



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 and FF

Introduction

This hearing was convened on the tenants' application of January 31, 2013 seeking a monetary award for loss of use of their balcony during a period in which the balconies in the building were being renovated.

Issue(s) to be Decided

Are the tenants entitled to compensation for the restriction on the use of their balcony and, if so, in what amount.

Background and Evidence

This tenancy began on July 1, 2010 and ended on August 31, 2012. Rent was \$1,120.33 per month.

During the hearing, the parties agreed that renovations to the balconies in the building had resulted in the tenants' loss of use from October 11, 2011 to January 19, 2012, a period of 100 days.

The tenants claimed \$10 per day for the loss of use based on two precedents submitted into evidence in which tenants were granted \$10 per day for the period in which their balconies were not available.

The landlord submitted a suggested formula for assessing the monetary value of the loss based on a calculation of the rent per square foot per day, extended to the square footage of the balcony. The landlord's calculations yielded a result of \$0.048 per square foot per day, applied to the 38.56 square foot balcony for a daily value of \$1.85. The landlord proposed that the \$1.85 constituted fair compensation for the loss of use.

Analysis

Section 27(2)(b) of the *Act* provides that a landlord may, on 30 days notice, restrict a non-essential service or facility provided that the landlord, "reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility."

While I very much appreciate the landlord's effort in proposing the per diem square footage as a bench mark reference in evaluating the loss of use of the balcony, I note that other variables also affect the value.

For example, as the landlord noted, one of the previous awards of \$10 per day was granted for a loss during prime outdoor weather while the present claim largely addresses the fall winter periods of more prominent wind and rain.

I note as well, that a square foot of bathroom, as an essential component of a dwelling, would have greater value than a square foot of balcony.

In addition, as apartment dwellers' access to building exit doors is usually some distance away, there is value to simply having the ability to step out on the balcony for a moment outdoors, a use less affected by square footage as by availability.

In the present matter, the tenants also had a cat that frequented the balcony and had kept plantings on it, uses that impact on quality of life for many people.

I find that the \$10 per day sought by the tenants represents a rent reduction in the order of 25 percent which I find to be greater compensation than is warranted by the value of the loss. At the same time, I find the \$1.85 per day suggested by the landlord is not fully reflective of the value of the loss.

I find that the tenants are entitled to a monetary award of \$3.50 per day for the loss of use of the balcony for the 100 days for a total of \$350. In addition, I find that the tenants are entitled to recover their \$50 filing fee for this proceeding from the landlord.

Thus, I find that the tenants are entitled to a monetary award of \$400.

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$400 for service on the landlord.

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

