



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Grace Court Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC OLC PSF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing, by teleconference, was held on December 1, 2017. This hearing dealt with the Tenants' 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 requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and,
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both sides were present at the teleconference hearing. All parties provided affirmed testimony and were given a full opportunity to be heard, to present evidence and to make submissions. Both parties confirmed receipt of each other's documentary evidence, and neither party raised any issue with respect to the service of these documents.

The Tenants stated that they are only looking for monetary compensation and they do not require the second two claims listed above. As such, I amend the Tenants' application accordingly.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. Both parties provided a substantial amount of documentary evidence and testimony. However, not all evidence will be referred to in this decision. Only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to compensation for damage or loss?

Background and Evidence

The Tenants' application for compensation centered on the following two issues:

1) Elevator

The Tenants provided some emails between them and the Landlord regarding this issue but the bulk of their evidence was provided through oral testimony in the hearing. The Tenants testified that they are seeking monetary compensation for the loss of use of their elevator for 43 days. The Tenants stated that the elevator was out of service from August 22, 2017 until October 2, 2017. They further stated that they live on the 6th floor, and there is only the one elevator in the building.

They stated that they travelled out of town 3 times while the elevator was out of service, and hauling their luggage up and down the stairs each time was difficult. The Tenants stated that one of them had a leg injury, which made using the stairs even more challenging. They also stated that there was a disruption in their mail service because Canada Post could not easily deliver to all the different suites in the building. The Tenants also stated that the Landlords gave them \$100.00 in cash, as well as gift certificates for laundry (\$50.00) and coffee (\$25.00) to help compensate them for the inconvenience. The Tenants are asking for compensation (cash) in the amount of 15% of rent paid for the time the elevator was down.

The Landlord stated that the elevator was taken out of service after a routine safety inspection. They stated that they worked with Canada Post while the elevator was down to help ensure tenants got their mail. The Landlord further stated that they expedited shipping on elevator parts, and paid overtime for repairs to help reduce the time it was out of service. The Landlord stated that they tried to keep the Tenants updated and apprised as much as possible. The Landlord feels they did everything they could to minimize the impact on the Tenants and they do not feel like they should have to compensate any further.

2) Mice

The Tenants provided some emails between them and the Landlord regarding this issue but the bulk of their evidence was provided through oral testimony in the hearing. The Tenants testified that they began to see mice in their rental unit in August of 2016. At that time, they notified the Landlord about the issue. They stated that there were multiple sightings, and 3 mice were caught in August of 2016. Then, in June of 2017, the Tenants stated that they started to see mice again. They reported this to management and subsequently, from June through to August of 2017 they saw over a dozen mice and around 7 were trapped.

The Tenants stated that they have had traps in their rental unit for a long time now and the presence of these traps is annoying for them because they have to check them regularly to ensure a mouse isn't caught. The Tenants stated that they don't feel they should have to

monitor the traps and they are also embarrassed by the presence of these rodents, especially when they have guests over. As compensation for their loss of quiet enjoyment, the Tenants are seeking 10% of rent paid from August 2016 until present. They stated that there are still traps set up and they have no indication the problem has been dealt with such that they can remove the traps.

The Landlord testified that they attended to the Tenants' complaints of mice in their unit in August of 2016. The Landlord stated that they caught a few mice during that month. The Landlord stated that they were in regular contact with the Tenants from September 2016 until June of 2017, but there were no complaints about mice during this time. Then in June of 2017, the Tenants complained that they were seeing mice in their unit again. Subsequently, the Landlord stated that they installed more bait stations and traps and further consulted the pest management company. The Landlord stated that they did not catch any mice or get any further reports of mice from the Tenants after mid-August 2017.

The Landlord stated that they take the rodent issue seriously and work constantly with a pest management company. They also stated that they have recently asked the pest management company to come twice as often, and to set more traps in and around the building. The Landlord testified that there was never a mouse infestation, and that they are doing their best to stay ahead of any problems.

Regarding both of the issues raised by the Tenants, the Landlord provided substantial documentation in support of their testimony, including the timelines, and evidence to support their conduct to minimize impact on tenants. This documentation included a variety of things such as invoices, service agreements, letters, and photos.

The Tenants testified that they paid \$1,900.00 in rent from August 2016 up until November 30, 2016. Then in December 2016, they paid \$1,955.00 per month. This amount increased to \$2,010.00 as of December 1, 2017.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must explain the value of the loss or damage. Finally it must be proven that the Tenants took reasonable steps to minimize the damage or losses that were incurred.

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.

[My emphasis]

The bulk of the Tenants testimony was surrounding their claim for compensation due to disruptions and loss of use of the elevator for 43 days, and also for loss of quiet enjoyment due to the presence of rodents. In consideration of these issues, I turn to the following two Residential Tenancy Branch Policy Guidelines:

The Residential Tenancy Branch Policy Guideline #16
(Compensation for Damage or Loss)

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.

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.

The Residential Tenancy Branch Policy Guideline # 6
(Entitlement to Quiet Enjoyment)

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]

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

1) Elevator

In accordance with section 32 of the Act, I find the Landlord was proactively maintaining the elevator when they determined that it needed fixing. I also note that the Landlord took significant steps to expedite the elevator repair process, and to mitigate the impacts that the loss of the elevator would have on the Tenants. The Landlords also took reasonable steps to maintain mail delivery to the rental unit while the elevator was out of service.

I acknowledge that the rental unit is located in an older building and that some repairs should be expected. However, I find that the Tenants are still entitled to some compensation for the loss of use of the elevator, above the nominal amount they have already received. I make this finding, in part, because they live on the 6th floor of the building, which creates a disturbance and impediment to any activity which involves leaving the unit. For example, the Tenants stated that in order to do laundry, they had to use the stairs to access the basement. One of the Tenants also stated that they had a strained leg for a portion of the time the elevator was down, which made getting in and out of the building very difficult.

In making my determinations on the amount of compensation the Tenants are entitled to, I have also considered the steps taken by the Landlord to expedite the repairs. I find the Landlord took

several steps to execute the repair as quickly as possible, and to minimize the negative impacts created by the loss of the elevator.

After considering the totality of the evidence before me, I acknowledge that the Tenants are seeking 15% of rent paid in compensation. However, I find a more reasonable amount of compensation for the elevator disruption of 43 days to be 10% of rent paid for that period. Monthly rent at the material time (August/September of 2017) was \$1,955.00. To get an approximate per diem rent amount, I have taken the monthly rent of \$1,955.00 and divided it by an average month (30 days). The approximate per diem rate the Tenants paid during this time was \$65.17. This per diem rate, multiplied by 43 days equals \$2,802.31. And finally, 10% of this amount is \$280.23. I find the Tenants are entitled to this amount for the loss of use of the elevator.

I note the Landlords gave the Tenants gift cards to help compensate (laundry card for \$50.00 and a coffee card for \$25.00). Also, I note the Landlords have already given the Tenants \$100.00 in cash as compensation. I have deducted these amounts from what they owe. In summary, the Tenants are still owed \$105.23 in compensation for their loss of use of the elevator.

2) Mice

It is clear from the evidence before me that there have been issues with mice in the rental unit, and in the building. Both parties agree that in August of 2016, there were mice inside the rental unit and that 3 mice were caught during that month. The Landlord's pest management service was deployed to help. The Landlord testified that their pest management company determined in September of 2016 that the issue was under control. The consistent evidence is that the Tenants did not see any rodent activity and no mice were trapped throughout the year, from September 2016 up until June of 2017. The Landlord stated that the Tenant did not complain to them at all throughout the year about mice, until they spotted another one in June of 2017.

The Tenants stated that they began seeing mice in their rental unit again in June of 2017. They further stated that they saw at least a dozen mice in their unit from June 2017 until August 2017, and that at least 7 mice were trapped and disposed of during this time period. The Tenants stated that they have had traps set in their rental unit for quite some time now, and they have suffered a loss of quiet enjoyment because they have to monitor and check the mouse traps daily. They stated that it is a constant frustration for them, having to worry about checking the traps.

I acknowledge that the Landlord has a professional pest management company working with them. In the hearing when I asked who was responsible for monitoring the traps in the rental unit, the Landlord stated that it was being done regularly by the company they hired. However, they also acknowledged that in between the times where the pest management company

attends the building, the Tenants keep an eye on the traps in case anything is found. Overall, it appears there is some reliance on the Tenants to monitor the traps and notify the Landlord of issues.

The Tenants have argued that they have suffered a loss of quiet enjoyment as a result of the rodent activity. After considering the totality of evidence before me, I find that there has been a loss of quiet enjoyment for a portion of the time. The Tenants are seeking a monetary order for 10% of rent paid from August 2016 until the date of the hearing. However, I do not find there was a “substantial interference” with their ordinary and lawful enjoyment of their unit for the entire time period of August 2016 until present.

After considering everything, I find the Tenants are entitled to monetary compensation in the amount of 5% per month for the months of August 2016, and June through August of 2017 (4 months total), which are the months where the bulk of the mice were seen and caught. I do not find the Tenants are entitled to monetary compensation just because there were traps set in their unit. The Landlord has an obligation to repair and maintain the rental unit, and the evidence before me indicates they are actively engaged with a professional pest management service. I find it clear they are taking the rodent issue seriously, and have even increased their level of service with the pest company to help stay ahead of the issue.

I award monetary compensation on this issue as follows:

Date	Rent Paid at that time	Percentage awarded	Amount awarded
August 2016	\$1,900.00	5%	\$95.00
June 2017	\$1,955.00	5%	\$97.75
July 2017	\$1,955.00	5%	\$97.75
August 2017	\$1,955.00	5%	\$97.75
Total Accrued Balance			\$388.25

In summary, and pursuant to section 67 of the Act, I grant the Tenants a monetary order for **\$493.48**, which is comprised of \$105.23 (for the elevator), and \$388.25 (for the mice), as specified above. I order that the Tenants may deduct this amount from future rent payments.

Conclusion

The Tenants are granted a monetary award of **\$493.48** 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: December 07, 2017

Residential Tenancy Branch