



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Middlegate Development Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC RP RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant 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 compelling the landlord to make repairs to the unit, site or property, to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee.

The tenant, the tenant’s brother, an agent for the landlord (the “agent”), and an Assistant Resident Manager 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 matters before me.

Both parties confirmed that they received evidence from the other party prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. Therefore, I find the parties were served with evidence in accordance with the *Act*.

Settlement Agreement

During the hearing, the parties agreed to the following:

1. The landlord agrees to have the decking contractors attend the rental unit by May 31, 2013.
2. The tenant agrees to allow access to her rental unit by the decking contractors with prior 24 hour notice in accordance with the *Act*.
3. The landlord will ensure that the decking contractors cover and protect the tenant’s flooring from the front door of the rental unit to the balcony to prevent damage to the flooring of the rental unit.

4. Any work recommended by the decking contractors to level out the balcony decking will be completed by June 7, 2013.

This settlement agreement was reached in accordance with section 63 of the *Residential Tenancy Act*.

Preliminary Matter

As a result of the settlement agreement described above, I will not consider whether the landlord should be compelled to make repairs, as the landlord agreed to the conditions above as raised by the tenant during the hearing. Therefore, I will consider only the tenant's application for a rent reduction and a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Issue to be Decided

- Is the tenant entitled to a monetary order or rent reduction under the *Act*, and if so, in what amount?

Background and Evidence

A month to month tenancy agreement began on August 15, 1990. Monthly rent is currently \$1,735.00 per month and is due on the last day of the month. At the start of the tenancy, the tenant paid a security deposit of \$537.50 which the landlord continues to hold.

The tenant stated that she is seeking compensation in the amount of \$1,500.00 comprised of ten months at \$150.00 per month for the loss use of her balcony. The tenant stated that she previously used her balcony on a daily basis and is seeking \$1,500.00 as a result of the loss of use of her balcony. The landlord disputed during the hearing that the tenant's balcony was not available for her to use.

The tenant testified that she has not notified the landlord in writing regarding her concerns related to her loss of use of the balcony. The tenant stated that she first notified the landlord to complain about the loss of use of her balcony by phone in November 2012 and that she called about three times per week until May 2013. The agent confirmed that she received a call from the tenant about two to three times per week on average and the landlord confirmed that she knew the tenant was not happy.

The tenant stated that she cannot use her balcony due to “little ponds of water that I can put my goldfish into”. The tenant stated that due to the water on her balcony she could not move her furniture back to the balcony which has impacted her enjoyment of the balcony.

The landlord disputed the tenant’s testimony by stating that the building was built in 1980 and that the building in which the tenant resides is comprised of 40 apartments, and that the balcony on the fourth floor where the tenant resides is not fully covered and is exposed to the rain and therefore, some water on the balcony is reasonable and expected for an outdoor balcony. The tenant did not provide any photos or evidence of the pooling of water she had described during the hearing. The tenant did not dispute that rain can enter the balcony from above as it is partially exposed.

During the hearing, several photos were reviewed include some photos where the tenant claimed the “dirtier” areas were where the water was pooling. The tenant confirmed that she refused the labourers working on the decking and surrounding areas access to her rental unit for two or three days in April 2013.

The landlord’s documentary evidence in Tab 3 identifies work completed in the rental unit in recent years. Some of that work includes:

- a kitchen counter in January 2010
- a fridge in April 2003
- a new dishwasher in 2002
- carpet in May 2000
- an invoice for a “new thermostat, paint kitchen, paint all doors and install a GFI plug” that did not have a date on it

In Tab 4 of the landlord’s documentary evidence, the landlord writes that the tarps were placed on the tenant’s building on October 13, 2012 and were removed on November 20, 2012. The agent testified that the entire building required new decking on the balconies and other work such as fascia board work. The landlord submitted copies of their daily journal to confirm specific dates. The tenant did not dispute the dates in Tab 4 as described by the landlord. The tenant is claiming that she is unable to place her furniture outside due to the pooling of water on her balcony.

In Tab 5 of the landlord’s documentary evidence, the landlord provided written notices to enter the rental unit dating from December 4, 2012 back to the year 2000.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenant's claim for compensation of \$1,500.00 – The tenant is claiming that she has suffered a loss of use of her balcony for a period of ten months due to balcony work that resulted in the pooling of water on her balcony. The tenant stated that due to the water on her balcony she could not move her furniture back to the balcony which has impacted her enjoyment of the balcony.

The tenant failed to provide any photos or other evidence of the pooling of water on her balcony and confirmed that her balcony is partially exposed which would permit the entry of rain onto the balcony.

Based on the above, **I find** that the tenant has provided insufficient evidence to support her claim. Furthermore, **I find** that water on an outside deck is reasonable for an outside

deck and that some pooling is also reasonable given the age and character of the building having been built in 1980.

In addition, **I find** that by the tenant's own admission to having refused the contractors access to her rental unit in April 2013, the tenant breached section 7(2) of the *Act* by failing to do whatever is reasonable to minimize the damage or loss. Given the above, **I dismiss** the tenant's claim in full, due to insufficient evidence and due to a breach of section 7(2) of the *Act*, without leave to reapply.

As the tenant was not successful with her claim for compensation, **I do not** grant the tenant the recovery of her filing fee.

Conclusion

I order the parties to comply with the terms of their settlement agreement described above.

I dismiss the tenant's claim for compensation in full, due to insufficient evidence and due to a breach of section 7(2) of the *Act*, without leave to reapply.

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: June 11, 2013

Residential Tenancy Branch