



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC

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 and authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for loss under the Act?

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

Background and Evidence

This tenancy began on February 1, 2015 as a one year fixed term. A copy of the tenant agreement was submitted as evidence in this hearing. The tenant vacated the rental unit on April 30, 2016. After a condition inspection was completed, the landlord held the tenant's \$650.00 security deposit and \$650.00 pet damage deposit paid by the tenant at the outset of the tenancy. The tenant sought \$947.50 from the landlord.

The tenant testified that when she entered into the tenancy agreement, the landlord had pre-warned her that there would be ongoing construction on site. The tenant testified

that she did not ask any questions about the construction. She had been told, she testified, that work was to be done on the siding and windows of the entire complex. The landlord testified that the complex holds 276 units. He confirmed that when the tenant looked at the rental unit and prior to signing the tenancy agreement, he advised the tenant that there would be substantial ongoing construction on the exterior of the premises. He testified that notices were put up within the building for the residents four weeks prior to the beginning of the construction work. The tenant testified that the notice indicated the work would take 5 weeks and that the work actually took about 10 weeks.

The tenant testified that she did not realize that she would be required to move items off of her deck and that she would be without mouldings around the windows for an extensive period of time. She testified that she went approximately 6 weeks without mouldings on her windows. She testified that the loss of the window coverings, when the construction was underway resulted in a substantial loss of her privacy.

The construction work began in September 2015 and therefore, the tenant testified that she was subjected to these conditions for 5 months. The landlord testified that the patio doors were completed in October 2015 and the siding work was completed in November 2015. He testified that crews were paid to work Saturdays to speed up the time required and that the work took a total of approximately ten weeks. He also testified that the tenant was paid two months' rent in compensation as the work took longer than originally anticipated.

The tenant testified that parking became an issue during the construction as the workers would take common spots and sometimes, the tenants were required to park elsewhere so that their cars were not damaged. The tenant testified that she was able to park on the property but not able to park in her spot every day. She testified that sometimes she had to walk five minutes to get to her residence.

The tenant testified that the workers would sometimes come in to her unit and she would have to arrange to have her dog elsewhere. As well, the tenant testified that her dog was not able to use the yard and therefore she would have to walk the dog to another location. She testified that, on six occasions between September and January 2016, the power went out for a brief period of time (hours). The water was turned off on two dates: September 28, 2015 and October 8, 2015.

The tenant also testified that, because she works from home, this construction was a larger inconvenience than to other tenants and that she uses her patio more than the average tenant, when she is able.

The landlord responded to the tenant's monetary claim by arguing that her claim was inflated. He testified that there were accommodations for parking and the tenant did not have to park far away. He testified that, if there were issues with parking, the tenants were encouraged to call the strata company – the strata company would have the workers move from designated spots. He testified visitor parking was also available. The landlord testified that the tenant never raised the issue of parking at the time. Further, the landlord testified that the construction work done to the exterior of the premises was mandatory. He testified that he had previously offered the tenant money to compensate her for any infringement or perceived infringement on her privacy.

Analysis

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the *Act*; a tenant is expected to pay rent; a landlord is expected to provide the premises as agreed to. If a tenant is deprived of the use of all or part of the premises, the tenant may be entitled to damages. In most circumstances, when assessing a claim for damage, Section 67 of the *Act* applies. The section indicates that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order payment. The party claiming the damage or loss bears the burden of proof to show 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 landlord.

In this case, the tenant has proven that the construction resulted in some intangible loss, mainly in her privacy and comfort. This is not a circumstance where the landlord has failed to honour the residential tenancy agreement or his obligations under the *Act*. In fact, the landlord paid the tenant \$200.00 to compensate her for the inconvenience of the ongoing construction. However, the Residential Tenancy Policy Guidelines provide that, even when the landlord is not in violation of the *Act*, there may be circumstances where he is still required to compensate the tenant.

The types of damages an arbitrator may award are; expenditures proved at the hearing in accordance with section 67 of the *Act* as outlined above; an amount reflecting a general loss where it is not possible to place an actual value on the loss; "nominal damages" where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant. As

stated, there is not infraction of a legal right by the landlord in this matter. I note that the landlords advised the tenant about the construction before her move in and they attempted to sufficiently compensate her for her inconvenience.

The tenant's current claim consists of; having to move items from the balcony and reduced use of the balcony. I find that this portion of her complaint should have been anticipated based on the landlord's disclosure of construction to the exterior of the residence. The tenant also claimed that the mouldings of the windows were removed. I find that this should also have been anticipated given the nature of the construction and that neither of these issues are grounds for compensation in these circumstances.

The landlord testified that the tenant did not avail herself of avenues to address her parking concerns. I find that, as the landlord offered alternatives and a means to address this issue and the tenant chose not to make contact to have the landlord address the parking, the tenant did not mitigate her claim with respect to parking and is not entitled to compensation related to parking.

I find that the tenant was faced with inconvenience in that she could not use her yard and had to walk the dog as well as having to park elsewhere creating a five minute walk. As well, she suffered inconvenience in that the power went out on six occasions and the water was turned off on two dates. As well, I find that the tenant suffered some effect on her privacy. I find that, for these inconveniences over the course of her tenancy, the tenant is entitled to an amount for general loss in the amount of \$325.00 taking into account the intangible nature of a claim of a loss of privacy as well as the fact that the landlord compensated the tenant a total of \$200.00 on a previous date. I accept the testimony of the landlord with respect to the timeline of three months that the tenant endured full construction.

As the tenant has been successful in her application, I find that the tenant is entitled to recover her \$100.00 filing fee from the landlords.

Conclusion

I grant a monetary order to the tenant in the amount of \$425.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. 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 13, 2017

Residential Tenancy Branch