



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Tenant for a Monetary Order for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on February 4, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there losses or damages to the Tenants and are the Tenants entitled to compensation?

Background and Evidence

This tenancy started on August 1, 2012 as a month to month tenancy. Rent is \$825.00 and a parking fee of \$25.00 is stated in the tenancy agreement, resulting in a rent payment of \$850.00 due on the 1st day of each month. The Tenant paid a security deposit of \$425.00 and a pet deposit of \$425.00 on August 1, 2012.

The Tenant said they moved into the rental unit on August 1, 2012 and then they received a notice that there was going to be work done on the building to improve the balconies. The Tenant said the balcony work started on September 4, 2012 and was completed on December 23, 2012. The Tenant continued to say that they lost the use of their balcony for 110 days and because of the construction there was scaffolding on the building that compromised their security. The Tenant said the scaffolding came up to their windows and the windows do not lock therefore someone could have gained access to their rental unit through the windows. The Tenant said they are claiming \$10.00 per day for compensation as this is the amount awarded in previous decision which dealt with similar situations. The Tenant did not provide additional evidence or

testimony beyond the previous decision to support his claim of \$10.00 per day for loss of the use of their balcony.

The Landlord said she agreed that the Tenant lost the use of his balcony for 110 days and the Landlord said she was authorized to offer the Tenant \$2.17 per day for the loss of use of the balcony. The Landlord said they calculated the square footage of the balcony against the square footage of the rental unit and then applied that ratio to the rent to arrive at the amount of \$2.17 per day as compensation for the loss of use of the Tenants' balcony. The Landlord said this was the only amount she was authorized to offer the Tenants as settlement.

The Tenant declined the Landlord's offer and requested the Arbitrator to make a decision. The Arbitrator told the Tenant these hearings and decisions are not bound by president, but are determined on the merits of each situation. The Arbitrator asked the Tenant if he had any testimony to support his claim of \$10.00 per day for the loss of use of the balcony. The Tenant said he submitted previous decisions that gave other tenants \$10.00 per day for loss of use of their balconies. The Tenant said he had no other testimony to give.

Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

As well these Dispute Resolution Hearings are not bound by president and are determined on the merits of each individual situation. Consequently applicants have a responsibility to prove their claim based on the facts of their situation.

The Tenant has provided undisputed evidence and testimony that they lost the use of their balcony for 110 days. As well the Tenant said their claim is based on a safety issue that the construction activity created a security situation for them as the scaffolding could have allowed entry to their unit through the windows. The Tenant said their claim of \$10.00 per day is based on other decision for similar situations.

The Landlord does not dispute the Tenants loss of use of the balcony, but does dispute the value the Tenant has claimed for the loss of \$10.00 per day. The Landlord calculated the loss of actual square footage and valued it based on the rental amount. This resulted in an amount of \$2.17 per day for the loss of use of the balcony.

As the Tenant has not justified their monetary claim for loss of use of the balcony with evidence of their individual situation and as both parties agree on the loss use of the balcony and the 110 days, I accept the Landlord's calculation for the loss of use of the balcony at \$2.17 per day for 110 days in the amount of \$238.70.

Further I accept the Tenant's testimony that the construction created a security issue. The construction resulted in scaffolding on the building that gave possible access to the Tenants' rental unit through the windows. As a result I award the Tenant a monetary claim of \$100.00 for loss of quiet enjoyment as a result of security concerns.

As the Tenant has been partially successful in this matter, the Tenants are also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. The Tenants will receive a monetary order as follows:

Loss of balcony use	\$ 238.70
Loss of quiet enjoyment(security issues)	\$ 100.00
Recover filing fee	\$ 50.00
Subtotal:	\$388.70
Balance Owing	\$388.70

Conclusion

A Monetary Order in the amount of \$388.70 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 23, 2013

Residential Tenancy Branch

