



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement and “other”, although the claim for “other” relates to their claim for a monetary order for loss of quiet enjoyment of their respective rental units.

Two tenants and two agents for the landlord (the “agents”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The parties agreed that they received evidence from the other party prior to the hearing and had the opportunity to review it prior to the hearing. I find the parties were served in accordance with the *Act*.

Preliminary and Procedural Matters

The tenants’ applications were joined for the purposes of this hearing. For the purposes of clarity, the tenants have been referred to during the hearing and this decision as tenant 1 and tenant 2. The names of the tenants are included on the cover page of this decision.

Tenant 1 submitted a USB drive as evidence which the tenant alleged has photos and audio recordings of the noise in the rental unit. Although I was able to view the photos, there were no audio recordings on the USB drive that could be found using a multimedia player which has the ability to play video files, audio files and display photos. As a result, audio evidence was not considered in this decision as such evidence was not made available in accordance with the rules of procedure.

Issues to be Decided

- Are the tenants entitled to a monetary order under the *Act*?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenancy for tenant 1 began on February 1, 2010. Monthly rent is currently \$1,250.00 per month plus \$50.00 for parking, due on the first day of each month. Tenant 1 paid a security deposit of \$600.00 at the start of the tenancy.

The tenancy for tenant 2 began on June 1, 2011. Monthly rent is currently \$1,454.00 per month plus \$55.00 for parking, due on the first day of each month.

The building where the subject rental units are located was built in approximately 1969 and is comprised of 3 buildings or towers with a total of 507 units in 3 towers. Tenants 1 and 2 both live in the same tower which has a total of 180 units. Tenant 2 resides two floors above tenant 1.

The applications of tenant 1 and tenant 2 relate to a claim of loss of quiet enjoyment resulting from a renovation project (the “project”) that was described by the agents as concrete facia work on all 507 balconies within the 3 towers. The agents stated that the project began due to the balconies requiring repair for safety purposes.

The parties agree that work related to the project was performed on the tower in which tenant 1 and tenant 2 reside between the months of October 2011 and May 2012 for a total of eight months. The entire project for all 3 towers lasted 18 months, according to the agents.

Tenant 1's application

Tenant 1 originally applied for a monetary claim in the amount of \$10,700.00, however, during the hearing the amount being claimed totalled \$10,380.00. As a result, tenant 1 agreed to reduce his claim to \$10,380.00 comprised of the following:

Item 1. Extra gas consumption for 8 months of project	\$800.00
Item 3. Travel time to attend office for 8 months of project	\$8,000.00
Item 4. Compensation for food/snacks and tea for 8 months of project	\$1,280.00
TOTAL	\$10,380.00

Item 1

Tenant 1 has claimed \$800.00 as compensation for his extra gas consumption needed to leave the rental unit and work at his office as he is a realtor and part-time instructor at a local university. Tenant 1 claims that due to excessive noise which impacted his right to quiet enjoyment of the rental unit, he was unable to work in his rental unit. Tenant 1 alleges that he has needed to leave the rental unit and travel to the office to make calls that he always made from home. The tenant describes lack of fresh air due to concrete dust, excessive noise, deprivation of peaceful enjoyment at home, increased dust and cleaning and other related concerns with respect to the impact the project has had on him.

Tenant 1 testified that prior to the project, on average he would travel to his work office once per month or once every couple of months. The amount of \$800.00 was calculated at 8 months at \$20 per week plus an additional 4 months of remaining work that the tenant is alleging is required. Tenant 1 did not provide gas receipts, vehicle mileage reports or other corroborating evidence to support this portion of his claim.

Item 2

Tenant 1 has claimed \$300.00 for extra car maintenance required due to the increased use of his vehicle used to travel to his work office due to the noise and alleged inability to make calls for work purposes from his rental unit. Tenant 1 did not provide receipts or other invoices to corroborate this portion of his claim.

Item 3

This item being claimed by tenant 1 is comprised of \$8,000.00 which is calculated by tenant 1 as travel time to and from his work office for 8 months. Tenant 1 was asked how he calculated \$8,000.00 over the course of 8 months. Tenant 1 testified that he used \$50.00 per hour at one hour per day for 8 months at 5 days per week (Monday to Friday) for a total of 160 days at \$50.00 per day which comes to \$8,000.00. Tenant 1

did not submit documents including timesheets, vehicle mileage reports, or other corroborating evidence to support his portion of his claim.

Item 4

Tenant 1 has claimed \$1,280.00 for food, snacks and tea for the 8 months of the project. According to tenant 1, he has been forced to go out of his rental unit to do his work which is an extra cost. He writes “tea and snacks are available at my home but in this case need to be considered as extra expense when working outside of home...”

Tenant 1 estimates this cost to be \$8.00 per day, or \$40.00 per week. At \$8.00 per day for 160 days, the total being claimed for food, snacks and tea is \$1,280.00. Tenant 1 did not provide receipts or other corroborating evidence in support of this claim.

Tenant 2's application

Tenant 2 applied for a monetary claim in the amount of \$2,607.91, however, during the hearing the amount being claimed totalled \$2,371.35. As a result, tenant 2 agreed to reduce her claim to \$2,371.35 comprised of the following:

Item 1. Medication/treatment throughout months for dust allergies	\$519.76
Item 3. Gas expenses for oldest daughter to leave home to study	\$400.00
Item 4. Medication to treat waking up with drilling that worsened anxiety/headache	\$263.92
Item 5. Inability to watch television due to noise	\$800.00
TOTAL	\$2,371.35

Item 1

Tenant 2 testified that she lives with her oldest daughter and has been also taking care of her youngest daughter who now lives with her. Tenant 2 stated that her daughter is in a wheelchair and suffers from severe anxiety. Tenant 2 testified that her youngest daughter suffers from severe allergies that include dust, cats and pollen. Tenant 2 is claiming \$519.76 for the cost of allergy medication over the period of the 8 months project.

Tenant 2 provided a summary of how she arrived at the amount of \$519.76. She stated she has had to purchased the following items throughout the months for dust allergies due to the project:

- Hydrasense Gentle Stream (135ml) at \$14.99 per months for 8 months, and
- Reactine Allergy and Sinus tablets (30 pack) at \$24.99 X 2 packages for 8 months.

Tenant 2 did not provide a note from a physician, receipts or other corroborating evidence to support this portion of her claim.

Item 2

Tenant 2 has claimed \$387.67 as compensation for the purchase of 8 months of supplies relating to the extra cleaning involved due to the project. Tenant 2 states that she had to spend more time cleaning the rental unit each day over the course of 8 months and could not keep her sliding doors open due to the dust. Tenant 2 alleges that many of her items were ruined on her balcony such as a rug, table and lamp.

Tenant 2 provided a summary of how she arrived at the amount of \$387.67. She stated she has had to purchase the following items throughout the 8 months due to the increased need for cleaning related to the project:

- Swiffer disposable cloths (34 sheets) at \$11.99 per month
- Swiffer Sweeper Wet refills (24 pack) at \$11.99 per month
- Swiffer Duster Refills (10 pack) at \$11.99 X 2 packages per month
- Windex Trigger Mult-Surface Cleaner (765ml) \$3.99 per month

Tenant 2 did not provide receipts, photos or other corroborating evidence to support this portion of her claim.

Item 3

This item being claimed by tenant 2 is comprised of the extra gas expenses in the amount of \$400.00 as her eldest daughter had to leave home to study and work on online courses due to the excessive noise. The amount of \$400.00 was calculated by Tenant 2 as an estimate of \$50.00 per month for a total of the 8 months of the project. Tenant 2 did not provide receipts, vehicle mileage reports or other corroborating evidence to support this portion of her claim.

Item 4

Tenant 2 has claimed \$263.92 towards medication required to treat anxiety and headaches. According to Tenant 2, she estimates she spent \$10.00 per month on

Ativan 30 packs for the 8 months of the project and \$22.99 per month Advil Extra Strength Liqui-gels 80 packs for 8 months. Tenant 2 did not provide a note from a physician, receipts or other corroborating evidence to support this portion of her claim.

Item 5

Tenant 2 testified that due to the noise in the rental unit from 8:00 a.m. or 8:30 a.m. to 5:00 p.m. she and her daughters could not watch television. Tenant 2 calculated the amount of \$800.00 being claimed as the television portion of her \$200.00 monthly service provider bill is \$100.00 per month over the course of the 8 month project.

Tenant 2 described that she had very limited use of her television due to the excessive noise. Tenant 2 did not provide copies of television invoices or other corroborating evidence to support this portion of her claim.

Other evidence from all parties

Tenant 2 confirmed during the hearing that she did not formally complain about the noise or loss of quiet enjoyment in writing to the landlord. Tenant 2 testified that she complained verbally to the landlord, however, the agent disputed that testimony by stating that he has never received a verbal or written complaint from Tenant 2 until receiving her application for dispute resolution. The agent stated that one of her daughters is not listed in the tenancy agreement as residing in the rental unit and that much of the Tenant 2's claim relates to the daughter that is not authorized to be in the rental unit.

Tenant 1 and Tenant 2 both confirmed during the hearing that they wish to continue to reside in their respective rental units. Tenant 1 testified that for 8 months there was noise all day, drilling, cutting, pounding and sanding. The noise would start at approximately 8:00 a.m. and continue with 25-30 minute breaks until 3:00 or 3:30 p.m. Tenant 1 described waking up to the noise as waking up like a "fearful rat".

The agents claim that both claims have been embellished and that disputes the amounts being claimed by both tenants, and claims that there are no receipts or other corroborating evidence to support the tenants' claims.

The agent stated that the landlord has done whatever they could do to minimize the impact on the tenants by having the contractors use low impact tools versus regular hammering tools in an effort to avoid any additional damage and reduce the overall noise of the project. The landlord testified that chipping of the concrete did not start until 9:00 a.m. or 9:30 a.m. and was only 30-35% of the time during the time work was being

done during normal work hours and that most of the time there was quieter time doing preparation work such as making forms for the new concrete, sanding and filling, compared to the louder drilling/hammering work.

The building manager testified that she works on the first floor in the building and that the noise would stop when the workers were building forms, sanding and filling and that the only noise she could hear was the time when they were chipping and that work was not done every day of the week, as being claimed by the tenants.

Tenant 1 provided a form that the Tenant 1 confirms he wrote and that other tenants in the building signed that states work on the balconies started around October 2011, the concrete repair was loud, annoying, and unbearable, the noise would resonate throughout the units, would start at around 7:50 – 8:05 a.m. every morning, in addition, the workers also worked on some Saturdays and Sundays, there was a lot of dust created, and the noise was a continuous annoyance for many hours every day. The agent disputed this document by stating that of the five names on the document, 3 of the names relate to this dispute, being Tenant 1, Tenant 2 and a daughter of Tenant 2. The other 2 tenants, according to the agent, have never complained to the landlord about noise related to the project.

Tenant 1 stated during the hearing that he didn't believe the project was required for safety reasons, however, did not have any corroborating evidence such as reports, witnesses or statements to support his claim that the project was not required for safety purposes.

The agent stated that they are not suggesting that there was not an inconvenience due to the project, however, it is their position that the tenants are exaggerating their claims, that the project was required for safety reasons and that the landlord did everything they could do to minimize the impact on the tenants.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

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.

Based on the above and on the balance of probabilities, and taking into account the absence of any corroborating evidence from the tenants to prove otherwise, I accept the landlord's testimony that the project was required for safety reasons.

I find that based on the balance of probabilities, the landlord would not engage in such a large project and at such an expense to the landlord without a reason such as safety concerns before starting such a project. Furthermore, **I find** that section 32 *Act* requires that the landlord maintain the residential property in a state of decoration and repair that complies with health, safety and housing standards by law and makes it suitable for occupation by a tenant.

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 tenants 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 landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did everything possible to minimize the damage or losses that were incurred.

Claim of Tenant 1 – Tenant 1 has claimed \$10,380.00 comprised of the following:

Item 1. Extra gas consumption for 8 months of project	\$800.00
Item 3. Travel time to attend office for 8 months of project	\$8,000.00
Item 4. Compensation for food/snacks and tea for 8 months of project	\$1,280.00
TOTAL	\$10,380.00

Although the agent for the landlord does not deny that there was some inconvenience to the parties due to the project, the landlord's position is that the work was required for safety reasons, and that they did whatever they could do to minimize the impact on the tenants.

All of the items being claimed by Tenant 1 relate to his employment as a realtor and part-time instructor at a university. Tenant 1 did not sign a commercial tenancy agreement. Rather, Tenant 1 signed a residential tenancy agreement, and therefore, **I find** that there is no remedy for the tenant to claim for business related expenses or losses through the landlord under the *Act*. Therefore, **I find** Tenant 1 has failed to prove that the landlord breached the *Act* resulting in the alleged losses Tenant 1 is claiming for, which are costs related to a business or businesses.

I also find that, on the balance of probabilities, the nature of Tenant 1's employment as a realtor and a part-time university instructor would require him to be outside of the rental unit meeting with clients, showing homes to potential clients and attending the university, none of which he addresses in his claim for losses. Given the above, **I dismiss** Tenant 1's claim in full due to insufficient evidence, without leave to reapply.

Claim of Tenant 2 – Tenant 2 has claimed \$2,371.35 comprised of the following:

Item 1. Medication/treatment throughout months for dust allergies	\$519.76
Item 3. Gas expenses for oldest daughter to leave home to study	\$400.00
Item 4. Medication to treat waking up with drilling that worsened anxiety/headache	\$263.92
Item 5. Inability to watch television due to noise	\$800.00
TOTAL	\$2,371.35

Tenant 2 confirmed during the hearing that she did not formally write to the landlord to complain about the noise of the project or her alleged loss of quiet enjoyment. At the very least, I would expect a person making a claim for loss of quiet enjoyment to put their concerns in writing, and not wait for a dispute resolution proceeding to make her claim. Tenant 2 testified that she complained verbally to the landlord, however, the agent disputed the testimony of Tenant 2 by stating that Tenant 2 has never complained about the noise or the project in general until they received the application for dispute resolution seeking a monetary order. Tenant 2 has also not provided any evidence to corroborate her claims that the landlords violated the *Act* which led to the costs she is claiming for.

Given the above, **I find** Tenant 2 has failed to prove that the landlord breached the *Act* resulting in the losses Tenant 2 is claiming for, and did not do whatever was reasonable to minimize the damage or loss by writing to the landlord. Therefore, **I dismiss** Tenant 2's claim in full due to insufficient evidence, without leave to reapply.

As neither tenant was successful with their respective applications, **I do not grant** either tenant the recovery of their filing fee.

Conclusion

I dismiss the applications of both tenants in full, without leave to reapply, due to insufficient evidence.

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: November 28, 2012

Residential Tenancy Branch