



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC PSF RR FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution 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 provide services or facilities required by law, authorization for the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee.

The tenants, an agent for the landlord (the "agent") and three witnesses for the landlord 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 hearing.

The tenants confirmed they received the evidence package from the landlord and had an opportunity to review it prior to the hearing. The agent stated that he had a September 11, 2012 letter from the tenants and the tenancy agreement that the tenants stated was submitted in evidence. As both parties had the same documents, those documents submitted by the tenants were admitted in evidence. I find the parties were served in accordance with the Act as a result.

Issues to be Decided

- Are the tenants entitled to a monetary order for money owed or compensation under the Act, regulation or tenancy agreement?
- Should the landlord be ordered to provide services or facilities required by law?
- Should the tenants be authorized to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

A fixed term tenancy agreement began on June 1, 2012 and on May 31, 2013 reverts to a month to month tenancy. Monthly rent in the amount of \$1,248.00 is due on the first day of each month. The tenants paid a security deposit of \$624.00 at the start of the tenancy. The parties agree that the building is a 1963 building with hot water heat.

The tenants claimed that within two weeks of the start of their tenancy on June 1, 2012, the landlord began a construction project on the outside of the building to fix the railings on the balconies (the "project"). The tenants claim they were not advised of the pending project in detail and once notified after they moved in, were advised the project would take twelve weeks to complete. The tenants testified that they would not have moved into the building had they known about the project due to the work schedule of the male tenant.

The male tenant described his work schedule as working nights from 9:00 p.m. to 4:30 a.m. and arrives home between 5:00 a.m. and 5:30 a.m. The male tenant stated that he is usually asleep between 7:00 a.m. and 8:00 a.m. and will sleep until 3:00 p.m. to 4:00 p.m. on average. The female tenant works a regular schedule between 9:00 a.m. to 10:00 a.m. to 5:00 p.m. or 6:00 p.m. on average.

The male tenant testified that he also attends college in the afternoon and that the noise and interruptions from the project have been interrupting his sleep, right to quiet enjoyment, creating the need to reschedule exams for example.

The tenants have submitted a monetary claim in the amount of \$726.80 comprised of the following:

Item 1	9 weeks with no use of balcony or rooftop patio at a 15% rent reduction between June 11, 2012 and August 9, 2012 calculated at: 9 weeks x \$288.00* x .15 (* \$1,248.00 monthly rent ÷ 4 weeks = \$288.00 per week)	\$388.80
Item 2	2 weeks with no heat between October 24, 2012 and November 13, 2012 at a 15% rent reduction, calculated at: 2 weeks x \$288.00 x .15	\$86.40
Item 3	7 weeks of loss of quiet enjoyment due to noise and	\$201.60

	sleep interruptions between August 9, 2012 and October 24, 2012 at a 10% rent reduction, calculated at: 7 weeks x \$288.00 x .10	
Item 4	Recovery of filing fee	\$50.00
	TOTAL	\$726.80

Item 1

The tenants are claiming \$388.80 for nine weeks with no use of their balcony or rooftop patio. The tenants used the monthly rent of \$1,248.00 and divided that by four weeks in a month for a weekly rent equivalent of \$288.00. The tenants then used \$288.00 and multiplied that by nine weeks for the period of June 11, 2012 to August 9, 2012 when they state they were without the use of the balcony and rooftop patio at a rent reduction of 15% for nine weeks.

During the hearing, the landlord did not dispute that the tenants were without the use of their balcony and rooftop patio.

Item 2

The tenants are claiming \$86.40 for two weeks with no heat between October 24, 2012 and November 13, 2012 at a 15% rent reduction, calculated at two weeks x \$288.00 x .15 for a total of \$86.40.

The parties agree that the landlord was first advised of the tenants concerns relating to the hot water heating system in the rental unit on or about October 26, 2012. The parties agree to the following in response to the tenants' concerns about the rental unit heating problems:

1. October 26, 2012 – the landlord is first advised by the tenants of a heating problem in rental unit.
2. October 26, 2012 – a maintenance person attended rental unit and replaced thermostat.
3. October 29, 2012 – a maintenance person attended rental unit again and replaced same thermostat with a new thermostat and checked the zone valve motor. The tenants claim they had heat for one hour before the thermostat “exploded”.
4. October 30, 2012 – the tenants advised the landlord in the evening that the heat was not working.

5. October 31, 2012 – a maintenance person installed a third thermostat.
6. November 5, 2012 – the tenants advise the heat was not working again and a maintenance person attended and installed a new transformer and checked the zone valve, breaker box, meter box and installed another thermostat.
7. November 8, 2012 – a maintenance person installs a new transformer. The maintenance person confirms he is a certified electrician.
8. November 12, 2012 – the thermostat is not working and the maintenance person believes the problem with the heating system is inside the walls so they installed a temporary wire system where external wires run on baseboards through low voltage wires.
9. December 11, 2012 – the maintenance person attends rental unit and installed new wires in walls.
10. December 13, 2012 – the tenants advise the landlord that the heating system is working but not very well.
11. December 14, 2012 – the tenants receive a note on their door requesting they contact the landlord to arrange a time for a maintenance person to come by to check heating system.

The male tenant stated that he suffers from osteoarthritis and has had to move a large corner desk each time the maintenance person attends the rental unit which is very difficult for him to do. The male tenant also testified that attendance after 3:00 p.m. would be appreciated so that he could sleep until 3:00 p.m. and not be disturbed as eleven interruptions regarding the heating system alone is impacting his quiet enjoyment, sleep and school grades as a result of lack of sleep.

The maintenance person WD stated that he believes that he has done his outmost to resolve the heating problems as they arise and attend most expeditiously once notified. Maintenance person WD understands the tenants' frustrations and feels that things have not gone smoothly for either party as the tenants appear to keep their windows open which could be putting too much strain on the heating system.

The tenants deny that they have had their windows open while they are heating their rental unit. The agent referred to a photo submitted by the landlord in evidence, in which the agent alleges shows the tenants with their window open on December 4, 2012 at 11:30 a.m. when it was four degrees Celsius outside. The tenants disputed the photo by stating that their window was not the open window in the photo as alleged by the agent. The photo was not dated or time stamped.

The resident caretaker testified that she provided her personal space heater to the tenants which the tenants confirmed during the hearing. The resident caretaker stated

that she offered a second space heater to the tenants, however, the tenants stated that a second heater was not required as it was not “freezing” in the rental unit.

Item 3

The tenants are claiming \$201.60 for seven weeks of loss of quiet enjoyment due to noise and sleep interruptions between August 9, 2012 and October 24, 2012 at a 10% reduction in rent. The tenants have calculated seven weeks x \$288.00 x .10 for a total of \$201.60.

The tenants stated that they were not advised by the landlord or the resident caretaker when they signed the tenancy agreement on April 27, 2012 that there would be a project lasting for so long and creating so much noise. The tenants testified that had they known that, they would not have moved into the rental unit.

The resident caretaker testified during the hearing that she put a letter under each door of the building including the rental unit on May 31, 2012 at 1:00 p.m. after the former tenants vacated. The tenants deny seeing a letter under their door. As a result, the existence of the letter advising the tenants of the project is in dispute.

The resident caretaker stated that she advised the tenants in April 2012 that the landlord would be repairing the concrete and installing new railings on each balcony. The tenants do not recall that information, however, do agree that the resident caretaker did advise them that they would be “looking at the balconies” and did not provide specific details of dates, a timeframe or scope of the work. As a result, the tenants stated they did not think the resident caretaker was speaking of a major project when she stated the landlord would be “looking at the balconies”.

On September 11, 2012, the tenants submitted a letter to the landlord to ask when they could expect an end to the ongoing construction. In the letter the tenants wrote that they were told it would take two weeks per column and that their column alone took nine weeks. The tenants write in their letter that during June, July and August, they had no balcony as the door was boarded shut, and a giant “X” was obstructing their normal spectacular mountain view from their wall to wall windows.

The tenants also write in their letter that the construction project is causing problems with the male tenant’s loss of sleep and interference with school due to the loss of sleep. The tenants write:

“...We assure you that we understand and respect your desire to improve your building, which is why we have patiently waited 14 weeks before we thought it appropriate to bring our concerns to your attention. At the same time we ask that you understand not only our desire to attain some peace and quiet in our home, but we also ask that you respect our right to Quiet Enjoyment, as outlined in section 6 of the RTA... So at this point we would just like to informally ask you two things; when can we expect this construction to end? Also, are you prepared to discuss the possibility of making a future rent reduction which would adequately reflect the inconvenience we have endured since the commencement of the construction back in June? Thank you for your time and consideration, as we are sure you are very busy. We look forward to your response and many more years in your building...”

[reproduced as written]

The agent was asked if the landlord responded in writing to the letter from the tenants dated September 11, 2012. The agent stated that the landlord did not respond as he “did not think it was necessary.” The agent stated that he asked the resident caretaker to advise the tenants that there would be no rent reduction.

The agent was asked if he responded to the other portion of the September 11, 2012 letter from the tenants requesting a timeframe when they could expect the project to be completed. The agent stated that he “didn’t have an exact date” and as a result, did not respond to that portion of the tenants’ letter.

The agent testified that noise due to the project was typically between 8:30 a.m. and 4:00 p.m.; however, there was not noise every day when patching and other work was being completed.

The parties agree that the main part of the project ended on November 13, 2012, approximately twenty-three weeks after the start of the project. The agent added that tile work on the facia of the building is still to be done.

Item 4

Item 4 relates to the tenants' claim for the recovery of the dispute resolution application filing fee of \$50.00 which will be addressed later in this decision.

Analysis

Based on the oral testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

Section 32 of the *Act* requires a landlord to provide and maintain a residential property in a state that complies with the health, safety and housing standards required by law and having regard for the age, character and location of the rental unit, make it suitable for occupation by a tenant.

On a balance of probabilities, I find the landlords were required to complete the project due to the age and character of the building, being a 1963 building in accordance with section 32 of the *Act*.

Residential tenancy policy guideline #6 – Right to Quiet Enjoyment, states that it is necessary to balance the tenants' 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. [emphasis added]**

Item 1 - The tenants claim \$388.80 for nine weeks without use of the balcony or rooftop patio. The agent did not dispute that the tenants were without use of the balcony or rooftop patio during this timeframe. I find that this portion of the tenants claim in the amount of \$388.80 is a reasonable claim considering the loss of the use of the balcony, rooftop patio and impacted view from June 11, 2012 to August 9, 2012 which are summer months. Therefore, **I find** the tenants have met the burden of proof and have established a monetary claim of **\$388.80** for this item.

Item 2 - The tenants claim \$86.40 for two weeks with no heat between the dates of October 24, 2012 and November 13, 2012. Based on the dates provided during the hearing, I find that the landlord made a reasonable attempt to respond in a timely matter to the complaints of the tenants regarding the heating system in their unit. I find that based on the age and character of the building and the hot water heating system, that it is reasonable that the landlord responded as best as they could under the

circumstances. **I find**, however, that the ongoing interruptions alone related to the maintenance person's various attempts to repair the heating system justify what I deem to be a reasonable claim of \$86.40 for periods without heat between October 24, 2012 and November 13, 2012. Therefore, **I find** the tenants have met the burden of proof and have established a monetary claim of **\$86.40** for this item.

Item 3 – The tenants claim \$201.60 for seven weeks of loss of quiet enjoyment due to noise and sleep interruptions between August 9, 2012 and October 24, 2012. I find by the landlord failing to respond in writing to the tenant's letter dated September 11, 2012 and stating he "didn't think it was necessary", showed a lack of good faith on behalf of the landlord.

I find that based on the length of the project being approximately eleven weeks longer than originally projected twelve week project, the impact on the male tenant's sleep schedule due to his specific work schedule, the impact on his schooling, and the impact due to the male tenant's osteoarthritis and being asked to moved the corner desk each time the heating system failed, the tenants' claim for \$201.60 is reasonable. Therefore, **I find** the tenants have met the burden of proof and have established a monetary claim of **\$201.60** for this item.

Item 4 - As the tenants were successful with their application, **I grant** the tenants the recovery of the filing fee in the amount of **\$50.00**.

The tenants have established a total monetary claim of **\$726.80** comprised of items 1 to 4 above. **I authorize** the tenants to deduct the full amount of \$726.80 as a one-time rent reduction from a future month's rent, in full satisfaction of their claim.

I do not find that the tenants have proven that the landlords require an order directing the landlord to provide services of facilities required by law. The landlord provided sufficient evidence that they have responded to the heating issues in the building which I find are a result of the age and character of the building being a 1963 hot water heating system. In addition, I find that the tenants were offered a space heater and accepted one space heater, and refused an offer for a second space heater as it was not cold enough to justify the use of a second heater.

Conclusion

I find the tenants have established a total monetary claim of \$726.80. I authorize the tenants to deduct the full amount of \$726.80 as a one-time rent reduction from a future month's rent, in full satisfaction of their monetary claim.

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: December 28, 2012.

Residential Tenancy Branch