



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BALFOUR PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on June 30, 2016 for monetary compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement.

An agent for the corporate Landlord (the “Landlord”) and the Tenant appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Application but denied receipt of the Tenant’s documentary evidence which the Tenant said he served personally to another agent of the corporate Landlord. The Landlord confirmed he had not provided any evidence prior to this hearing.

The Tenant’s documentary evidence consisted mainly of evidence showing his weight, size, and back problems he was having. As a result, I allowed the hearing to proceed with the Tenant’s documentary evidence and I informed the parties that I would adjourn the hearing if there was a requirement for the Landlord to be served with this evidence. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Background and Evidence

The parties agreed that this tenancy for a rental unit in a two floor residential building started on June 1, 2013 for a fixed term of one year which then continued on a month to month basis. Rent is payable in the amount of \$935.00 on the first day of each month.

The Tenant claims \$341.00 from the Landlord for disturbance he underwent during the roof replacement of the building. The Tenant testified that the work started in the middle of June 2016 and finished a few days into July 2016. The Tenant stated that he works night shifts and therefore when he went to sleep during the day, the banging and construction noise from the roof replacement stopped him from sleeping and exacerbated his medical problems.

The Tenant submitted that he is tall and has back problems for which he uses a special mattress to sleep on. Therefore, despite being made aware of the roof work that was going to take place five days prior to the work commencing, he was not able to make alternative arrangements as he didn't have anywhere else to go to.

The Tenant stated that all the other rental units in the building have their own basement portion that residents could escape to but his rental unit does not and therefore he was exposed to all the noise which took place during the day time.

The Landlord denied the Tenant's claim stating that the building roof had been leaking and had been patched up by the owner until the Landlord advised the owner to replace it as they had an obligation to provide all residents with living accommodation that complies with the Act. The Landlord stated that they mitigated any disturbance to residents by ensuring the residents, including the Tenant, were given prior written notice before the work took place over the course of approximately two weeks.

The Landlord acknowledged there was construction noise during the replacement of the roof but testified that the noise was restricted to normal working hours and within hours that complied with the by-laws. The Landlord said that most residents in the building sleep at night and therefore the work could not be completed at night to allow the Tenant to sleep in the day as this would have then contradicted the noise by-laws.

Analysis

Under Section 7 of the Act a party who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss.

Section 67 of the Act provides that if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may determine the responsible party pay compensation to the applicant.

When a party makes a claim for damage or loss under the Act, the burden of proof is on the applicant to prove the existence of the loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the Arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have carefully considered the evidence before me in this case and I apply the above test in making findings on the Tenant's monetary claim as follows. Firstly, I find there is sufficient evidence before me that the Tenant experienced a loss of peaceful and quiet enjoyment of the rental unit for approximately two weeks in June 2016 as a result of the roof being replaced. This was mainly because the Tenant sleeps in the rental unit during the day time due to night shift work. However, in this case, the Tenant must prove that the loss he experienced was the result of the Landlord's failure to comply with the Act. In this case, I find the Tenant has failed to do so.

This is because there is insufficient evidence before me to show that the Landlord did anything or failed to do anything that breached the Act. Section 32(1) of the Act requires a landlord to maintain a rental unit that complies with the health, safety and housing standards required by law and make it suitable for occupation by the tenant.

Accordingly, I accept the undisputed evidence of the Landlord that the roof was required to be replaced and that a failure of the Landlord to do this may have resulted in a breach of the Act by the Landlord and made them subject to ramifications. Therefore the work was imperative and had to be carried out. I find the Landlord mitigated disturbance by having the roof replacement work carried out during regular working hours in compliance with local by-laws so as to minimize noise levels to the majority of residents who do not work at night. I also find the Landlord put the Tenant on sufficient notice of the work to allow the Tenant time to make alternative arrangements even though the Tenant did not have the means or ability to go anywhere else.

While I sympathize with the Tenant's experience he had during the time the repair work was being carried out in the day, the fact that the Tenant works night shift and was caused excessive disturbance to his sleep does not result in mandatory compensation payable by the Landlord. Compensation would only be payable if the Landlord carried out this work contrary to the Act, which in this case is unproven.

Conclusion

Based on the foregoing, I find the Tenant has failed to prove the Landlord breached the Act and is therefore not entitled to his monetary claim. As a result, I dismiss the Tenant's Application without leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 03, 2017

Residential Tenancy Branch