



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNDC RR 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 to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Issues

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

Is the tenant entitled to a reduction in rent?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

The rental unit is an apartment unit in a building with approximately 100 rental suites in the complex. The apartment building is one of four multi-unit complexes on the property. The buildings were constructed in 1970 and are now 46 years old. The unit occupied by the tenants is a corner unit approximately 1600 square feet plus two 100 square foot balconies.

The tenancy began on August 1, 2004 and the monthly rent was \$1723.00 plus \$40 for parking. Effective March 1, 2017 the rent increased to \$1786.75 plus \$40 for parking.

The tenant provided affirmed testimony, argument and evidence as follows:

- There has been ongoing construction at the property since July 2016 to present.

- They have suffered the loss of use of both balconies for this period.
- There has been excessive heat in the unit as they have not been able to fully open balcony door.
- Suffered through dust and debris blowing into the suite from concrete removal.
- Increase of allergy symptoms from dust.
- The single biggest impact has been the regular intrusive noise generated by jack hammering and other power tools used by construction crew resulting in loss of quiet enjoyment.
- Stress and anxiety caused by the months of disruption due to the construction work.
- The tenant is seeking a 50% reduction in rent retroactive to July 2016.
- The tenant is also seeking a 50% future rent reduction.
- The tenant is also requesting compensation for research into making this application in the amount of \$1000.00
- The tenant is also seeking an award of \$5400.00 for stress and anxiety.

Upon cross-examination, the tenant testified as follows:

- He has not provided any medical evidence in support for his claim for stress and anxiety.
- He acknowledged all construction work was being performed during daytime hours within municipal by-laws.

On behalf of the landlord, the property manager S.P provided affirmed testimony as follows:

- She is the on-site property manager and she provides updates to the residents based on her conversations with the construction manager.
- Every Friday a memo on the renovation update is posted in the common area.
- She works out of one of the towers under construction and is able to carry out her job duties.
- The rental complex was built in 1970 and the exterior of the buildings is deteriorating requiring replacement of all the concrete walls and balconies.
- There has been no previous envelope renovation to the buildings.
- The balcony renovation is done in phases. The concrete removal takes approximately 1 week per suite.
- The worst of the noise from the jackhammering of the concrete balconies takes approximately 1 week for each individual balcony. The noise level decreases as the construction crews move away from the tenant's suite.
- The landlord has set up a quiet room located in the lower commercial level which is open daily. There is no renovation work being performed near this area.

Counsel for the landlord submitted argument as follows:

- The tenant's claim for research costs should be dismissed as there is no remedy under the Act for compensation for legal costs.
- The tenant has not submitted any medical evidence in support of the claim for loss resulting from anxiety and stress.
- The landlord submits the tenants' right to quiet enjoyment must be balanced against the landlord's responsibility to repair and maintain the rental unit.
- The rental complex is over 45 years old and the concrete is chipped causing drainage issues.
- The renovations are reasonable.
- All of the renovation work has been done in accordance with the by-laws.
- The worst of the noise only lasted a period of 5-6 days per individual suite.
- Counsel for the landlord also argues the tenant did not properly bring forward a claim for loss of use as the material on file only points to a claim for loss of quiet enjoyment.
- The landlord is not disputing that the tenant has suffered a loss of use of the balconies for the duration of the construction.
- However, the landlord argues the balconies are not a facility included under the tenancy agreement.

Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all the details of the submissions and/or arguments are reproduced here.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 "Entitlement to Quiet Enjoyment" provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises.

This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section. In determining the amount by which the value of the tenancy has been reduced, consideration will be given to the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation existed.

Pursuant to section 65(1)(f) of the Act, if the director finds that a landlord has not complied with the Act, the regulations or the tenancy agreement, the director may issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

There was no dispute that the landlord is in the process of completing extensive renovation work to the exterior of not only the building the tenant resides in but also three similar multi-unit complexes on the property. There was no dispute that the building was 46 years old and in a deteriorating condition.

As per section 32 of the Act, I find that the landlord not only has the legal right but also the obligation to maintain and repair the residential property. In conducting the extensive repairs to the exterior of aging rental complex, the landlord is within their rights and obligations under the Act. As per Policy Guideline #6, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. I find that the tenant's claim for loss of quiet enjoyment is nothing more than a temporary discomfort and inconvenience which does not constitute a basis for a breach under this provision. There was no dispute that all of the construction work was being completed with by-laws and any noise would have been restricted to these hours. It was also not disputed that the worst of the noise was during the jack-hammering phase which lasted only approximately one week per individual suite or balcony. I find that the temporary discomfort and inconvenience of this renovation work is magnified by the fact that the rental complex is one of four multi-unit buildings in the complex. I find that this unfortunately comes with the territory of residing in such a complex. The tenant's claim for compensation for loss of quiet enjoyment is dismissed.

The tenant's claim for costs associated with research for this application is also dismissed as there is no provision under the Act to recover such costs aside from the filing fee an application.

The tenant's claim for loss resulting from stress and anxiety is also dismissed as the tenant has not provided any medical evidence to support this part of the claim nor has the tenant provided any evidence on how he suffered a loss due to the alleged stress and anxiety.

I dismiss the landlord's argument that the tenant did not properly make an application for loss of use of the balconies. Although the tenant may not have calculated the requested compensation

in the form of loss of use versus loss of quiet enjoyment, it is quite clear that loss of use is one of the bases for the tenant's application.

I find the tenant did suffer a loss in form of loss of use of the two balconies. The landlord did not dispute the loss of use of the balconies. I do not accept the landlords' argument that no loss was suffered as the balconies were not an included facility as per the tenancy agreement. The balconies are attached to the rental unit and are only accessible from the rental unit so they clearly form part of the rental unit.

As the tenant continued to occupy and otherwise make use of the rental unit during the period in question, it is difficult to quantify the reduction in the value of their tenancy.

The balconies are approximately 11% of the overall square footage of the rental unit and are neither essential to the tenant's use of the rental unit as living accommodation or a material term of the tenancy. As such, I find the tenant is entitled to the nominal amount of \$75.00 per month as compensation for loss of use of the two balconies for the 11 month period from July 1, 2016 to May 31, 2017 for an award of \$825.00.

The tenant is permitted to deduct \$825.00 from a future rent payment. In the event the tenancy has ended and the tenant is not able to make this deduction from future rent, I grant the tenant a Monetary Order in the amount of \$825.00. 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.

In addition to the above \$825.00 reduction for past rent, the tenant is also entitled to a future rent reduction of \$75.00 per month for loss of use of the two balconies from June 1, 2017 up to the date on which the use of both the balconies is or was restored.

As the tenant was only marginally successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

I find the tenant is entitled to the nominal amount of \$75.00 per month as compensation for loss of use of the balcony for the 11 month period from July 1, 2016 to May 31, 2017 for an award of \$825.00.

I find the tenant is entitled to a future rent reduction in the amount of \$75.00 per month as compensation for loss of use of the balconies from June 1, 2017 up to the date on which the use of both the balconies is or was restored.

The tenants may reduce a future rent payment in the amount of \$825.00 plus an additional \$75.00 per month of any period of loss from June 1, 2017 onward.

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$825.00. 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: July 17, 2017

Residential Tenancy Branch