlords appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party.

The landlords stated that they did not receive an evidence package from the tenant. The tenant responded by stating he served the caretaker of the property with evidence six months prior to making the current application. Service of evidence prior to making application for dispute resolution is not in accordance with the rules of procedure. In addition, the tenant stated that he served the caretaker and not the landlord. Evidence must be served on the party to whom the claim is being made, after the claim is made and in accordance with the rules of procedure. Given the above, the evidence of the tenant was not considered in this decision.

The landlords testified that they served the tenant with their evidence package in response to the tenant's application for dispute resolution by registered mail on August 14, 2012. The landlords provided a registered mail tracking number as evidence during the hearing. The tenant stated that he has been out of the country shortly after making his application and was not due to return to Canada until September 13, 2012. The tenant was provided the opportunity to have the hearing adjourned until his return to provide time for him to review the evidence of the landlords. The tenant declined to have the hearing adjourned and wished to proceed with the evidence provided by the landlords.

Preliminary and Procedural Matters

The landlords indicated that the respondent name on the application was incorrect and requested to replace the name of the property management company with the company name of the landlords. The tenant did not dispute this request and as a result, the application was amended to the company name of the landlords.

The landlords testified that it was their belief that the tenant was not entitled to make a claim for money owed or compensation under the *Act*, regulation or tenancy agreement due to a two year time limit to make a claim under the *Act*. The landlords felt the two year time limit began after the work was completed at the rental unit which was approximately April 2010. Pursuant to section 60 of the *Act*, if the *Act* does not state a time by which an application for dispute resolution must be made, an application for dispute resolution must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned. As the tenancy has not ended and the tenant remains in the rental unit, I find the tenant has made his application in accordance with the *Act*, and I have considered the merits of the application as a result.

Issues to be Decided

- Should the tenant be granted a monetary order for money owed or compensation under the *Act*, regulation or tenancy agreement?
- Should the tenant be authorized to reduce rent for repairs, services or facilities agreed upon but not provided?
- Should the tenant recover the filing fee?

Background and Evidence

The parties agree that the tenancy began on April 1, 1995. The original tenancy agreement was a fixed term tenancy for one year which reverted to a month to month tenancy in April 1996. Originally, the rent was \$650.00 per month due on the first day of each month. Over the course of the tenancy, the rent has increased to \$724.89 per month. A security deposit of \$325.00 was paid by the tenant on April 1, 1995.

Both parties agree that the building owned by the landlord underwent a substantial renovation project between September 2008 and April 2010, when work was completed. The tenant has made a monetary claim of \$6,340.00 related to the impact of the renovation project on him. The tenant did not submit a monetary worksheet with his claim, nor did he provide a breakdown of the details of the monetary amount with the application for dispute resolution. The tenant did provide oral testimony during the

hearing of his claim. The following is a summary of the main categories of the tenant's claim:

1	Inability to use balcony and roof deck @ \$150.00 per month X 6 months (April 1, 2009 to September 30, 2009)	\$900.00
2	Severe noise from tarp @ \$100.00 per month X 17 months (September 2008 to February 2010)	\$1,700.00
3	Lack of privacy due to blind removal and 13 entries by workers over the course of 18 months @ \$50.00 per month X 18 months (September 2008 to February 2010)	\$900.00
4	Lack of lighting due to tarps impairing general feeling in rental unit @ \$30.00 per month X 17 months (September 2008 to February 2010)	\$510.00
5	Cleaning due to ongoing renovation work @ \$20.00 per hour for cleaning X 25 hours in total cleaning	\$500.00
6	Portion of storage fees after being asked to move furniture away from walls @ \$35.00 X 18 months	\$630.00
7	Airflow issues and high temperatures in rental unit @ \$300.00 X 4 months (summer months of June 2009 to September 2009)	\$1,200.00
	TOTAL	\$6,340.00

Summary of Tenant's testimony

The tenant provided the following testimony during the hearing regarding items 1 through 7 of his monetary claim as described above. Item 1 relates to the inability to use the balcony and roof top sundeck over the course of the renovation project. The tenant calculated the amount of \$900.00 by taking the square feet (SF) of his rental unit which is approximately 520SF and adding the SF of the roof deck (approximately 110SF) and his balcony (approximately 40SF) for a total of 670SF. The tenant then divided the balcony and roof deck portion of 150SF from the total of 670SF to come up with a percentage of approximately 22%. The tenant affirms that 22% of his living space was impacted and therefore should be entitled to compensation of 22% of his rent at the time which was \$695.00 for total of \$150.00 times the six months that he claims he could not use the balcony or roof deck for a total claim of \$900.00 in relation to item 1. The tenant stated that he did not submit written complaints to the landlords during the six months when he states he could not access his balcony or the roof deck.

Regarding item 2, which related to severe noise stemming from the construction tarp, the tenant said that although he did not have any witnesses or evidence of the loud noise, he claims he was unable to sleep at times and assigned a value of \$100.00 per month times 17 months between September 2008 and February 2010 when the tarps were finally removed. The tenant stated that he did not submit any complaints in writing to the landlord regarding the noise from the tarps over the course of the 17 months.

The tenant stated that item 3 relates to a privacy issue in relation to the rental unit blinds having to be removed between the months of September 2008 to February 2010, which he calculated as 18 months. The tenant also stated that his privacy was impacted by 13 different entries by workers over the course of the 18 month project project. The tenant did confirm that all entries were made with proper notice, however, he felt that 13 entries was excessive over the course of 18 months. The tenant confirmed that he did not submit any complaints to the landlord in writing regarding his privacy being impacted over the course of the 18 month renovation project.

Regarding item 4, the tenant stated that his general feeling inside the rental unit was impacted as the rental unit became darker over the period of 17 months while the construction tarps blocked natural light from entering the rental unit. The tenant assigned a value of \$30.00 for each of the 17 months between September 2008 and February 2010 for a total of \$510.00. The tenant did not indicate that he wrote to the landlords to complain about the lack of light entering his rental unit over the course of 17 months between the months of September 2008 and February 2010.

The tenant described item 5 as relating to cleaning involved after the rental unit windows were installed on three different occasions. The tenant described excessive dirt and dust when there was sanding taking place inside the rental unit and affirmed that he had to spend time cleaning the rental unit on 8 separate occasions consisting of 3 occasions due to the window installations, 4 occasions after sanding was completed, and 1 occasion at the time of demolition. The tenant stated that he spent 25 hours at \$20.00 per hour for a total \$500.00 for this portion of his monetary claim.

Regarding item 6, the tenant described this as a "minor item", which involved a notice to the tenants of the building to move their furniture 2 feet away from the walls due to the renovation. As a result of the small size of his rental unit, the tenant stated that he rented a storage unit. The tenant stated that he rented a larger storage unit than required to store his items as he had need to store other items in the storage unit also. The monthly rent of the storage unit is \$107.00 per month, however, the tenant stated that he is only claiming for \$35.00 for the 18 months of the renovation project for a total

of \$635.00. The tenant did not provide receipts from the storage locker company but did indicate that he attempted to obtain receipts but was unsuccessful.

The final item described by the tenant, item 7, relates to airflow issues and high temperatures inside the rental unit during the summer months of 2009; June, July, August and September. The tenant described that there are normally two openings for outside air into the rental unit. The first opening is a door downstairs and the second opening is a door upstairs. The tenant stated that both doors were nailed shut during the summer of 2009. The tenant affirmed that the inside temperatures of the rental unit went up to 42 and 45 degrees making the rental unit “unliveable”. The tenant is seeking \$300.00 per month times 4 months (June, July, August and September), for a total of \$1,200.00 for this portion of his claim. The tenant denied sending any complaints in writing to the landlord to describe his concerns in relation to item 7.

Summary of Landlords' testimony

The landlords testified that the tenant did not provide any writing complaints regarding any of the 7 items being claimed. The landlords were never notified that the tenant felt inconvenienced. The landlord stated that they have a duty to repair and maintain the rental unit and building as a whole.

Regarding item 1, the landlords felt that they claim was extreme and disputed that the tenant did not have access to the roof deck for the time being claimed for. The landlords stated that the calculation of the space on the balcony or roof deck compared to the space inside the rental unit is not comparable in value as a loss of a bathroom for instance.

The landlords stated that the noise mentioned in item 2 is very subjective and did not have any real evidence to prove what noise was caused by the tarps, if any. The landlords stated that the monetary claims for items 2, 3 and 4 were arbitrary numbers as far as values associated to those claims. The landlords stated that item 5 did not include any receipts and were just calculations by the tenant. The landlords affirmed that item 6 did not relate to the entire timeframe of the renovation project and that the tenant failed to provide any receipts as evidence. The landlords also disputed item 7 by asking what evidence supports the tenant's claims and that they did not receive any complaints from the tenant stating that his unit was unbearable or unliveable.

The landlords stated that they wanted to remain in accordance with the Act, and not to evict an entire building of tenants during a renovation project. As a result, the landlords stated that they decided to approach the renovation of the building using the more

costly option of approving a “staged” project in phases versus having to evict any tenants. The landlords also testified that the rent paid by the tenant is much lower than the surrounding area which was their way of compensating tenants for any temporary inconvenience.

The landlords testified that they would respond quickly to any complaints from the tenants. The landlords provided documentary evidence relating to a different tenant indicating their good will. The evidence indicates that when a tenant complained about the renovations impacting their use of their balcony, the landlords reduced their rent by \$200.00 per month until the time when their balcony work was completed. They confirmed that they never received such a written complaint from the applicant tenant.

At the end of the hearing, the tenant asked the landlords why the project was halted for a period of 4 months. The landlords responded by stating the work was delayed for those months due to bad weather, heavy snowfall and due to the discovery of asbestos which required special protocol to manage properly, which was done. The landlord affirmed that the delay was beyond their control and not something they could anticipate.

Analysis

Based on the documentary evidence from the landlords, the oral testimony provided by both parties during the hearing, and on the balance of probabilities, I find the following.

Section 32 of the *Act* requires that the landlords repair and maintain the residential property. The landlords stated that they choose the more expensive option to approve a stage renovation project versus evicting tenants for the purposes of renovating. The tenant did not dispute this portion of the landlord’s testimony and this was considered undisputed testimony as a result.

Section 67 of the *Act* provides for compensation to be considered for damages or loss when a party is found to have not been in compliance with the *Act*, regulation or tenancy agreement.

It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find that all 7 items submitted by the tenant fail to meet the test for damages or loss. There is no evidence from the tenant that the landlord breached the *Act* by completing the renovation project. There is no evidence to substantiate the tenant's alleged loss. At the very least, I would expect the tenant to have submitted a complaint in writing at the time these events were occurring to provide the landlords the opportunity to correct, compensate or otherwise remedy the complaint. Based on the testimony of the tenant, **I find** the tenant failed to provide any written notice to the landlords of his complaints.

Section 7 of the *Act* states:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the tenant did not do whatever is reasonable to minimize the damage or loss and permitted the amount of his claim to grow without ever submitting a complaint to the landlord of the alleged damage or loss. If the landlords had received a written complaint from the tenant, I find it likely that they would have addressed the complaint based on their evidence of their response to other tenant's complaints during the renovation project.

Given the above, I **do not** authorize the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

I dismiss the tenant's application in full, due to insufficient evidence to support his claims, without leave to reapply.

As the tenant failed to prove his claim, I **do not** grant the recovery of the filing fee.

Conclusion

I dismiss the tenant's application due to insufficient evidence, without leave to reapply.

I do not grant the tenant authority to reduce the monthly rent.

I do not grant the tenant's recovery of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 30, 2012

Residential Tenancy Branch