



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ottmann Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This was a hearing with respect to the tenant's application for a monetary award. The hearing was conducted by conference call. The tenant and the landlord's representatives called in and participated in the hearing

Issue(s) to be Decided

Is the tenant entitled to a monetary award as compensation for his loss of quiet enjoyment of the rental unit and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Vancouver. I was not provided with a copy of the tenancy agreement, but I was advised that the tenancy began in April, 2010 and the current monthly rent is \$1,055.00. The tenant testified that he experienced problems with the electrical service to the rental unit beginning in the fall of 2015. The tenant said the problems were caused by an electrical bus panel in the rental property. The problem continued until February, 2016. The tenant said that in December, 2015 he lost heat in his apartment. The problem was electrical; the landlord replaced his thermostat and the problem was resolved.

The tenant said that his electrical supply began fluctuating over the next week; by that he meant that the voltage would drop, or the power became intermittent, causing lights to flicker and electronic devices to reset. The tenant said that the intermittent power caused the smoke detector to start beeping. The smoke alarm would sound repeatedly during the night, interfering with the tenant's sleep. The tenant provided a typed chronology of the power fluctuations and outages and the consequences over a period of four days. The power fluctuations and outages, disturbed his sleep, caused him to be late when his alarm failed, prevented him from cooking and prevented him from using

appliances, computers, DVD, TV and other electronics. The power disruption affected the tenant's refrigerator and he testified that he lost a couple of hundred dollars' worth of food due to spoilage. In a letter sent on January 13, 2016, the tenant asked the landlord to waive his obligation to pay rent for February as compensation. The landlord replaced the tenant's refrigerator. The electrical problem was repaired on February 16, 2016.

The tenant applied for a monetary award; he requested payment of the following amounts, including amounts for loss of quiet enjoyment and for a rent reduction:

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|---|------------|
| • December, 2015 20% RR and 50 for quiet enjoyment: | \$422.00 |
| • January, 2015 50% RR and 50% for quiet enjoyment: | \$1,055.00 |
| • Replacement bicycle light: | \$67.14 |
| • Spoiled groceries: | \$200.00 |

Total:	\$1,744.14
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The tenant's claim for the bicycle light was made because the power fluctuations damaged the charging system for the light. The tenant claimed for the cost to replace the light.

The landlord's representative testified that it was not until the tenant's refrigerator failed and the replacement fridge also failed to work that the landlord learned that there was an electrical problem in the building. The problem affected the rental unit and the unit occupied by the landlord's manager. The electrical bus system was the source of the problem, but because the parts required to repair the system were obsolete, unique new parts had to be manufactured. They were installed as soon as completed and service was then restored.

The landlord's manager also had power problems in her apartment beginning in December. She said that initially they were of short duration and they were not terribly inconveniencing. In January the problem worsened. They occurred both day and night and sometimes lasted for several hours. The power failures did not affect all electrical circuits. Some outlets continued to function and she said that she was able to switch some electrical devices to the working outlets.

The landlord's representative testified that the electrical problem was not due to any negligence on the part of the landlord and there was no delay by the landlord in making repairs. The landlord's position is that it has done everything in its capacity to repair the

electrical problem in the timeliest fashion possible and in these circumstances the landlord should have no obligation to compensate the tenant. The landlord's representative said that he offered the tenant the use of a nearby apartment at no cost in an effort to provide a solution to the disruption experienced by the tenant due to the intermittent power supply. He also offered the use of another refrigerator not affected by the electrical fluctuations to store the tenants' frozen items. The tenant declined the landlord's offers. He advised the landlord that he was not prepared to abandon his apartment because the landlord failed to provide services.

Analysis

I accept that the tenant's use and quiet enjoyment of the rental unit was affected by the power interruptions and fluctuations. The landlord's position is that it was not negligent and did everything it could to have the power restored at the earliest possible date and absent fault on the part of the landlord it should not be liable to compensate the tenant.

Fault is not a requirement for every finding of liability under the *Residential Tenancy Act* or pursuant to common law principles that apply to landlord and tenant relationships. The landlord was obliged under the tenancy agreement to provide the tenant with use and enjoyment of the rental unit. This included the provision of electricity. I find that the deprivation of that service, or the intermittent provision of that service over an extended period, in this case for more than a month does constitute a compensable loss of use and enjoyment of the rental unit. I do not agree that the tenant is entitled to compensation for spoiled food or for the cost to replace his bicycle light. The landlord is not the tenant's insurer and without proof that the tenant's losses were due to some negligence on the part of the landlord, the landlord is not responsible for damage or loss of the tenant's goods and these claims are denied.

The tenant has requested both a rent reduction and a monetary award for loss of quiet enjoyment. He requested compensation equivalent to 40% of his rent for December and 100% of the rent for January. I find that the tenant is entitled to a monetary award to compensate him for the loss of quiet enjoyment that he suffered, but not in the amount claimed. If I were to award the tenant the full amount of his rent for January that would be tantamount to a finding that the tenancy during that period was valueless. I do not agree that the electrical problems were so severe that the rental unit became unliveable and the tenancy of no value. I note as well that the tenant was offered the temporary use of a nearby bedsitter. The tenant was not obliged to use the offered unit and the offer did not require him to abandon his apartment as the tenant suggested. The tenant complained that the power fluctuation interfered with his sleep and the tenant could have used the offered accommodation as a means of mitigating his loss of

quiet enjoyment and the disruption of his sleep. The tenant was not obliged to accept the landlord's offer, but I find that this is a factor that I may take into account when assessing the appropriate award to the tenant.

Damages for loss of quiet enjoyment are difficult to calculate even though the loss is real. An award will therefore necessarily be somewhat arbitrary. I find that an award of based on a percentage of the monthly rent for the periods in question is appropriate. For December I award the tenant 20% of the monthly rent or \$211.00 for loss of quiet enjoyment. For January, when the problems became more severe and disruptive I award the sum of \$527.50, being 50% of the monthly rent for a total award of \$738.50. The tenant is entitled to recover the \$100.00 filing fee for his application for a total award of \$838.50. All other claims by the tenant are dismissed without leave to reapply.

Conclusion

The tenant has been awarded the sum of \$838.50 and I grant an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court. Alternatively the tenant may deduct the said sum from a future instalment of rent due to the landlord.

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 17, 2016

Residential Tenancy Branch