



Dispute Resolution Services

Page: 1

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 MNDC, OLC, RP

Introduction

On April 6, 2017, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement, and for the Landlord to make repairs to the unit or property.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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

At the start of the hearing the Landlord confirmed the correct legal name of the Landlord. The Tenant did not object to the Application to being amended to reflect the correct legal name. Accordingly, pursuant to section 64 of the Act, I amend the Tenant’s Application to reflect the correct legal name of the Landlord.

Issues to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The parties testified that the tenancy commenced on March 1, 2012. The Tenant pays monthly rent of \$1,073.30 on the first day of each month.

The Tenant is seeking compensation for a loss of quiet enjoyment of the rental property and amenities due to a large scale construction project on the property.

The Tenant submitted that the construction started in December 2015, and the construction and workers have caused significant disruption and interference until December 2016.

The Tenant submitted that his quiet enjoyment has been breached and he submitted that he is entitled to a rent reduction. He is requesting a 50% rent reduction for the past 17 months and asks that the Landlord to complete repairs in a timely manner.

The Tenant testified that the construction caused a lot of disruption, and the door to the rental building was not secure. The Tenant testified that there was flooding due to broken pipes and constant noise from jack hammering.

The Tenant testified that he suffered lost wages due to lack of sleep. He testified that he works as a musician at night and needs to sleep during the day.

The Tenant testified that the construction workers disrupted the popcorn ceilings which contained asbestos, and exacerbated his chronic obstructive pulmonary disease.

The Tenant provided color photographs of the hallway, balcony, windows, and the exterior of the building with scaffolding. The Tenant provided a photograph of a notice stating the water to the building will be shut off from 10:00 am - 2:00 pm on February 6.

The Tenant provided an audio file containing the sound of construction noise.

The Tenant submitted that he deserves compensation for the disturbances.

In response, the Landlord questioned the Tenant about the security of the building and whether he had any personal items stolen. The Tenant replied, "no" nothing was stolen.

The Landlord asked the Tenant about his work as a musician and his work schedule. The Tenant replied that he does not have a consistent job, because he works as a street entertainer and he needs to sleep in the morning.

The Landlord asked the Tenant about his health and whether he has seen a doctor. The Tenant replied “yes” he sees his doctor each month.

The Landlord submitted that the Landlord has an obligation to maintain and repair the rental property. The Landlord submitted that the occupants of the property were given notice of the construction. The Landlord provided a copy of the Notice to all residents dated October 30, 2015. The Notice states that the Landlord intends to proceed with the following maintenance, repairs and capital work to the residential complex:

- *Corridor, lobby and entrance refurbishment, security upgrades, elevator modernization, painting building envelope, balconies, windows and doors, unit renovations, energy efficient systems and mechanical equipment replacement.*

The Notice states that as a result of the proposed construction activity at the property there may be noise, vibration, dust and inconvenience to access and egress the property.

The Landlord submitted a Baseline Condition Property Assessment Report, dated October 13, 2015. The report indicates there is a need to address balcony deficiencies including concrete deterioration.

The Landlord submitted that construction occurred during the hours of the day permitted by the city bylaws. The Landlord testified that jack hammering took place between 8:00 am and 3:30 pm, despite the bylaw allowing the work to continue until 7:00 pm.

The Landlord submitted that in accordance with the Residential Tenancy Branch Policy Guideline # 6, the Landlord cannot allow a residential property to fall into a state of disrepair, and Tenants have to allow for some inconvenience.

The Landlord submitted that there was no tangible loss to the Tenant due to the issue of safety or security.

The Landlord submitted that the work stopped in December 2016, until present. The Landlord testified that the only work that is taking place is property management duties.

Analysis

Section 28 of the Act, states that 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
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

*A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment **even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.*** [my emphasis]

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- *Loss of quiet enjoyment;*
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental*

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.

Section 32(1) of the Act states that a Landlord must provide and maintain residential property in a state of decoration and repair that:

- (a) *complies with the health, safety and housing standards required by law, and*
- (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.*

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

I find that construction at the rental property started in December 2015, and stopped in December 2016. I accept the Landlords' submission that the only work that is taking place since December 2016, is related to property management activities.

The construction during this period resulted in noise, vibration, dust and inconvenience to the Tenants. I find that the construction was necessary for the Landlord to maintain the property; however, I find that the ongoing noise and inconvenience resulted in a loss of quiet enjoyment for the Tenants.

In considering whether compensation is due, I have considered the submissions from both parties. I dismiss the Tenants claim to be compensated for loss of wages or for health reasons. The Tenant provided insufficient evidence prove he suffered a loss, and did not prove the value of the loss. The Tenant did not provide any medical documentation to support his submission on the effects to his health, or on any costs incurred for medication.

While I find that the Tenants have established a claim to be compensated for a loss of quiet enjoyment; I find that Tenants claim for a 50% rent reduction is not reasonable. I find an award of a 20% rent reduction to be more reasonable based on a claim of this type.

The Tenants were paying rent of \$1,035.00 from December 2015, to December 2016. I award the Tenants a rent reduction in the amount of \$207.00 per month, for 12 months.

Pursuant to section 67 of the Act, I grant the Tenants a monetary award of \$2,484.00 for loss of quiet enjoyment. I order that the Tenants may deduct this amount from future rent payments.

It is unclear whether or not the renovations on the property are complete. Then Tenant requested a repair order but did not specifically indicate what he wanted repaired. I find that the Landlord has a plan and schedule for the renovations, and I decline to issue a repair order. The Tenant did not apply for future compensation. I grant the Tenant leave to apply for further compensation for any loss of quiet enjoyment, after the date of the hearing held on May 16, 2017.

Conclusion

The Tenants are granted a monetary award of \$2,484.00, and I authorize the Tenants to deduct this amount from future rent payments.

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: June 5, 2017

Residential Tenancy Branch