



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation in the form of a retro-active rent abatement and damages for loss of enjoyment of the rental unit and devalued tenancy.

Both parties appeared and gave testimony.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation under section 67 of the Act for damages or loss and a rent abatement?

The burden of proof is on the applicant.

Preliminary Matter

The tenant indicated in the application that they were seeking “*aggravated damages*”

In addition to other pecuniary damages an arbitrator may award aggravated damages. However, these damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses such as extreme physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress and other intangible losses, which are considered to be "non-pecuniary" in nature and are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour.

I find that the non-pecuniary or aggravated damages are measured by the wronged person's suffering and the following factors are considered:

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation

at the time they entered into the contract that the breach complained of would cause the distress claimed.

- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

After some discussion of the nature of the tenant's claim, it was determined that the compensation actually being sought by the tenants was intended to be a claim for regular damages, not aggravated damages.

Background and Evidence

The tenancy began August 1, 2012 with rent set at \$2,450.00. A security deposit of \$1,225.00 was paid.

The tenant testified that at the start of the tenancy the landlord had advised the tenant that there would be some renovation and repair work on the rental unit that would take approximately 2 to 4 weeks. According to the tenant, the landlord then granted a rent abatement of \$500.00, comprised of \$250.00 for each of the first two weeks.

The tenant testified that the renovation work continued in one form or another for approximately four months. The tenant testified that the continuous noise affected their ability to study and their use the rental unit for their quiet enjoyment as is their right to do under the Act. The tenant testified that, in addition to the disruptive noise, they suffered the loss of use of their decks, loss of use of the yard and were deprived of a portion of storage in the garage. The tenant testified that they did not have security lighting nor fencing and were alarmed on one occasion to find that a burglar was trying to steal construction material left on the premises. The tenant also felt that the landlord had an obligation to repair the central vacuum to working order as part of the tenancy, or to compensate the tenant

The landlord testified that they had advised the tenant that that there would be some renovation and repair work on the rental unit that would take 4 to 8 weeks, but the work was subject to delays. The landlord testified that it took a lot longer than expected because of certain condition issues that were not discovered until the work was already underway. According to the landlord, the tenant was aware from the very start of the tenancy that there would be renovation work. The landlord testified that, as a courtesy, the tenant was granted a rent abatement of \$500.00, for the first month of their occupancy.

The landlord acknowledged that the renovation work continued for approximately four months but it has now been completed. The landlord testified that during the process, efforts were made to cause the least amount of disruption to the tenants and to get the renovations done as quickly as possible. The landlord testified that this was a challenge, given that various trades were involved for the different aspects of the work.

The landlord testified that the renovations were only conducted during business hours each weekday and did not occur afterhours, nor on weekends. The landlord acknowledged that this work may have compromised the tenant's quiet enjoyment but did not feel that a rent abatement beyond \$500.00 per month was warranted for the four-month period.

With respect to the loss of use of the decks, the landlord pointed out that each deck was dealt with in sequence and the period that they were not available for use was minimal.

In regard to the tenant's allegation that they suffered the loss of use of the yard, the landlord testified that the material in the yard was always cleaned up on a regular basis and not left for any significant duration.

In regard to the garage storage, the landlord stated that they periodically needed to put some materials in the garage for protection but that the tenant was still able to store items in a portion of the garage. The landlord pointed out that, if this was raised as a concern to them by the tenant, the garage would not have been used for their storage at all. The landlord also pointed out that the tenant did not have a car.

In regard to the disrupted security lighting and lack of fencing for a time, the landlord testified that the inconvenience stemming from this was minimal and stated that the fence in question was decorative and never functioned as a security fence in any case. The landlord stated that the attempted theft of building materials was not due to any violation of the Act by the landlord. The landlord stated that the tenant was not financially affected by the incident.

In regard to the non-functioning central vacuum, the landlord's position is that this amenity was never a part of the tenancy and the tenancy agreement reflects this fact.

Analysis

Section 7 of the Act states that if a party fails to comply with the Act, or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and to order payment under such circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists.
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement.
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove a violation of the Act or agreement and a corresponding loss.

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable, lawful purposes, free from interference.

I find that the landlord and tenant had contracted for a tenancy that included a rental unit that was comfortable and liveable with some inevitable noise from the renovations for an estimated minimum period of 4 weeks. However, I find that the duration exceeded both the tenant's and the landlord's expectations. I find that this did have a detrimental effect on the value of the tenancy contract and possibly constituted a violation of section 28 of the Act on occasion as well.

I accept the landlord's testimony that the renovation work was limited to certain hours and weekdays. I find that the tenant's expectation that the landlord had agreed to grant an abatement of \$250.00 per week was not based on any specific or overt commitment made by the landlord verbally or in writing, but was merely presumed by the tenant

based on their perception that the renovation work was supposed to continue for two weeks.

I find that the tenant has genuinely suffered a loss of value to the tenancy over the duration of the renovation work, and I accept that it affected one of the tenant's ability to study at times. Whether within the control of the landlord or not, I find that some disruption did occur and the tenant deserves to be compensated. I set the amount at \$500.00 per month for the noise for each of the additional three months following the first month. I also grant the tenant compensation of \$50.00 for the temporary loss of the decks during this period and another single payment of \$50.00 for intermittent loss of space in a portion of the garage.

Based on the testimony and evidence discussed above, I find that the tenant is entitled to total compensation of \$1,650.00 comprised of \$1,500.00 rent abatement for construction noise and disruption, \$50.00 for temporary loss of use of the decks, \$50.00 for loss of the use of part of the garage and the \$50.00 cost of the application.

I hereby order that the tenant may reduce the next rental payment owed to the landlord by \$1,650.00 as a one-time abatement to satisfy the monetary compensation to which they are entitled.

Conclusion

The tenants are partially successful with their claim and are granted a one-time rent abatement in the amount of \$1,650.00.

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: December 17, 2012.

Residential Tenancy Branch