



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Heritage Apartments / Bay Street Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, OLC

Introduction

This hearing concerns an application by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and an order instructing the landlord to comply with the Act, Regulation or tenancy agreement. Both tenants attended and gave affirmed testimony. The landlord did not appear.

The tenants testified that the application for dispute resolution and the notice of hearing (the “hearing package”) was served by way of registered mail. Evidence submitted by the tenants includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was “successfully delivered” on August 06, 2015. Based on the documentary evidence and the affirmed / undisputed testimony of the tenants, I find that the landlord has been duly served in accordance with section 89 of the Act which addresses **Special rules for certain documents**.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is located on the 5th storey of a 23 storey residential building.

There is no written tenancy agreement in evidence for this tenancy which began in 1993. Monthly rent of \$975.00 is due and payable in advance on the first day of each month.

By way of notice dated March 30, 2015, the landlord informed all residents in the building of upcoming “roof repairs, exterior cleaning, painting and concrete repairs from swing stage on the East and West elevations.” More specifically, the work was described as “localized concrete repairs, sealant replacement, building painting, railing painting and roof repairs.” The landlord further instructed that “Mobilization and setup of the site” was to begin April 01, 2015, and commencement of the project was scheduled for April 06, 2015. Working hours were generally to be from Monday to Friday, 8:00 a.m. to 5:00 p.m., although residents were advised that they should “expect to hear construction noise at times beginning from 7:30 a.m.” By notice dated April 27, 2015, residents were also informed that work on Saturdays between 9:00 a.m. and 4:00 p.m. would be limited to painting.

Documentary evidence that the tenants formally addressed their renovation - related concerns to the landlord includes a letter dated July 17, 2015. In their letter the tenants set out a range of concerns which includes, but is not limited to “constant noise from incessant repairs and continuous drilling since work began on April 13th, 2015.” The tenants also claim a “Lack of use of pool and surrounding facilities.” Further, in their letter the tenants state as follows:

We seek retroactive compensation for our loss of quiet enjoyment equal to one-third of our rent (\$325.00) from the time of the beginning of the work, and up to and including such time as ALL the intended exterior work on the building at [address] is completed, and we have full use of all amenities.

In response, by undated general notice addressed to all residents in the building (apparently faxed from the landlord’s office to the building on July 22, 2015), the landlord stated, in part:

When the repairs are completed the landlord will review all requests and advise tenants at that time. No decisions will be made until that time.

We understand your frustrations. Please be aware we are doing our best and we are sorry for any inconveniences this may have caused.

Analysis

At the outset, the attention of the parties is drawn to certain statutory provisions which pertain directly to the circumstances of this dispute.

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 27 of the Act addresses **Terminating or restricting services or facilities**, in part:

27(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 28 of the Act addresses **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.

Further, Residential Tenancy Policy Guideline # 6 speaks to "Right to Quiet Enjoyment" in part:

Temporary discomfort or inconvenience does not constitute a basis for 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 the disruption to the tenant in making repairs or completing renovations.

- **Claim for damages**

In determining the amount by which the value of the tenancy has been reduced, the Arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

Notwithstanding the landlord's "right and responsibility to maintain the premises," based on the documentary / digital evidence and the affirmed / undisputed testimony of the tenants, I find that the tenants have met the burden of proving that there has been a breach of their right to quiet enjoyment, that there has been a temporary termination / restriction of their access to the pool, and that the value of the tenancy has therefore been reduced.

For the period beginning May 01, 2015 and ending October 31, 2015, I find that the tenants have established entitlement to compensation totalling **\$1,425.00**, which is calculated as follows:

Initial 3 full calendar months of renovation activity in 2015:

\$150.00: May
\$150.00: June
\$150.00: July

Additional 3 full calendar months of renovation activity in 2015:

\$325.00: August
\$325.00: September
\$325.00: October

The graduated increase in monthly compensation reflects what I find is an enhanced level of the breach of the right to quiet enjoyment, which arises from the extended and continuous period of disruption. In this particular case, I also note that the tenants' formal, documented concern was initiated by letter to the landlord dated in July 2015.

I order that the tenants may recover the total amount of \$1,425.00 by way of withholding payment of rent due on November 01, 2015 in the full amount of **\$975.00**, and by way of withholding **\$450.00** from rent due on December 01, 2015.

Conclusion

The tenants have been ordered that they may withhold payment of specific amounts of rent for November and December 2015.

In the meantime, the landlord is hereby **ORDERED** to inform building residents of the presently anticipated completion date for all building renovations.

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: October 14, 2015

Residential Tenancy Branch

