



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LARLYN PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC RR FF

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (the "Application") under 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, for a rent reduction for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee.

The tenant attended the teleconference hearing and gave affirmed testimony. During the hearing the tenant was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant testified that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on August 19, 2016 and were successfully delivered on August 22, 2016. The online registered mail tracking website information supports the tenant's testimony. The registered mail tracking number has been included on the cover page of this Decision for ease of reference. Based on the above, I find the landlord was served as of August 22, 2016 the date the registered mail was successfully delivered.

Preliminary and Procedural Matter

The tenant testified that the landlord agent changed to a new management company as of October 1, 2016 and as a result, she requested to limit her claim until September 30, 2016 against the respondent property management company, L. P. M. L. By agreement of the tenant applicant, the personal name of the property manager was removed from the tenant's Application and the name of the landlord agent company was left

remaining. The tenant also indicated that she is not claiming against the new property management company, D.P, that took over as of October 1, 2016.

Issue to be Decided

- Is the tenant entitled to a monetary order under the *Act* for either a rent reduction or money owed for compensation for damage or loss under the *Act*, regulation or tenancy agreement, and if so, in what amount?

Background and Evidence

According to the tenant, the tenancy began on October 1, 2014. Monthly rent was initially \$745.00 per month and increased during the tenancy to \$775.00 per month. The tenant remains in the rental unit.

The tenant's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Retroactive rent reduction for loss of quiet enjoyment for time period of March 1 – June 31, 2016 (30% of \$775.00 monthly rent = \$232.50 X 4 months)	\$930.00
2. Rent reduction for loss of quiet enjoyment for time period of July - September 2016 (50% of \$775.00 monthly rent = \$387.50 per month X 2 months)	\$1,162.50
TOTAL	\$2,092.50

Regarding item 1- the tenant testified that the landlord property management company breached her right to quiet enjoyment between March 1 – June 31, 2016 due to construction noise, loss of common areas, and loss of water utilities. The tenant testified that she is claiming for a retroactive rent reduction of 30% from March 1 to June 31 of 2016, which totals \$930.00 as described in the table above.

Regarding item 2 – the tenant testified that the landlord property management company further breached her right to quiet enjoyment from July 1 to September 30, 2016 due to increased construction noise, ongoing loss of common areas, and ongoing loss of water utilities. The tenant testified that she is claiming for a retroactive rent reduction of 50% from July 1 to September 30, 2016 which totals \$1,162.50 as described in the table above.

The tenant provided in evidence photographs and many pages of documentary evidence in support of her monetary claim.

Analysis

Based on the undisputed documentary evidence and unopposed testimony of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

As the landlord was served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the landlord. Section 28 of the *Act* applies and states:

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.**

[my emphasis added]

As a result, and after considering the tenant's documentary evidence, testimony and reasonable monetary claim, I find the landlord breached section 28 by violating the tenant's right to quiet enjoyment. Therefore, I find the tenant's application is fully successful in the amount of **\$2,092.50**.

As the tenant's application was successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00**.

I grant the tenant a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenant in the amount of **\$2,192.50** comprised of \$2,092.50 for items 1 and 2, plus the recovery of the cost of the filing fee in the amount of \$100.00.

Conclusion

The tenant's application is successful.

The tenant has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenant in the amount of \$2,192.50. The tenant must serve the landlord with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 24, 2016

Residential Tenancy Branch

