



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

The matter was originally set for hearing on April 9, 2015. Both parties appeared at that time. I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. The arbitrator determined that it was appropriate to refer this matter to me because I had heard an earlier application involving the parties. The matter was set down for hearing on today's date. 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. The tenancy ended on February 28, 2015.

The landlord undertook renovation work during the course of the tenancy. On December 17, 2014 I awarded the tenant \$800 for the reduced value of the tenancy to the date of the hearing.

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.

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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 as the construction work continued for the period January 1, 2015 to January 122, 2015 based on the following:

- On two occasions during that period the landlord completed construction work for the entire day. The tenant was out for work during that period.
- On two to three occasions the landlord completed construction work for 1 to 3 hours.
- On two of the occasions the landlord gained entry without giving the tenant notice.

- The rental unit was properly cleaned after the construction work was completed.
- During other periods of time the tenant's enjoyment of the rental unit was significantly impaired because of construction taking place in the hallway and other units on the floor. On one occasion the landlord's agents worked to 11:30 p.m. Her enjoyment was impaired because of paint smells.
- During this period the tenant had an eye infection and was not able to go to work.
- On one occasions the cold water did not work and the tenant was unable to take a shower because the hot water was too hot.

Analysis

The Application for Dispute Resolution filed by the tenant seeks a monetary order in the sum of \$872.50. I dismissed the tenant's claim for compensation for the eye infection for recovery of the cost of the doctor's note, loss of wages and the doctor's prescription as the tenant failed to prove the eye infection was caused by the construction or the fault of the landlord. The doctor's note describes the eye infection but does not make a determination as to the cause.

I determined there has been a significant disruption in the enjoyment of the rental unit. The construction work was spread over 5 days. The landlord failed to give notice on two occasions. I have considered the fact the tenant was able to avoid much of the disruption by being at work while the contractors completed the work. The contractors properly cleaned the rental unit prior to the tenant coming home. However, the construction in the hallway and in other units disrupted the enjoyment of the rental unit and on one occasion the construction lasted until 11:30 p.m.. In the circumstances I determined the tenant is entitled to compensation in the sum of \$200.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$200 plus the sum of \$50 in respect of the filing fee for a total of \$250.

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: May 21, 2015

Residential Tenancy Branch

