



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 loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenants 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 landlords, pursuant to section 72 of the *Act*.

CL, a law student, presented evidence on behalf of the tenant in this hearing. AC, counsel for the landlords, presented evidence on behalf of the landlord in this hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As the parties or their representatives were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application'). The landlord's agents and counsel confirmed receipt of the tenant's application. In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the cost of the filing fee from the landlords for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on May 1, 1992. The landlords took over this tenancy in 2015 with a change in ownership. The tenant is currently paying \$1,026.63 in monthly rent, which was effective as of March 2017. Monthly rent was previously set at \$990.00. The tenant paid a \$345.00 security deposit at the beginning of this tenancy, which is still held by the landlords. This tenancy is part of a four building complex, with the tenant's unit located in one of the towers.

All parties agreed in the hearing that all buildings in this complex are over 40 years old, and are undergoing an extensive maintenance and repair project which commenced in early 2016. The renovations included the exterior envelope of the building, common areas, as well as the balconies for all units in this complex.

The tenant is making a monetary claim for \$14,115.20, as well as a rent reduction to reflect the loss of quiet enjoyment that he experienced during this project, which is still ongoing and may not be completed until sometime in the fall of 2017.

The tenant's representative argued in this hearing that the tenant has been subjected to a lengthy period of noise, dust, and disturbance as part of this project. The tenant entered into written evidence a decision issued by another arbitrator appointed under the *Act* that he maintained was a similar case that involved the same landlords to support his claim that he should be provided compensation for the loss of quiet enjoyment. That file number is referenced in the title page of this decision.

The landlord's counsel confirmed this case, stating that he was the counsel in that hearing which involved the same landlord and similar project, but a different building and tenant. The matter was originally decided in favour of the tenant on November 22, 2016, but was subject to a review hearing on March 31, 2017 when the tenant's monetary award was reduced. The following excerpt from that decision summarizes the decision of the Arbitrator. Both parties agreed that the tenant in this decision was subjected to a similar renovation project undertaken by the landlord.

"The landlord testified that the excessively loud noise is ongoing for one week while the workers remove the concrete from the balcony of the rental unit. Therefore I find it appropriate to award the tenant \$500.00 as compensation for the week that the workers jack hammered the balcony attached to the rental unit.

Since June 27, 2017 the work has been ongoing in the building complex. The landlord testified that the work is carried out within the times set by the local municipality. However, the tenant is still subject to the loss of the balcony and the general noise involved in construction. Pursuant to the tenant's testimony, I accept that he was not informed of the pending work prior to entering into a tenancy agreement and therefore is now subject to the noise and inconvenience associated with the repairs to the building complex. I find it appropriate to award the tenant a

rent reduction of \$200.00 per month starting July 2016 and ongoing for the duration of the construction work.”

The landlord's counsel acknowledged in the hearing that the tenant was denied the use of his balcony from June of 2016, when he was required to remove his belongings from the balcony, to July of 2017. During this period the tenant was subjected to intermittent noise and disruption due to work being completed on his balcony and throughout the entire complex. The landlord's counsel states that the majority of the disturbance was only 1 week long, while the tenant disputed this stating that it has been over 1 year of noise, dust, and disturbance.

The tenant had planned to call three witnesses for this hearing, who were dismissed by mutual agreement of all parties in this hearing, as the landlord had confirmed the fact that the work that has taken place is audible to all tenants in the building. The landlords do not dispute that his tenant was subjected to noise and discomfort during these repairs, nor do the landlords dispute the fact that the tenant has lost access to his balcony. The landlord's counsel argued that the balcony was not an essential facility, and that the landlords' duty to repair should be balanced with the tenant's right to quiet enjoyment.

The tenant testified in this hearing stating that the landlord's ulterior motive was to create enough disturbance to cause the tenants to move out. The tenant testified that the landlord had offered a monetary incentive for tenants to move out of the complex completely, but the tenant did not accept this offer. The landlord did not respond to this claim.

The landlord's counsel confirmed that the contractors completed the work in compliance with municipal bylaws, and communicated with the tenants on a regular basis as to the work that was scheduled to be completed. The tenant's representative did not dispute this, but states that the tenant should be awarded compensation as the landlords did not comply with sections 27 and 28 of the *Act* by denying the tenant the facilities material to the tenancy agreement, and by denying the tenant his right to quiet enjoyment.

Analysis

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

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.

Section 27(1) and 28 of the *Act* outlines the landlord's obligations in relation to restricting services or facilities, as well as the tenant's right to quiet enjoyment.

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

- (b) freedom from unreasonable disturbance...

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

I have considered the testimony of both parties, and while the tenant had provided testimony to support that he had experienced stress and extreme discomfort as part of the repairs during this tenancy, the tenant did not provide sufficient evidence to establish that the landlords failed to fulfill their obligations as required by sections 27 and 28(1) of the *Act* as stated above.

I accept the facts as stated by the landlord's counsel: that the building is extremely old, and that the landlords had to take the necessary steps to maintain the property in a state of repair as required by section 32 of the *Act*. I find that the inconvenience and stress that the tenant faced is the result of the landlords' necessary steps to fulfill their obligations, rather than their failure to fulfill their obligations, as required by section 32 of the *Act*.

I note the tenant's concern that the landlords have an ulterior motive, which is to motivate the tenants to move out, but I am not satisfied that tenant has provided sufficient evidence to support this claim.

The tenant also presented a similar case in their evidence, involving the same landlord and similar project. The landlord's counsel is the same as the one in this hearing, and all parties confirmed that the tenant was given monetary compensation as noted above. I note in my

review of that decision, although similar to this matter, that situation differs in that the upcoming repairs were not disclosed to the tenant prior to his moving in on April 1, 2016, despite the fact that the project was approved and about to take place. I find that in this case the landlords have not failed in their duty to disclose the details of this project to the tenant, which is supported by the numerous notices and communication in both the tenant's and landlords' written evidence.

I find that the landlords have attempted to minimize the tenant's exposure to the noise and disruption as much as possible in compliance with the *Act* and municipal bylaws. I also find that the landlords have fulfilled their obligations as required by the *Act*. Although I find that the tenant has experienced stress and discomfort during this project, I find there is insufficient evidence for me to make a finding that the landlords have failed to meet their obligations regarding this matter, and on this basis I am dismissing the tenant's entire application.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenant's application for recovery of the filing fee.

Conclusion

I dismiss the tenant's entire application.

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: October 3, 2017

Residential Tenancy Branch