



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes : FF, MNDC, O RR

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on October 24, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order that the landlord be prohibited from appointing his wife as a agent?
- b. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- c. Whether the tenant is entitled to an order prohibiting the landlord from forcing her to vacate the rental unit in order to allow the landlord opportunity to renovate?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on March 1, 2014, end on February 28, 2015 and the tenant would have to move out of the residential unit at that time. The rent was \$1000 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$500 at the start of the tenancy. She has also paid a pet damage deposit of \$500.

The tenancy agreement contained an addendum that stated “This is to confirm that the roof of the cottage will be renewed during the term of your tenancy and no later than the end of August 2014.”

The rental unit is a cottage located in close proximity to the main house. Throughout much of the tenancy the landlord has hired contractors who have worked on renovations to the main house. The work also included replacing the roof of the main house and the roof the cottage which occurred in August 2014.

On September 1, 2014 the tenant wrote the landlord identifying a number of complaints including:

- Busy traffic, noise and general disruption due t renovations on the main home
- The driveway is cluttered with truck, cars, sawhorse and materials through the weekdays preventing me from safety turning my car around
- I have not been able to enjoy a quiet week day morning or afternoon while saws, compressors, sanding, hammering etc.

The letter requests a reduction of rent of 30% effective September 1, 2014 but not retroactively until the renovation work is completed. It also identifies a problem with the ceiling in her rental unit.

On September 4, 2014 the landlord responded in writing rejecting the request for a reduction of rent “because as stated above you knowingly entered the tenancy aware

the renovation and construction would be ongoing for at least a year” and that he does not believe the work has been unreasonable.

The landlord’s contractors inspected the ceiling in the cottage and it was much more serious than the parties expected. The bulge in the ceiling was caused by a leaking pipe. The leak lead to significant disruption for the tenant as the contractors had to remove the ceiling, fix the broken pipe and take extensive remediation steps. The tenants testified on many occasions she had to move her desk and clean up the vermiculite, mouldy ceiling tiles, insulation and rat faeces.

Law

Section 28 of the Residential Tenancy Act provides as follows:

Protection of tenant's right to quiet enjoyment

28 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 and lawful purposes, free from significant interference.

Policy Guideline #6 includes to following statement:

“...Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, **however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations...**”

Analysis

There is no legal basis for an arbitrator to order who can appear as an agent for a party. As a result I dismissed the tenant's application that I make an order prohibiting the landlord's wife from acting as an agent. The parties agreed at the end of the hearing that the tenant should deal with the landlord unless he was not at home.

I do not accept the submission of the landlord that he is not responsible to compensate the tenant as the tenant was aware the renovations would take place. The Residential Tenancy Act does not permit the parties to contract out of the obligations under the Act. The fact that the tenant was aware there would be renovations does not relieve the landlord from ensuring the tenant is free from unreasonable disturbance. I determined the extensive construction noises over many months amounts to an unreasonable disturbance and reduces the enjoyment of the premises rented by the tenant. Section 7(1) of the Residential Tenancy Act provides as follows:

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

The tenant initially sought compensation of 30% of the rent for September but not retroactively. In these proceedings the tenant is making the claim retroactively. In the circumstances I determined the tenant is entitled to compensation in the sum of \$100 per month for the period of June, July and August for a total of \$300. I have not considered September is this portion of the claim will be included with the tenant's claim for disruption caused by the remediation work on the leaky pipe and ceiling,

The tenant seeks compensation in the sum of \$500 for the disruptions caused by the leaky pipe and remediation work done as a result. The disruption lasted approximately 2 ½ weeks. The rent is \$1000 per month. Much of the rental unit was not affected by this. The tenant was not required to leave the rental unit. In the circumstances I determined the tenant is entitled to compensation in the sum of \$300 for September

including the disruption from the leaky pipe and the disruptions from the work done on the main house.

In summary I determined the tenant has established a claim against the landlord in the sum of \$600. I decline to make a monetary award for the breach of the covenant of quiet enjoyment for the period after that date as such a claim was not included in the application and there is insufficient evidence to make such a determination.

On October 17, 2014 the tenant received a letter from the landlord's wife stating the restoration company required access for work that was estimated to take 3-4 weeks Monday to Friday from 9:00 a.m. to 5 p.m. The scope of the work to be carried out included:

- A complete new ceiling to the living room
- New flooring throughout the living room and the main bedroom
- Dope remedial work to the living room wall affected by the water
- Remedial work to the kitchen ceiling.

The work is necessary so that things could be finalized with the insurance company. The letter concludes stating that the landlord understands that disruption may not be desirable to your routine and that the landlord completely understood if the tenant decided to leave.

Based on the evidence presented I determined the work is not related to a health or safety manner and is not an emergency. I determined that the landlord does not have a right to breach their obligations under the Residential Tenancy Act to provide the tenant with quiet enjoyment where the work is not urgent and the tenancy will be coming to an end at the end of February 2015. It should not be the tenant's obligation to bear the burden of the landlord's effort to renovate in circumstances such as this. I determine the landlord does not have a legal right to require the tenant to give access to the

landlord during the remaining three months of the fixed term tenancy in order for the landlord's contractors to perform the work set out in the letter.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$600 plus the sum of \$50 in respect of the filing fee paid pursuant to section 49 for a total of \$650 such sum may be applied to future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced 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: November 28, 2014

Residential Tenancy Branch

