



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR

Introduction

This matter dealt with an application by the Tenant for monetary compensation for loss or damage under the Act, regulations or tenancy agreement and for a rent reduction for repairs, services or facilities agreed upon but not provided.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on June 29, 2012. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there losses or damages and is the Tenant entitled to compensation?
2. Is the Tenant entitled to a rent reduction for repairs or facilities and services not provided and if so how much?

Background and Evidence

This tenancy started on June 1, 2011 as a fixed term tenancy with an expiry date of May 31, 2012 and then renewed on a month to month basis. Rent is \$1,050.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$525.00 in June 2011.

The Tenant said that they were not informed about the construction at the rental complex prior to moving into the rental unit. The Tenant said they moved into the rental unit on June 1, 2011 and the construction started in mid to late June 2011. As a result of the construction in the rental complex and in their rental unit the Tenant said they are requesting monetary compensation for the following:

1. The Tenant said the balcony on their unit was rebuilt so they did not have the use of the balcony from approximately the first part of July, 2011 to November 28, 2011. The Tenant said he is requesting \$10.00 per day for the loss of use of the balcony and because the balcony door could not be used to get fresh air into the unit to cool the unit down in the hot summer period. The Tenant said he submitted previous decisions relating to other tenants in the building that were awarded \$10.00 per day for loss of use of their balconies for the time the

construction was going on. The Tenant said he is claiming for 135 days at \$10.00 per day for a total of \$1,350.00 as compensation for the loss of use of his balcony.

2. The Tenant continued to say that the second part of his claim is for loss of quiet enjoyment of his rental unit. He said he was not told about the construction prior to moving in and the construction was very noisy and both his 8 month old daughter and his wife reacted to the dust and off gassing of the paint and materials used in the construction process. The Tenant said he estimated that \$700.00 would be fair compensation for the loss of quiet enjoyment that he and his family had to endure.
3. The Tenant's last claim was for loss of use of the rental unit. The Tenant said that he and his family moved out of the unit to friend's homes for 5 to 10 days while the construction was taking place as they could not live with the noise, dust and heat. The Tenant said he is requesting 10 days at \$35.00 per day totalling \$350.00 for the loss of use of the rental unit. The Tenant said he calculated the \$35.00 per day by dividing his monthly rent \$1,050.00 by 30 days in a month.

The Landlord said that they understand the Tenant's dissatisfaction because the construction time was a difficult period for the rental complex. The Landlord continued to say the owners of the building did the repairs on the advice of an engineering firm to make sure the balconies were safe for the tenants and to improve the rental units. Further the Landlord said she agrees that the Tenant should be compensated for the loss of use of the balcony and she offered \$2.38 per day for a total compensation offer of \$321.30 for the Tenant's loss of use of the balcony. The Landlord said she calculated this amount on the squared footage of the balcony compared to the square footage of the rental unit and then multiplied it by the monthly rent.

Further the Landlord said she was willing to offer the Tenant \$350.00 for loss of quiet enjoyment as they realize the construction was difficult for the Tenant especially as the Tenant had an 8 month old daughter.

The Landlord continued to say the Tenant's claim for loss of use of the rental unit when the Tenant moved to friend's homes for 5 to 10 days should be dismissed as the construction was only in the daytime from 8 a.m. to 5 p.m. and the nights were quiet. The Landlord said she lives in the rental complex and she found the nights to be fine. The Landlord said the unit was habitable during the nights and therefore the Tenant did not have to move out and there was no loss of use of the rental unit beyond the day time construction work.

In addition the Landlord said that they have not increased the Tenant's rent as a good faith gesture for this year. The Landlord said the rent increase would have been \$45.15 per month, but they agreed with the Tenant's request for no rent increase. The Landlord said the Tenant will save a total \$541.80 because of no rent increase for the upcoming year. The Tenant said he disputed the rent increase on different and separate grounds to the construction issues and the freeze on his rental amount should not be considered in this decision.

The Landlord said the rent increase was to take effect June 1, 2012 and the Tenant made his application for these claims on June 19, 2012. The Landlord said the rent freeze was a good faith gesture and if they knew about the Tenant's application for compensation for the construction in the building the rent freeze would not have been done.

The Landlord said the Tenant was a good tenant and she hoped they could resolve these issues and continue a good relationship.

The Tenant said he thought the Landlord was a good person and she was doing a good job and he hoped that his application did not get her in trouble.

Analysis

With respect to the first issue in the Tenant's claim, regarding the loss of use of the balcony is appears from both parties testimony that there is agreement that the Tenant should be compensated for the loss of the balcony. The Tenant is requesting \$10.00 per day based on previous decisions and the Landlord is suggesting \$2.38 per day based on the square footage of the balcony compared to the rental unit. Although I see some merit in the Landlord's method of calculating the loss, I also find that the square footage method does not allow for the heat issues and lack of fresh air that that balcony door would provide. The Tenant said that the heat and stuffy air was a large part of the loss they experienced by not having access to a balcony. Combining this with the testimony that the Tenant gave that they were not told about the construction prior to moving in, I find the Tenant has established grounds to justify the amount of \$10.00 per day for the loss of the balcony. Consequently I award the Tenant \$10.00 per day for 135 days for an amount of \$1,350.00 for the loss of use of the balcony during the construction period.

Further both the Tenant and the Landlord agreed that the Tenant should have some compensation for the loss of quiet enjoyment of this rental unit during the construction period. The Tenant has requested \$700.00 and the Landlord offered \$350.00. I was compelled by the Landlord's testimony that the Landlord's froze the Tenant's rent as a good faith gesture prior to the Tenant applying for compensation for his losses due to the construction. Consequently I find the Tenant's claim of \$700.00 to be reduced by the rental savings in the amount of \$541.15 resulting in an award to the Tenant for \$158.85 for the loss of quiet enjoyment. I grant the Tenant the amount of \$158.85 for the loss of quiet enjoyment.

With respect to the Tenant's third claim regarding the loss of use of his rental unit for 5 to 10 days in which time the Tenant said he move into friend's homes. The Tenant is claiming \$35.00 per day for 10 days for a total of \$350.00. When I questioned the Tenant on this claim the Tenant said he could not remember when they had moved out and he could not remember if it was for 5 days, 7 days or 10 days. As well the Landlord said the rental complex was only disrupted during the hours from 8:00 a.m. to 5 p.m.

Monday through Friday and that she lived in the complex and that the complex was habitable in the evenings and night time. Consequently I cannot quantify or validate the Tenant's claim for loss of use of the rental unit; therefore I dismiss this part of the Tenant's application without leave to reapply. The Tenant's claim for \$350.00 for loss of use of his rental unit is dismissed without leave to reapply.

As the Tenant has been partially successful in this matter, the tenant will receive a monetary order for the balance owing as following:

Compensation for :	
Loss of use of the balcony:	\$ 1,350.00
Loss of quiet enjoyment	\$ 158.85
Subtotal:	\$1,508.15
<i>Balance Owing</i>	<i>\$ 1,508.15</i>

Conclusion

A Monetary Order in the amount of \$1,508.15 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

Residential Tenancy Branch