



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METCAP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, AAT, RR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via personal service on August 4, 2016. The landlord's counsel (the landlord) confirmed receipt of the tenant's notice of hearing and the submitted documentary evidence in this manner. The tenant stated that the landlord was served with the tenant's late documentary evidence on September 14, 2016. The landlord confirmed receipt of the tenant's late evidence and disputed that portions of the documentary evidence were highly prejudicial and should be excluded from consideration for this hearing. The tenant provided no objections. I find that the first 5 pages (email communication between the parties) and the last page (a letter dated August 4, 2016) from the landlord shall be excluded from consideration in this hearing. The remaining 3 pages of copies of notice(s) issued by the landlord may be considered.

As both parties have attended and have confirmed receipt of the submitted documentary evidence, I find that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset it was clarified with both parties that the tenant was only seeking a monetary claim of \$500.00 for the loss of wages due to the landlord's renovation and repairs.

At the end of the hearing the landlord's counsel requested that the mailing address be changed to deliver the decision to the landlord's counsel. As such, the mailing address for the landlord shall be updated with that provided by counsel during the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss of wages and recovery of the filing fee?

Background and Evidence

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

This tenancy began on December 1, 2013 on a fixed term tenancy ending on May 30, 2014 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated November 18, 2013. The monthly rent was \$1,300.00 and a security deposit of \$650.00 was paid on November 15, 2013.

The tenant seeks a monetary claim of \$500.0 for the loss of wages which is equal to 2 days of work at \$50.00 an hour.

The tenant provided affirmed testimony that the rental building is currently undergoing major construction to the building envelope and that access to his balcony is cut off. The tenant also states that there is severe daytime noise and dust which has caused him to suffer from a loss of quiet enjoyment due to physical exhaustion which has made him lose two days of wages. The tenant states that he suffers from poor air quality due to the construction.

The landlord disputed the tenant's claims stating that the landlord had provided notice in a letter dated April 15, 2016 explaining the scope of work for the renovations of the building envelope. The tenant confirmed receipt of this notice. The submitted copy states in part,

Detailed Project Information

Corridors & Lobbies: April 15-December 2016

Entrance Upgrades: June 15, 2016 to February 15, 2017

Envelope & Balcony Repairs-May 15, 2016 to May 15, 2017

The landlord is intending to complete necessary upgrades to the interior and the exterior of the building. The work will be scheduled accordingly. The work will be done between the hours 9am to 5pm except Holidays and Sundays to mitigate any interference.

Impact on Tenants

This type of work will generate noise from possible saw cutting, hammering and drilling. It will also create dust from using this similar type of equipment and odors from the painting. We will take measure to do our best to prevent as much dust as possible during work. More detailed schedule per building to follow. If you have any questions, please contact the Property or Resident Manager.

Both parties confirmed that extensive repairs were needed to the rental property in order for the landlord to properly maintain it as a result of an engineer's report that the exterior of the building was degrading.

Both parties agreed that the construction was scheduled between 9am to 5pm, Monday to Friday. The tenant stated that he normally worked Monday to Friday between 7am to approximately 4pm and that he was impacted by the construction for approximately 1-2 hours at the end of each day. The landlord provided evidence that the tenant would be affected for approximately a 4 month period ending at the end of October. The landlord stated that the tenant has failed to provide any evidence that there is any air quality issues and that the tenant has not provided any evidence to support his claim that he suffered a loss of wages.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case the tenant has claimed that he suffered a loss of wages due to poor air quality and a loss of quiet enjoyment. The tenant stated that the construction caused him to suffer a loss of sleep making him exhausted which caused him to not work. The landlord has disputed this stating that the tenant has not provided any evidence to support his claim of poor air quality and that there was any loss of wages.

Section 32 of the Act states that the landlord must provide and maintain the residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and having regard to the age, character and location of the rental unit.

Both parties have confirmed that the renovations were necessary due to an engineer's report that the exterior of the building was degrading.

I find based upon the tenant's evidence that the tenant has failed to provide sufficient evidence to satisfy me that there was poor air quality causing him to be ill and suffer a loss of wages. Both parties confirmed that the tenant was only impacted for approximately 1-2 hours in the late afternoon. The tenant has failed to provide sufficient evidence to show that the construction caused him to lose sleep and that there was any loss of wages.

Conclusion

The tenant's application is dismissed.

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: September 26, 2016

Residential Tenancy Branch