



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant, the landlord and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence and confirmed that they had opportunity to review it. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on November 01, 2006. Rent for this unit was \$500.00 per month and was due on the first day of each month. The tenancy ended on February 28, 2013 and the tenancy moved from the unit on February 27, 2013.

The tenant testifies that on October 21, 2012 the landlord's property manager informed the tenant that the tenant's suite needed to be upgraded to comply with the City regulations. This consisted of new ceilings in the bedroom, the living room, the kitchen and the hallway. These rooms also had to be painted with flame resistant paint and fire alarms had to be wired throughout the rooms to the main floor of the house. The tenant testifies that initially the property manager TD informed the tenant that they would not start the work until the spring giving the tenant a four to five month time frame. The tenant testifies that TD also informed the tenant that the tenant could either move out or stay during the renovations as they would not take more than five weeks to complete being an easy process where the work would be done one room at a time and the tenant could move her belongings from each room.

The tenant testifies that on October 29, 2012 TD informed the tenant that they wanted to start the renovations the next day. The tenant testifies that this was not possible due to the tenants full time classes and the fact that the tenant could not pack her belongings so quickly. The tenant testifies that she agreed the work could be started in a few days and the first room would be emptied by November 01, 2012. The tenant testifies that all her belongings in the first room were packed and distributed around the rest of the suite in every available space including the kitchen worktops and the table. The only items left in the living room were the tenant's two couches a bookcase, a coffee table and a television table. The tenant testifies that TD said he would be able to work around those items and would cover them and the room would only take seven to eight days to complete. The tenant testifies that there were also items stored in a closet which TD told the tenant not to worry about as he would seal the closet with plastic to protect the tenant's belongings.

The tenant testifies that on November 03, 2012 TD started doing the renovations. TD did not seal the closet and a lot of the tenants belongings stored in the closet were covered in drywall powder. TD then took all the tenants belongings from the closet and dumped them into dirty recycling bins and various totes. The tenant testifies that the living room was not completed as agreed. The tenant testifies that she had told TD that he could enter the suite as needed to get the renovations done quickly as long as it was not early in the morning or late at night. However on several occasions TD worked until late at night, on one occasion

until 11.00 p.m. and once till 10.00 p.m. The tenant testifies that during this work the only space the tenant had to study or enjoy her rental unit was on the tenant's bed with some space in the kitchen and the tenant's quiet enjoyment of her suite was nonexistent as the renovations were nearly always done in the evenings and weekends.

The tenant testifies that during this period of 42 days the tenant also went without cable as this was located in the living room and could not be accessed from the bedroom. The tenant testifies that cable was included in the rent. The tenant testifies that at this time no compensation was offered to the tenant and the tenant continued to pay the full rent for this suite.

The tenant testifies that on December 03, 2012 the tenant came home early at 1.30 p.m. and found that her furniture had been moved into the kitchen and was obstructing the tenants access to the sink, cupboards and stove. The tenant testifies that TD asked the tenant to empty the china cabinet because it was blocking the connecting door so TD could move the tenant's furniture. The furniture was not removed from the kitchen until after 9.00 p.m.

The tenant testifies that on December 05, 2012 the tenant went through her belongings that had been taken out of the closet. These items were heavily covered in drywall dust and the tenant took four hours trying to remove the dust. The tenant testifies that she spoke to the landlord and told the landlord that she was very upset as there was dry wall dust on everything and the tenant had to clean it. The tenant testifies that the landlord mumbled an apology and would tell TD. Later TD spoke to the tenant and the tenant told TD that this was not acceptable and TD stated that drywall dust gets everywhere.

The tenant testifies that on December 13, 2012 TD came to the suite and finished painting odds and ends and expressed that the tenant could now move everything to the new bedroom and that the tenant should do this within a few days as TD wanted to start work on the next stage. TD gave the tenant until December 23, 2012. The tenant testifies that on December 23, 2012 TD came to the unit around 5.00 p.m. and helped the tenant put boxes and other pieces of furniture into the landlords room in the basement. The tenant testifies

that she informed TD that she would be away over the Christmas holidays as she could not celebrate Christmas in the suite and she would be home on December 26, 2012 if TD wanted to do as much work as he could and work as late as he wanted to.

The tenant testifies that she stayed at a friend's until December 27, 2012 and when the tenant returned to the suite the tenant found that no work had been completed while the tenant was away. On December 29, 2012 at 7.30 p.m. TD showed up at the suite and wanted to do some work. The tenant had a friend over for the evening but decided to allow TD to enter and complete some work. The tenant testifies that her and her friend and to stay in the bedroom to watch a movie and the noise was so loud they had to turn up the volume. Around 9.30 the landlord's wife came to the suite and the tenant told the landlord's wife that it was too late to be doing renovations. The landlord's wife spoke to TD and told the tenant that TD would only be half an hour longer. TD did not leave the suite until 10.30 p.m. that night.

The tenant testifies that between December 30 and January 13, there was only one day that the bedroom was worked on and at this time the landlord had decided to knock out a wall and turn the old bedroom into an open plan living room. The tenant testifies that there was little communication about how much longer the renovations would be taking as they had far exceeded the original time frame of five weeks. The tenant testifies that on two occasions the tenant was told an electrician was coming to the suite. The first time the tenant was given half an hour's notice and the second time the tenant was given two hours notice. The tenant testifies that she asked the landlord from this point to provide 24 hours written notice. The tenant testifies that on January 14, 2013 the tenant was given a notice on the tenant's door giving less than 24 hours. This notice stated that the electrician was coming to do some wiring but no notice was given that the ceiling in the kitchen was to be ripped out or the tenant testifies she would have packed up her belongings.

The tenant testifies that on January 15, 2013 the tenant returned home at 8.30 p.m. and found the ceiling had been ripped out and there was dust and chunks of rubble all over the tenant's counters and belongings in the kitchen. The items the tenant had stored on top of the cupboards had been thrown on the counters and were covered in dust and ceiling

debris. The tenant testifies that no care had been taken to protect her belongings. The tenant testifies that someone had also used the tenant's toilet and had left urine all over the toilet bowl. The tenant testifies that she called the landlord and informed the landlord of the problem in the tenant's suite and asked the landlord to come downstairs. The landlord said he did not know anything and the tenant needed to speak to TD. The tenant testifies that she did not have TD number and asked the landlord to get TD to call the tenant. TD never called the tenant back.

The tenant testifies that at this point she wrote to the landlord and asked for estimates and informed the landlord that renovations could only be done Monday to Friday between 8.30 and 6.00 p.m. The tenant testifies that the next day the tenant filed her application for Dispute Resolution and served the landlord on January 16, 2013. After serving the landlord both TD and the landlord came to the tenant's suite and asked the tenant about the hearing papers. The tenant testifies that TD asked the tenant why the tenant didn't speak to TD about it. The tenant testifies that said that she had spoken to the landlord but TD had not called the tenant back. TD claimed he did not have the tenant's number however the tenant points out that her number is on the tenancy agreement. The tenant testifies that TD kept saying that he had asked the tenant if the tenant wanted to move out during the renovations. The tenant responded by saying that the renovations were only supposed to take five weeks and that is why the tenant had agreed to stay. Further discussions took place at this time between TD, the tenant and the tenant's witness. The tenant testifies that TD informed the tenant that a contractor was completing the work and it would be finished by February 14, 2013 and that they would reduce the rent for February by \$200.00 and would see what they could do about the damaged items. The tenant testifies that she said this was unacceptable.

The tenant testifies that on January 17, 2013 the tenant found a notice on the door to enter on January 19, 2013 to do renovations. The tenant testifies that on January 18, 2013 the tenant was waking up in the morning when she heard a knock on the door. The landlord's wife then entered the tenant's suite without permission. The tenant testifies that she now felt that she had to move from the suite due to the renovations and the volitions of the landlord in providing written notice to enter the suite and then entering without notice or permission.

The tenant testifies that on January 19, 2013 renovations began on the tenants kitchen. This was in accordance to the times set out in the tenant's letter however the tenant was unable to use the kitchen. Later that day the tenant found two letters requesting entry to do renovations on January 21 and February 15, 2013.

The tenant testifies that she gave the landlord notice to end the tenancy on January 27, 2013 and followed this up with a second notice on January 28, 2013 effective on February 28, 2013. Between January 29 and February 05, 2013 various renovations took place in the suite but then renovations ceased for reasons unknown. On February 06, 2013 the tenant received notice that the landlord daughter was going to be the property manager from February 08, 2013. The tenant states that at that time the tenant had no idea that the landlord or TD were out of town. The tenant called the new property manager and asked what was going on with the renovations and asked about gaining access to the landlord's basement to retrieve the tenants belongings stored there.

The tenant testifies that on February 23, 2013 the tenant found more drywall powder on her belongings in the tenants desk area even after the tenant had informed TD twice before. The tenant testifies that she was able to retrieve her belongings from the landlord's basement room and the tenancy ended on February 27, 2013. At this point the renovations were still not completed.

The tenant seeks to recover the following amounts for damage and loss:

Shredder clogged with drywall dust - \$50.00

Duffel bag ruined with drywall dust could not be cleaned - \$30.00

Scrapbook album ruined with drywall dust - \$25.00

Art work ruined by drywall dust - \$25.00

Christmas tree ruined by drywall dust - \$20.00

Christmas paper lanterns ruined with drywall dust - \$10.00

Nintendo game console (2009) ruined with drywall dust approximately - \$200.00

Lilo and Stitch figurine ruined with some sort of compound - \$25.00

Black and Decker toaster ruined with drywall dust and ceiling rubble - \$50.00

Suede boots covered in drywall dust – \$20.00

Sheepskin boots covered in drywall dust - \$60.00

Bassil vacuum ruined by cleaning up drywall dust - \$75.00

The tenant also seeks a rent reduction for a loss of quiet enjoyment of the rental suite and for loss of cable service for over 40 days. The tenant seeks

\$250.00 for December, 2012

\$500.00 for January, 2013

\$500.00 for February, 2013

The tenant seeks to recover the amount of \$200.00 for gas to move from the rental suite.

The tenant seeks to recover cleaning costs for cleaning up the drywall dust and ceiling debris as this was not done professionally by the landlord. The tenant testifies that the first cleaning had to be done on December 05, 2012 for four hours. The second clean on January 17 for two and a half hours and the third clean on February 27, 2013 for two hours. This cleaning was over and above what a tenant should be expected to clean in a suite. The tenant seeks to recover \$10.25 per hour to a total sum of \$87.12.

The landlord's property manager TD testifies that they agree with most of the tenant's testimony. TD testifies that they had informed the tenant that the landlord had to comply with the City and the tenant had agreed to stay in the suite while the renovations were taking place. Between December 07 and December 26, 2012 no renovations took place so the tenant could have decided to leave then if the tenant no longer wanted to stay.

TD testifies that the tenant did not raise any concerns or issues with the renovations until the tenant filled this application for Dispute. TD testifies that he spoke to the tenant and attempted to negotiate an amount of \$200.00 in rent reduction and some other compensation for cleaning and damage. TD agrees that the tenant is entitled to some compensation.

TD cross examines the tenant and asks the tenant if the landlord provided some storage and was the tenants stuff put in the kitchen for just one day when carpets were being laid.

The tenant responds that storage was given and the items placed in the kitchen were not removed until after 9.00 p.m. that night. The tenant responds that the coaches, china cabinet, suitcase, boxes and end table were stored in the landlord's basement but the suite was still crammed with stuff.

The tenant calls her witness and asks the witness if the witness came for dinner and a movie to the tenants suite on December 29, did TD turn up to do work, was the work loud and did the landlords wife walk into the tenants bedroom and say the work would take another half an hour. Was the work done at 10.30? The witness responds that yes she did come for dinner and a movie. TD was at the unit, the work was so loud they had to turn up the sound on the movie and the landlord's wife did come into the tenant's bedroom and the tenant told the landlord's wife that it was too late to be doing renovations. The landlord's wife spoke to TD and said it would be another half an hour but TD did not finish until 10.30. The tenant asks the witness if the witness saw the tenants belongings damaged and covered in drywall dust. The witness responds that yes she did.

TD cross examines the witness and asks if the witness was aware that the tenant granted access to TD that day and did the tenant ask TD for some quiet time. The witness responds that yes access was granted and TD knew the witness was there as the witness spoke to TD.

The tenant calls her second witness MM. The tenant asks the witness if the witness was present when the tenant served the hearing papers to the landlord and was the witness present when TD and the landlord came to the tenant's door. The witness responds that she was present. The tenant asks the witness if the witness heard the tenant ask TD if they had gone through the package and did the tenant speak to the landlord. The witness responds that the tenant did ask TD this and the landlord had refused to come down.

The tenant asks the witness if the witness heard the tenant ask TD if TD had the tenant's number. The witness responds that yes she heard this and heard the tenant say her number was on the tenancy agreement. The tenant asks the witness to explain about what was said when the electrician came. The witness responds and says no mention was made

for the tenant to cover her belongings up when the electrician came. The tenant asks the witness if TD said the tenant could have moved out. The witness responds that TD kept saying this to the tenant. The tenant asks the witness if the tenant was upset that the tenants stuff had been damaged twice and did the tenant ask for 24 hours notice. The witness responds that the tenant was upset and the tenant asked for 24 hours notice so the tenant could cover her belongings. The witness responds that TD did say all work would be done by February 14, as contractors were going to come in and TD offered a rent reduction of \$200.00.

The tenant asks the witness if the tenant called the witness after the landlord's wife had entered the tenant's suite. The witness responds that the tenant did call and said the tenant could not trust the landlord anymore.

The landlord declines to cross examine this witness.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. With regard to the tenants claim for damage to the tenants belongings; I find the landlord made the tenant aware that renovations were taking place and this date was moved forward which provided very little time for the tenant to either find alternative accommodation or to securely pack her belongings to prevent damage from drywall dust and ceiling debris. I further find the landlord did not mitigate any loss to the tenant's belongings by taking suitable precautions to protect the tenant's belongings from exposure to the drywall dust or ceiling debris.

Consequently I must find in favor of the tenants claim for damage to her belongings with some exceptions. I find from the evidence presented that the tenants electrical appliances such as the toaster, the Nintendo game console, the shredder, and the vacuum cleaner were highly likely to have been damaged by this drywall dust getting into the components of these appliances therefore I find the tenant is to be compensated for this damage to the sum of **\$50.00** for the shredder, **\$50.00** for the toaster and **\$75.00** for the vacuum. However

as the age of the game console is four years it will have limited its value and I must take into account the depreciation of the games console. I therefore award the tenant the sum of **\$100.00** in compensation.

With regards to the other items claimed I am not satisfied that the tenant could not vacuum the drywall dust from either pair of suede boots or the duffel bag therefore I dismiss these sections of the tenants claim. I am satisfied however that the reminder of the tenants claim for damage is justified and I award the tenant compensation for damage to the scrap book album of **\$25.00**, the art of **\$25.00**; the Christmas tree of **\$20.00**, the lights of **\$10.00**, and the figurine of **\$25.00** to a total sum of \$105.00.

With regard to the tenants claim for an amount of compensation due to the loss of quiet enjoyment of the rental suite; It is my decision that although the tenant agreed to continue to live in the rental unit while renovations took place. These renovations were expected to go on for five weeks when in fact they were still not completed four months later. The tenant also had to endure the disruption to her daily life including the intrusion of the landlords property manager, the landlords wife, the electrician and any contractors entering the suite particularly at times often late in the evening. The tenant also had to endure the noise, dust and disruption to her life in not being able to enjoy full use of her rental suite for four months while this work continued. Consequently it is my decision that the tenant is entitled to compensation for the loss of quiet enjoyment. However I limit the tenants claim to half a month's rent of \$250.00 for the three extra months this was endured over and above the time scale the tenant original agreed upon when deciding to stay in the suite. I further find the tenant is entitled to an amount for the loss of cable for over a month while the tenant could not access the cable in the living room. The tenant will receive a monetary award to the sum of **\$750.00** plus **\$50.00** for the loss of cable usage.

With regards to the tenants claim for additional cleaning; I find from the evidence presented that due care was not taken by the landlords building manager to cover the tenants belongings with a suitable protective cover to ensure drywall dust and ceiling debris did not cover the tenants belongings. It is therefore my decision that the tenant is entitled to recover the sum of \$10.25 per hour for the additional cleaning the tenant had to do to remove the

drywall dust and debris from her belongings. I therefore find the tenant has established a claim for a monetary award to the sum of **\$87.12** for cleaning.

With regards to the tenants claim for compensation or loss for having to move from the rental unit; I find that the tenant was very tolerant with the landlord's property manager in allowing access to the suite so renovations could be completed quickly. However this reached breaking point for the tenant when the tenant saw that the building manager was exceeding this allowance by working on the unit late at night and when requested to provide 24 hours written notice of entry the notices were posted to the tenants door but did not allow for the three extra days in order for the notice to be deemed served as stated under s. 90(c) of the *Act*. On one occasion after notice was requested the landlord's wife entered the tenant's suite without notice or authorization. I find at this point it was not unreasonable for the tenant to decide to give the landlords one clear months notice to vacate the suite and therefore as the landlord breached the *Act* by entering the suite without proper notice I find in favor of the tenants claim to recover compensation for moving costs of **\$200.00**.

As the tenant has been partially successful with this claim I find the tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant pursuant to s. 67 and s. 72(1) of the *Act* for the following amount:

Compensation for damage to personal belongings	\$380.00
Loss of quite enjoyment plus loss of cable	\$800.00
Additional cleaning	\$87.12
Compensation for moving	\$200.00
Filing fee	\$50.00
Total amount due to the tenant	\$1,517.12

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,517.12**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: April 10, 2013

Residential Tenancy Branch