



Dispute Resolution Services

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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(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and authorization to recover the filing fee for this application from the landlord 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

Are the tenants entitled to a monetary order for compensation for loss of use of rental space?
Are the tenants entitled to reduce past rent for facilities agreed upon but not provided? Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began in May 2016. A copy of the residential tenancy agreement was submitted as evidence at this hearing. The tenants continue to reside in the rental unit paying \$1600.00 monthly rental amount of the first of each month. The landlord continues to hold an \$800.00 security deposit. The tenants testified that the landlord also holds an \$800.00 pet damage deposit however the landlord testified that he did not receive the pet damage deposit. The tenants sought to recover \$10,488.80 in rent reductions as a result of a loss of use of their unit, loss of quiet enjoyment (privacy) in their unit as well as loss of facilities that were/were not provided by the landlord as agreed.

The tenants initially testified that they were not told of the large balcony construction work until approximately one month after they moved in. At this hearing, the tenants acknowledged that they were aware of construction ongoing when they signed the residential tenancy agreement.

The tenants testified that they rented a unit with a balcony as advertised but they have been unable to use the balcony, even for storage. The landlord testified that the tenants were advised regarding the construction prior to their move-in and prior to signing the residential tenancy agreement. The landlord testified that, when the tenants moved in, the construction project was underway and therefore they would have seen the construction work when they attended to view the rental unit.

The landlord testified that the tenants would have also been aware of the construction work by the notices posted throughout the complex when the tenants viewed the rental unit. The tenants testified that they did not observe any posted notices when viewing the rental unit. The landlord testified that he provided updated notices door to door and posted within the residential tenancy property. The landlord submitted copies of several notices that were provided to tenants on an almost-weekly basis. Three notices were dated for May, the month the tenants moved in: May 5 and May 19 and May 26, 2017. The notices indicated; the construction process will take approximately 6 months and that outside parking may be limited. One notice also indicated that the water would be shut off for approximately 3 hours on January 17, 2017. One notice was provided to tenants in December 2015 and one notice included the details of an information session for tenants regarding the construction. This meeting took place approximately 3 months after the tenants moved in to their rental unit.

The tenants testified that, when they were told about the construction project, they were told that it would take approximately six months but that the project has gone on for over one year. The tenants provided undisputed testimony that the construction work on the exterior of the building is very loud from 8:30am to 4:30pm most days. The tenants testified that, beyond the annoyance and disturbance of the construction noise to themselves, their cat has been very distressed by the sounds of the construction.

The tenants testified that their bicycles and plants have had to remain inside their rental unit, costing space, when they would usually put these items on their balcony. The tenants also testified that their privacy has been impacted as there are construction workers outside their balcony window often. The tenants also testified that the parking has become limited by the amount of workers parking within the complex. The tenants testified that sometimes without access to the underground parking or their regular parking area, they would have to park approximately 5 minutes away. The tenants testified that their pool and hot tub has been out of service for several months and is now being removed from the building.

The landlord testified that he offered some compensation to the tenants for the impact on their privacy but that the tenants would not accept the rent reduction. The landlord submitted that the pool and hot tub were not essential amenities to the residential tenancy and that there are pools nearby that the tenants could access for a small monthly fee. The landlord testified that all of the tenants in the building have access to the neighbouring gym's pool but that it is a courtesy and not part of the tenancy agreement.

The landlord testified that the residential tenancy building was built in 1973 and has not had previous exterior work done. He testified that the balcony work has been done in phases and that the 168 balconies are almost completely repaired. He testified that the work should be finished in approximately a week. He testified that the construction workers occasionally worked on weekends to decrease the timeline of the work.

Ultimately, with the assistance of counsel, the landlord stated that the tenants should be entitled to a nominal amount for loss of access to the balcony but the landlord should not be penalized as he advised the tenants from the outset. The landlord stated that any loss of facilities was contemplated at the time of the signing of the agreement and therefore built in to the rental amount. The tenants testified that they were not given peace and comfort in their own home.

Analysis

Section 32 of the *Act* provides the landlord and tenant obligations to repair and maintain the rental unit. The landlord's obligations are as follows;

- 32** (1) 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 a tenant.

I accept the testimony of the landlord, ultimately undisputed by the tenants and supported by the documentary evidence, that the landlord advised the tenants of the upcoming construction project on the balconies and that both parties took into account the scope of the project and its impact on the tenants when they agreed to the terms of the tenancy. I find that the landlord was acting on his obligation to provide housing that meets the health, safety and housing standards required by law. The undisputed facts are that the residential tenancy building is 44 years old and that the balcony work was essential to the safety and integrity of the building.

With respect to the impact to their tenancy listed by the tenants, it is unfortunate that the tenants' cat has been distressed however the landlord cannot be responsible for this particular consequence of the construction work. With respect to the impact on their parking, I accept the landlord's testimony that any tenants who raised a concern about parking would have had that issue addressed immediately. Furthermore, I note that the tenants indicated the furthest they were required to park away from their unit was a 5 minute walk. I acknowledge the inconvenience but find that it does not merit financial compensation in these circumstances.

However I find that the tenants are entitled to nominal compensation to account for the extended time period for the work done beyond 6 months initially discussed between the parties. The tenants are entitled to compensation for;

- lack of balcony space: storage/ general balcony use beyond the initial timeframe;
- reduction in the tenants' privacy as acknowledged by the landlord;
- pool and hot tub access.

The landlord claimed that the pool and hot tub access were a courtesy but that they did not constitute part of the tenancy agreement. I find that, based on the residential tenancy agreement and the descriptions by both parties of the allowable access to the pool and hot tub at the outset of the tenancy, the tenants were entitled to consider the access to the pool and hot tub part of their tenancy.

Any loss of use of a part of the property, services or facilities as originally provided within the residential tenancy agreement may, under section 27 and 32 of the *Act*, may result in a rent reduction that is equivalent to the reduction in the value of the tenancy agreement resulting from any loss of use or restriction to use. Therefore, I find that the tenants are also entitled to an additional \$10.00 per month for the loss of use of the pool and hot tub as a service that was originally provided and then withdrawn. This amount will allow the tenants to use a pool elsewhere.

The landlord testified that he offered some compensation to the tenants for the impact on their privacy but that the tenants would not accept the rent reduction. At this hearing, through counsel the landlord acknowledged that some nominal compensation is appropriate. The tenants sought 17% of the total rental space as advertised equalling approximately \$136.00 per month for 10 months. In all of the circumstances of this particular claim, I find that the tenants are entitled to 12 months compensation (from the original finish date of July 2016 to July 2017) at \$50.00 per month for the continuation of the construction after the initial six months that had been estimated by the landlord. I find that this amount accurately reflects the amount of loss considering that a balcony is used less regularly than the rest of a rental unit.

Finally, the landlord acknowledged some impact on the tenants' privacy as an additional consequence of the ongoing construction. The tenants described the impact of having an open balcony, with workers and the removal of the blinds on the patio door. Based on the description by the tenants and the acknowledgement by the landlord, I find that the tenants are entitled to an additional \$80.00 per month as a result of the lack of privacy during the months of the construction – 10% of their monthly rental amount.

As the tenants were successful in their application, they are entitled to recover the filing fee.

Conclusion

I grant a monetary order in favour of the tenants as follows,

Item	Amount
Loss of Use (Balcony including storage use) 12 months loss @ \$50.00 per month	\$600.00
Loss of Facility/Service (Pool) 12 months @ \$10.00 per month	120.00
Loss of Privacy 12 months loss @ \$50.00 per month	960.00
Recovery of Filing Fee for Application	100.00
Total Monetary Order	\$1780.00

The tenants are 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: August 30, 2017

Residential Tenancy Branch