



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

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 sufficiently served by mailing, by registered mail to where the respondent carries on business. 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 a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on March 1, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$1525 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$762.50 and a pet damage deposit of \$300 at the start of the tenancy.

Law

Policy Guideline #16 includes the following statements: :

“Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

....

Criteria Considered When Awarding Damages

If a claim is made by the tenant for loss of quiet enjoyment, the arbitrator may consider the following criteria in determining the amount of damages:

- the amount of disruption suffered by the tenant.
- the reason for the disruption.
- if there was any benefit to the tenant for the disruption.
- whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant.”

The tenant seeks compensation for breach of the covenant of quiet enjoyment based on the following evidence:

- In early October 2014 the landlord commenced work on a major plumbing renovation in the landlord’s high-rise. The applicant is the only remaining tenant on the floor. She has been subjected to significant inconvenience caused by construction noises and dust. The work commences weekdays at approximately 7:30 a.m. and does not end to 4:30 p.m. There is also some work done on Saturdays. There is no disruptive work done on Sundays.
- The photographs show there is considerable dust and mess caused by the renovations. The hallways are very messy and dirty.

- On November 7, 2014 the landlord's contractors came into her rental unit and cut holes into a number of walls in order to access the plumbing. The holes in the walls have not yet been repaired.
- The landlord's contractors have returned around 4 or 5 times to continue with work. In some cases proper notice has been given. In other cases no notice or insufficient notice was given.
- The tenant testified that "harsh" construction noises and dust etc. have caused tiredness, headaches and a lack of rest and sleep.
- The tenant further testified it has adversely affected her son's performance at school. He does not wish to come home in the evening because of the poor conditions of the rental unit.
- The landlord requested access to the rental unit on December 16, 17 and 18 to complete the work but it was refused by the tenant.
- Witness 1 testified she is a co-worker of the tenant and the poor condition of the rental unit has caused poor job performance. The tenant has been late attending work on many occasions. She further testified the tenant's son is experiencing trouble with the law because of the poor conditions at home.
- The tenant testified she contacted the landlord in late October. The landlord proposed to pay compensation to the tenant in the form of a rent reduction of \$625 for each of November and December plus an additional \$100. She was initially prepared to accept this offer. However, her enjoyment of the rental unit was further reduced because of the work done inside her rental unit.
- The tenant has taken advantage of the landlord's proposal by paying \$625 per month less in rent for the months of November and December.

The landlord responded as follows:

- The tenant agreed to the \$625 reduction of rent for November and December and cannot now claim additional sum.
- The agreed reduction of \$625 for October and November is more than fair.

- The tenants claim for the reduced value of the tenancy has been exaggerated as the tenant has acknowledged she works two jobs and is seldom in the rental unit during the period the work was being completed. Further, her son would be going to school during that time.
- On several occasions the landlord offered other units to the tenant but she refused to move.
- The work is a major plumbing refit of the entire high-rise building that will benefit many tenants.
- The work should be completed with 7 to 10 days provided the tenant gives the landlord and it's contractors access.
- The holes in the rental unit were covered although the drywall work has not been completed.

Analysis:

After carefully considering all of the evidence I determined the tenant is entitled to compensation for the reduced value of the tenancy. However, the amount claimed is excessive and not supported by the evidence. I come to this determination based on the following reasons:

- The work done by the landlord is major and has resulted in significant disruptions that has lasted for approximately 2 ½ months.
- I am satisfied the construction noises have been significant and there has been a major disruption of the peaceful enjoyment of the rental unit. However, I have considered that the tenant and her son would have been outside of the rental unit at work or at school for much of the period of time the work was taking place.
- I do not accept the submission of the landlord that the tenant is precluded from making this claim because of the agreement relating to a reduction of rent for November and December. The agreement did not include a provision that the tenant releases the landlord from all further claims. The situation changed when the landlord started work in the rental unit.

- The tenant failed to prove the condition of the rental unit has caused medical problems. The tenant made the allegation but failed to provide supporting medical evidence. Further, I do not accept the submission that the landlord is responsible for her son's reduced performance at school or his alleged difficulties with the police.
- I am satisfied the work done by the landlord is necessary for the landlord to perform its duties under the Residential Tenancy and will result in significant benefits for many tenants. There is no evidence the landlord has been negligent in the performance of its duties.

I determined the tenant is entitled to compensation in the sum of \$2050. I have determined this sum based on the followings:

- The parties initially agreed to the sum of \$625 per month for each of the months of November and December at a time when the parties were only considering construction noises and mess outside of the rental unit. I determined this is a reasonable sum for the disruption from the exterior construction. Further, I determined the tenant is entitled to an additional \$450 in compensation for the month of October. Thus I determined the tenant has established a claim of \$1700 for reduced value of the tenancy caused by outside construction work.
- In addition the tenant is entitled to further compensation of \$350 for the problems in her rental unit for the period November 7, 2014 to the date of the hearing. I am satisfied this has resulted in further loss of enjoyment of the rental unit. The tenant denied the landlord access to complete the work. The tenant has liberty to re-apply for any period the landlord is in the rental unit completing the work. However, the tenant is not entitled to compensation because of the condition of the rental unit where the landlord wants to complete the work but is prevented from doing so by the refusal of the tenant to give the landlord access.

In summary I determined the tenant has established a claim against the landlord in the sum of \$2050 for the reduced value of the tenancy for the period from the first week of October to December 17, 2014. I ordered that this sum be partially satisfied by the \$1250 reduction of rent paid by the tenant for November and October. The balance owed by the landlord to the tenant is the sum of \$800.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$800 plus the sum of \$50 in respect of the filing fee paid pursuant to section 49 for a total of \$850 such sum may be deducted from 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: December 17, 2014

Residential Tenancy Branch

