



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IHM POOL XIV LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, MNDC, PSF, OLC, 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 requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order of possession of the rental unit pursuant to section 54;
- 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. Both parties confirmed that the tenant served the landlord with the notice of hearing package via Canada Post Registered mail on February 24, 2017. The tenant clarified that the first of the two documentary evidence packages was not served as it was incomplete. Both parties confirmed that the 2nd submitted documentary evidence was served to the landlord. Both parties confirmed that the landlord served to the tenant their documentary evidence package. No issues regarding service were raised by either party. As both parties have attended and were ready to proceed, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

It was clarified with both parties that the tenant's request for an order of possession was made in error as the tenancy continues. As such, no further action is required for this portion of the tenant's application. It was also clarified by the tenant that he only seeks

monetary compensation for the loss of use of the balcony and for a rent reduction for future rent until the end of their tenancy.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the loss of use of the balcony, future rent reduction for loss of use 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 July 1, 2016 on a fixed term tenancy ending on June 30, 2017 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated May 30, 2016. The monthly rent is \$1,895.00 payable on the 1st day of each month. A security deposit of \$947.50 was paid on June 30, 2016. A condition inspection report for the move-in was completed by both parties on June 30, 2016.

The tenant seeks a monetary claim of \$11,370.00 which consists of:

\$7,580.00	Loss of Use of Balcony (July to February)
\$3,790.00	Future Rent Reduction until end of tenancy

The tenant provided affirmed testimony that he has suffered the loss of use of the balcony due to construction and seeks compensation. The tenant stated that he was not informed when he signed his tenancy agreement that there would be construction. The tenant stated that had he known, he would not have entered into the agreement.

The tenant has also provided a copy of a floor plan for his affected unit which states that rent of \$1,895.00 includes 1,030 square feet. The landlord provided undisputed testimony that the affected balcony area was approximately 80-90 square feet.

The landlord's counsel (the landlord) disputed the tenant's claim stating that the tenant was already residing in the rental property as a sub-tenant in another unit for at least 3 months prior to entering into the signed tenancy agreement. The landlord stated that the notice(s) of construction plan to all residents were given to all residents and posted as early as December 21, 2015 throughout the property for all to see. The landlord

claimed that it would be highly unlikely for the tenants to have not noticed any of the posted notices throughout the property.

The tenant also made reference to the loss of quiet enjoyment, but failed to disclose how much or at what proportion that this would entail of the total \$11, 370.00 claim.

The tenant provided direct testimony that the noise is so excessive that that tenant's wife had to exit the rental property. The tenant also stated that a loss of quiet enjoyment occurred on 5 different occasions.

No Water for 1 day on July 31, 2016 due to construction.

Loud Noise at 10:30pm on September 28, 2016, a panel falling.

No sunlight for 8 months.

Plumbing noises for 21 days.

A panel of glass broke against the balcony door.

The landlord disputes that this claim stating that a temporary discomfort does not constitute a loss of quiet enjoyment as necessary renovations/repairs are made to the property and that all residents were informed in advance of the issue.

The landlord disputes this claim stating that a panel had fallen at 10:30pm at night after construction had stopped earlier. The landlord confirms that this occurred, but that no work was occurring that it was a temporary discomfort that did not reoccur.

It was clarified with both parties that the tenant was arguing that the mesh scaffolding blocked direct sunlight into the rental property. The landlord argued that there was still sufficient light as the mesh scaffolding still allowed light through.

It was clarified by both parties that the tenant referenced that he could not be home for 21 days. The landlord disputed this claim as the tenant has not provided any specific details of being unable to occupy the rental property for 21 days.

It was clarified with both parties that a panel of glass broke against the balcony door on one occasion due to mishandling. The landlord argues that this was a workplace accident that has not reoccurred. The landlord argues that this is a temporary discomfort to the tenant.

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 stated that his monetary claim of \$500.00 per month for the loss of use of the balcony is based upon a calculation. However, the tenant has failed to explain his calculation or how he came to the \$500.00 per month.

The landlord also stated that the Residential Tenancy Branch must balance the principles of necessary repairs. The landlord provided undisputed affirmed evidence that this is a 50 year old property undergoing its' first major renovation and that the construction is necessary action for the landlord as a duty to maintain the property. The landlord stated that although longer than estimated the tenants are undergoing a "temporary discomfort" to realize an updated rental property.

In this case both parties have confirmed in their testimony that there was a loss of use of the approximately 80-90 square foot balcony. I find that the tenant has failed to establish a claim for the amount sought. The landlord provided undisputed affirmed evidence that the tenant had prior knowledge of proposed renovation/repair work. The tenant has failed to provide sufficient evidence to satisfy me of an actual amount for the compensation sought for the loss of use of the balcony. However, both parties have confirmed that a loss did occur and I find that the tenant is paying monthly rent for the agreed upon tenancy without the benefits of the included balcony. As such, I find that the tenant is entitled to a nominal award of \$50.00 per month. I find this nominal award based upon the approximate 1,030 total square footage minus the loss of the approximate 90 square feet of the balcony (total square footage of 1,030 divided by monthly rent of \$1,895.00 = \$0.54/per square foot), which equal \$48.91. In approximating this I round up to \$50.00 per month. I grant the tenant a monetary claim of \$500.00 based upon the loss of use from July 2016 to the date of this decision inclusive for 10 months.

As for the tenant's request for an ongoing rent reduction, I decline to make any such order and dismiss this portion with leave to reapply. I find that this is pre-mature as

neither party has provided sufficient evidence of how long the future construction may or may not take.

On the issue of loss of quiet enjoyment, I find that the tenant has failed. The tenant has provided 5 examples of a loss of quiet enjoyment. The tenant has failed to clarify what if any of the monetary claim is attributed to the loss of quiet enjoyment and in the absence of that I find that the tenant has failed to provide sufficient evidence of an actual amount sought for the loss of quiet enjoyment. I find that the tenant has failed to provide sufficient evidence of 21 days of recurring losses of quiet enjoyment due to plumbing noises and that the other 4 incidents which were not recurring, but were temporary discomforts as part of the construction. This portion of the tenant's claim is dismissed without leave to reapply.

As the tenant has only been partially successful, I grant the tenant recovery of \$50.00 for his filing fee.

Conclusion

The tenant is granted a monetary order for \$550.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: April 4, 2017

Residential Tenancy Branch