



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMACON PROPERTY MANAGEMENT SERVICES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to 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 pursuant to section 65; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

The landlord did not attend this hearing, although I waited until 1133 in order to enable the landlord to connect with this teleconference hearing scheduled for 1100. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant attended with his agent who is a former neighbour.

The tenant testified that he personally served the landlord's agent with the dispute resolution package in early July. The tenant testified that his spouse was present. On the basis of this evidence, I am satisfied that the landlord was served with the dispute resolution package pursuant to sections 89(1)(b) of the Act.

Preliminary Issue – Mootness of Repairs Claim

The tenant informed me at the hearing that he vacated the rental unit on or about 31 July 2015. As the tenant is no longer occupying the rental unit, I decline to consider the issues of repairs to the unit as the issue is moot.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant and agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

The tenant and landlord entered into a tenancy agreement with respect to the rental unit on or about 1 January 2015 (the Second Tenancy). Prior to this, the tenant occupied a different unit within the same residential property (the First Tenancy). The First Tenancy began 1 January 2014. The unit for the First Tenancy was located on the second floor of the residential property. The rental unit is on the third floor of the residential property. The tenant testified that the Second Tenancy ended on or about 31 July 2015. The tenant's most recent monthly rent was \$950.00. I was not provided with a copy of either tenancy agreement.

The agent testified that the elevator for the residential property was broken over a period of three months. The tenant testified that he has a disability that makes using the stairs very difficult.

The agent testified that there is a courtyard area on the residential property located between the tenant's building and a second building. That area has a grassy area, a picnic table, and a basketball hoop. The tenant testified that his children were unable to use the yard area as needles from drug users were often left in the area, rendering the play area unsafe. The tenant testified that he was shown this common area when he viewed the residential property prior to entering into the First Tenancy.

The agent testified that the intercom that allows occupants of the building to be alerted to deliveries and guests was broken for the duration of the tenant's tenancy. The tenant testified that when he entered into the First Tenancy, the landlord's agent informed him that the intercom would be fixed in one week. The tenant testified that the lack of intercom was especially difficult for him as he received regular deliveries of medical supplies. The lack of intercom meant that he had to take unexpected trips to collect his medical supplies.

The agent testified that there are three washers and three dryers in the residential property. The agent testified that only one washer worked and two of the dryers. The agent testified that there would often be drug users in the laundry room washroom. The agent testified that she believed that these people were let in to the residential property by another occupant. The tenant testified that when he was viewing the residential property before entering into the First Tenancy the landlord's agent showed the laundry facilities to the tenant.

The tenant submitted that he experienced devaluation over the course of the First Tenancy and the Second Tenancy by 15%. The tenant did not provide any particular breakdown for this amount.

Analysis

The tenant sets out in his application that he seeks money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Paragraph 65(1)(f) of the Act allows me to issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

The landlord represented to the tenant that various amenities and facilities were available in the building. The tenant entered into the tenancy on the basis of the amenities and facilities. I find, that although not specifically set out in the tenancy agreement, the following amenities and facilities were implied terms of the First Tenancy agreement:

- intercom;
- coin laundry facilities;
- elevator; and
- yard.

I find that the intercom, coin laundry facilities, and yard were not implied terms of the Second Tenancy agreement as it by entering into the Second Tenancy the tenant was not induced by representations by the landlord's agents, but rather had a full understanding of the facilities available at that time.

By failing to provide various services and amenities, the landlord caused a devaluation of the tenancy. In this situation, the assessment of compensation is not a precise science; it is not even a calculation. I have provided reasons for my determination of the diminished value below. The amounts are particularized; however, I have also considered the global amount of the award in relation to the tenant's rent and determined that it is reasonable.

On the basis of the tenant's and agent's sworn and uncontested testimonies, I find that the landlord failed to provide an intercom as required pursuant to the First Tenancy agreement. The tenant testified that he has regular medical deliveries and that the lack of an intercom was particularly difficult because of this. On the basis of the tenant's special circumstances, I value this inconvenience at a rate of \$20.00 per month. I find that he has shown damages of \$240.00 for the lack of intercom for the duration of the First Tenancy.

The tenant and agent testified that at least one of the washers and two of the dryers were operational. I find that there was no representation made as to whether or not all of the laundry machines would be operational. I find that by providing at least one working washer and one working dryer the landlord has met the implied term of the First Tenancy and Second Tenancy agreements. I find that the tenant is not entitled to compensation for the broken machines.

On the basis of the tenant's and agent's sworn and uncontested testimonies, I find that the landlord failed to provide an elevator as required pursuant to the First Tenancy and Second Tenancy agreements. I find that the landlord failed to provide the elevator for a period of three months. The tenant testified that he is disabled and that the lack of elevator was particularly difficult for him on the basis of his disability. On the basis of the tenant's special circumstances, I value the loss of this service at a rate of \$85.00 per month. I find that the tenant has established an entitlement to a past rent abatement of \$255.00.

On the basis of the tenant's and agent's sworn and uncontested testimonies, I find that the landlord failed to provide a yard suitable for the use it was intended and as was required by the First Tenancy agreement. The yard was not suitable as it was littered with used drug paraphernalia. As a result of the landlord's failure to provide a yard suitable for use as a yard, the tenant experienced a diminished value in the tenancy as his children could not play in the yard. I value the diminished value of the play area at \$10.00 per month. I find that tenant has established an entitlement to \$120.00 for the duration of the First Tenancy.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$615.00 under the following terms:

Item	Amount
Loss of Elevator	\$255.00
Loss of Yard	120.00
Loss of Intercom	240.00
Total Monetary Order	\$615.00

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this 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 subsection 9.1(1) of the Act.

Dated: September 17, 2015

Residential Tenancy Branch

