



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation for damage or loss under the Act.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The landlord confirmed receipt of the tenant's evidence. The tenant stated that they did not receive the landlord's evidence package. The landlord indicated that their evidence was sent by registered mail on January 27, 2017. The tenant replied that have not check their mail for a week.

In this case, the landlord sent their evidence in accordance with the Act. It was the tenant's responsibility to ensure their mail was checked prior to the hearing to ensure they received the evidence. Therefore, I have allowed the landlord's evidence to be submitted as evidence for the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary issue

At the outset of the hearing counsel indicated that the tenant has named the wrong person as the Respondent, as the named party is an agent for the landlord. Counsel submits the application should be amended to landlord's company name. Counsel submits they are representing the landlord.

In this case, I find it appropriate to amend the style of cause by removing the landlord's agent and naming the landlord.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation for damages or loss?

Background and Evidence

The tenancy began on October 1, 2016. Rent in the amount of \$1,460.00 was payable on the first of each month. A security deposit of \$730.00 and a pet damage deposit of \$730.00 were paid by the tenant.

The tenant claims as follows:

a.	Return of six month of rent	\$8,760.00
b.	Filing fee	\$ 100.00
	Total claimed	\$8,860.00

The tenant testified that they seek the return of six months of rent for loss of quiet enjoyment. The tenant stated that when they moved into the rental unit they knew it was under renovations. The tenant stated that they were fully prepared to live with the renovation for a 4 month period.

The tenant testified that it started out badly as they did not get their blinds for two months. However, their main concern was their safety as the doors to the building were left open and the construction workers would come and go. The tenant stated that they like to keep their door to the apartment open.

The tenant testified that they were not aware of the extension of the renovation as they were informed that it was the exterior balcony; however, the scope of the project was much bigger. The tenant stated that they saw workers outside on their balcony with hazmat equipment and there were two bags left on their balcony marked asbestos, the tenant stated they were concern for their health.

Counsel for the landlord cross-examined the tenant.

The landlord's agent testified that the tenant was aware of the renovations when they entered into the tenancy agreement, as there was scaffolding on the exterior of the

building and there is a large project board in the lobby which informs the tenants of the work being performed.

The landlord's agent testified that they have not received any complaints from the tenant. The agent stated that they have addressed concerns that they have been made aware of.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the tenant seeks compensation for return of all rent they paid for six months due to loss of quiet enjoyment; however, the tenant has not lived in the premises for six months.

Further, the tenant knowingly entered into a tenancy agreement while the premises were under renovations and was prepared to live with the renovation for four months, it is not unreasonable that the scope of the project may change based on the issues that may arise during construction.

I find the tenant's claim for return of all rent is unreasonable; the tenant did not lose any space that was negotiated at the start of the tenancy. The tenant did not notify that landlord in writing about any of their concerns. A party cannot be responsible if not notified that a problem existed.

Further, the evidence of the tenant was that they felt unsafe due to the construction workers coming and going, as they like to leave their rental door open. I find that this is

a personal choice of the tenant as they could simply could close the door and lock it. The landlord is not responsible for personal choices made by a tenant.

I also find the tenant concerns for asbestos is unsupported. There was no evidence that the tenant was in any danger from the bags left outside on balcony for a short period. The bags were sealed. I also find it highly unlikely that a Hazmat company would leave any material out jeopardizing the health or safety of any of the occupants.

Based on the above, I find the tenant has failed to prove a violation of the Act, or tenancy agreement by the landlord. Therefore, the tenant's claim for damages must be dismissed.

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: February 16, 2017

Residential Tenancy Branch