



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH 415 & 435 MICHIGAN APARTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

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Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated April 8, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that rent be reduced, retroactive to January 1, 2017;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant attended the hearing on his own behalf. The Landlord was represented at the hearing by G.S., who was assisted by K.H., legal counsel. All parties giving testimony provided a solemn affirmation.

The Tenant testified the Landlord was served with the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, by registered mail on April 13, 2017. In support, the Tenant submitted a copy of an envelope addressed to the Landlord, date-stamped April 13, 2017. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. Accordingly, I find the Landlord is deemed to have received the Tenant's Application package on April 18, 2017.

The Landlord submitted documentary evidence in response to the Tenant's Application. The Landlord's documentary evidence was served on the Tenant by registered mail on April 28, 2017. The Tenant acknowledged receipt. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Landlord's documentary evidence package was received by the Tenant on May 3, 2017.

No further issues were raised with respect to service or receipt of the above documents. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant's Application disclosed only that he was seeking "other" relief. However, the Details of the Dispute section, and the written submissions of the Tenant, are clear that the Tenant was seeking a rent reduction retroactive to January 1, 2017. It is also clear, as indicated on the Monetary Order Worksheet submitted, that the Tenant sought to recover the \$100.00 filing fee paid to make the Application. Pursuant to section 64 of the *Act*, and with the agreement of the parties, I amend the Tenant's Application to include a claim for a rent reduction and to recover the filing fee.

In addition, the incorrect corporate name of the Landlord was indicated on the Tenant's Application. Pursuant to section 64 of the *Act*, and with the agreement of the parties, I amend the Tenant's Application to reflect the correct corporate name of the Landlord.

Issue to be Decided

1. Is the Tenant entitled to an order that rent be reduced?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted into evidence a copy of the tenancy agreement between the parties. It confirmed that total rent is \$1,510.00 per month, including parking, and is due on the first day of each month. The Tenant paid a security deposit of \$735.00, which the Landlord holds.

The Tenant sought a "significant reduction in rent" retroactive to January 1, 2017, and suggested during the hearing that a 50% reduction would be appropriate. The Tenant testified that he moved into the rental unit on July 1, 2016, in part because of the ocean view. Soon after, in August or September 2016, scaffolding and a mesh covering were erected, obscuring his view and preventing access to his balcony. The scaffolding and mesh are still in place. The Tenant testified he is only seeking a rent reduction retroactive to January 1, 2017, because he recognizes that construction takes time, and that the Landlord has an obligation to repair and maintain the property.

The Tenant also referred to a notice to the residents of the building, included with his documentary evidence. It advised tenants that the "abatement phase" would take "two or three weeks" to complete. The Tenant suggested it was his understanding that this was the timeframe during which work would be completed. The Tenant is otherwise satisfied with the condition of the rental unit.

In reply, and on behalf of the Landlord, K.H. submitted that a 50% reduction is excessive. She stated the Tenant was aware of the construction to be completed at the beginning of the tenancy. She referred me to Schedule "A" to the tenancy agreement, included with the

Landlord's documentary evidence (the "Schedule"). The Schedule, which was signed by the Tenant, advised of anticipated "maintenance, repairs and capital work" that included "[c]orridor, lobby and entrance refurbishment, security upgrades, elevator modernization, painting building envelope, balconies, unit renovations, energy efficient systems and mechanical equipment replacement." The schedule advised that work was "expected to take 24 to 36 months". K.H. submitted that the Tenant entered the tenancy with a full knowledge and understanding of the scope of the project.

G.S. also provided oral testimony on behalf of the Landlord. He advised that the Tenant received a credit of \$1,510.00 on February 21, 2017 (on account of February 2017 rent), and a credit of \$487.16 on March 16, 2017 (on account of rent from March 1-10, 2017). The Tenant also provided the Tenant with hotel accommodation for this period, and gave him gift cards and other benefits as an acknowledgment of the inconvenience caused by the construction.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 65 of the *Act* permits an arbitrator to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. As the Tenant testified, he has experienced a loss of a view and a loss of use of his balcony. However, I find the amount of the rent reduction sought by the Tenant is excessive.

For the loss of a view and loss of use of his balcony, I find the Tenant is entitled to a rent reduction of 10%. For the period from January 1 to May 31, 2017, I find the Tenant is entitled to recover 10% of *rent paid*, or \$555.29, which has been calculated as follows:

Month	Rent paid
January 2017:	\$1,510.00
February 2017:	\$0
March 2017:	\$1,022.90
April 2017:	\$1,510.00
May 2017:	\$1,510.00
TOTAL:	\$5,552.90 X 10% = \$555.29

I order that \$555.29 may be deducted from a future rent payment by the Tenant.

For the period from June 1, 2017 forward, I find the Tenant is entitled to a rent reduction of 10% until and including the month in which the scaffolding and mesh are removed. In other words, commencing June 1, 2017, rent will be due in the amount of \$1,359.00 per month, to and including the month in which the scaffolding and mesh are removed. This rent reduction applies to any future rent increases imposed in accordance with the *Act*.

Having been successful, I also find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application, which I find may also be deducted from a future rent payment.

Conclusion

The Tenant is granted an order that rent paid is reduced by 10% from January 1, 2017, to and including the month in which the scaffolding and mesh are removed.

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: May 18, 2017

Residential Tenancy Branch