



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR and FF

Introduction

This matter was originally set for hearing on August 8, 2012, but was adjourned to the present session as a package of potentially key evidence provided by the applicant tenant had not been added to the application.

The application in question dealt with a claim by the tenant for a rent reduction/rent abatement following earlier such consensual rent relief to compensate for loss of quiet enjoyment of the rental unit due to demolition and construction of a new home on the adjoining property.

Issue to be Decided

Is the tenant entitled to further rent relief and, if so, in what amount?

Background and Evidence

This tenancy began on March 20, 2011 with prorated rent until the end of the month, at which time monthly rent was set at \$4,350. The tenants paid a security deposit of \$2,175 on February 17, 2011.

In September of 2011, the tenants were dismayed to see demolition beginning on the property next door to the rental unit. In the weeks to follow, they notified the landlord of serious disruption to their quiet enjoyment of the rental property. They proposed a rent reduction of \$1,000 per month for eight months, , the landlords countered with a suggestion of \$500 per month for six monthsto which tenants replied with \$750 per month for eight months leading to the landlords' offer of \$600 per month reduction for six months.

The landlords' agent stated that that offer which was in effect from November 2011 to April 2012 inclusive, a total of \$3,600, constituted a settlement of the claim. The tenant holds that it was not a settlement, but an ultimatum.

The tenant further states that the landlord was fully aware that a project was imminent and submitted a copy of a notice of a Development Application which was distributed in the area dated February 4, 2012. It described the project, invited community comment and alerted residents who had listed their property for sale or who contemplated a rental agreement to advise prospective buyers or tenants.

The landlord's advocate stated that the landlords, who live close by, were very elderly and their command of English was limited. She stated that, if they had known of the project, they would have considered it a matter of duty to disclose details to prospective tenants.

In describing the impact of the project on the quiet enjoyment of the family, the tenant stated that he works from the home and the constant noise created a major distraction from his work.

The female tenant said the work had greatly impacted the family's privacy as workers could see in their windows if blinds were not drawn. The aesthetic value of the home was substantially diminished as a picturesque hedge that separated the properties was replaced by unsightly construction fencing which still revealed the construction work next door.

When the work continued past the apparently expected April 30, 2012 period of rent relief, the tenant submitted the discounted rent amount for May and June 2012. When the landlord protested, they paid the full amount and made application for the present dispute resolution.

As a matter of note, in May 2012, the landlord's agent also advised the tenant that the landlord would be agreeable to waiving the fixed term agreement if the tenant so wished.

In the present application, the tenant has sought rent relief of an additional \$3,600.

Analysis

While I note the tenant's objection to the contrary, I find that the \$3,600 rent relief granted for the six month from November 2011 to April 2012 inclusive did constitute a settlement for the loss of quiet enjoyment to April 30, 2012 and included consideration for September and October of 2011 and I decline to revisit that period.

However, while I find it reasonable for the parties to have assumed that the worst of the construction would have ended by April 30, 2012, eight months after the work began and six months after the rent relief agreement went into effect.

However, the work is still not finished as evidenced by a current photograph submitted into evidence by the tenant and by his description of exterior finishing just nearing completion.

Therefore, I find that the tenants have continued to suffer a compensable loss of quiet enjoyment from May 2012 to the presents. However, I find the degree of disturbance will have diminished as the demolition and structural phases of the work have been completed.

Section 7 of the *Act*, which provides for compensation for parties suffering a loss or damage under the rental agreement or legislation, also imposes a duty on a claimant to do whatever is reasonable to minimize their loss. It was available to the tenant to accept the landlord's offer in May 2012 to dissolve the fixed term agreement, or to propose the same much earlier in the process.

For the period from May 1, 2012 to September 30, 2012, I find that the tenant is entitled to a rent reduction of \$300 per month for a total award of \$1,500, an award I intend to include compensation for any residual loss of quiet enjoyment into October 2012. I further find that the tenant is entitled to recover the \$50 filing fee for this proceeding from the landlord.

I hereby authorize and order that the tenant may retain \$1,550 from the rent due on October 2012 in satisfaction of this order.

Conclusion

The tenant is granted a rent reduction of \$300 per month for the five months from May 1, 2012 to September 30, 2012, and to recover the filing fee for this proceeding from the landlord, a total award of \$1,550.00.

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: September 10, 2012.

Residential Tenancy Branch