Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Management
Starlight Investments IMH 415435 Michigan Street Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF, MNSD

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Landlord requested and the Tenant agreed to add the owners name as a Respondent to the Tenant's application. Given this agreement I have added the owner as another Respondent as provided by the Landlord.

The Tenant objects to the Landlord's evidence package received only a few days ago. The Landlord's Legal Counsel indicates that the materials provided are not evidence and only submissions. As the materials are not evidence to be relied on at the hearing for the purposes of determining the dispute I decline to consider the materials. The Landlord remains entitled to provide oral submissions and argument.

Issue(s) to be Decided

Are the Tenants entitled to return of double the security deposit?

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy started on August 1, 2012 and ended on August 31, 2016. At the outset of the tenancy the Landlord collected $580.00 as a security deposit. The Parties mutually conducted a move-in condition inspection with a condition report completed and copied to the Tenants. No move-out inspection was conducted. The Tenant provided its forwarding address to the Landlord on August 28, 2016 and the Landlord returned $515.20 without permission by the Tenant for the retention of any portion of the security deposit. The Landlord's business has been taken over by a different management company than was in operation during the tenancy.

The Tenants claim return of double the security deposit.

The Tenant states that as of July 1, 2016 the monthly rent was increased to $1,260.00. The Landlord does not dispute that amount however Legal Counsel argues that the Tenant's evidence of rent conflicts with the Landlord's final account settlement entitled "move out statement" that indicates the rent being $1,234.80. The Tenant states that the statement confuses the Tenant and that the Tenant does not know how why that figure was used by the Landlord.

The Tenant states that in December 2015 the Landlord started renovations to several units in the building. The Tenant states that workers were carrying wall boards down the elevator leaving dust behind. The Tenant states that in January 2016 the dust tested positive for asbestos and the work was stopped in March 2016 for that reason. The Tenant states that the unit next to the Tenants' was under renovation and the door

held a warning sign labelled “Asbestos”. The Tenant states that despite the presence of asbestos the renovations continued although black bags were now used to carry out the materials from the units.

The Tenant states that in June, July and August 2016 the Landlord started removing the 26 balconies along the side of the building where the Tenants unit is located. The Tenant states that they lost use of their entire balcony for this period. The Tenant states that in addition to the loss of privacy from the workers being able to see into their unit, they were subjected to extremely loud noise from the use of a jackhammer on a daily basis from 8:00 am to 3 or 4 pm. The Tenant states that they had to close the windows during this period and even then the noise was so bad that the Tenant had to leave the unit. The Tenant states that they are in their 70’s. The Tenant states that the construction dust caused the Tenant more cleaning and that they had to deal with plastic covering the hallway floors. The Tenant states that the coverings made it difficult for the Tenants to walk and to push their carts.

The Tenant states that as renovations were to be ongoing for several more months and as other tenants were being evicted the Tenants felt tremendous stress and concerns with the construction work and for these reasons they had to end the tenancy. The Tenant states that they were very disappointed as they had and expected to have a peaceful home but, in addition to the noise and dust, there were now more people using the elevator causing delays. The Tenant states that water also started coming through the hallway ceilings leaving he hallways periodically flooded resulting in the loss of water and use of only cold to luke warm water most of the time. The Tenant states that at time they were not notified of the water shut offs that often lasted all day.

The Tenant states that it cannot say that it has health issues as a result of the exposure to the asbestos and that the Tenant is claiming compensation in relation to the risk from the exposure. The Tenant states that it is too early to tell if she has symptoms related

to the exposure. The Tenant claims $4,800.00 calculated as equivalent to half the rent for 8 months.

The Landlord agrees that renovations on a select number of units started in January 2016 but that these renovations occurred only on a periodic basis as the units became vacant. The Landlord agrees that the work on the balconies required the use of jack hammers but argues that the work was not constant as there were breaks and that the work occurred on week days and on Saturdays between the hours not restricted by the local noise bylaws. The Landlord states that no asbestos was found in the unit until after the Tenants moved out of the unit and was only found in certain pieces of material. The Landlord states that the units with asbestos were sealed off. The Landlord states that it does not know of any dust as there are no records on this but that regular cleaning was maintained. The Landlord acknowledges that work was being done in the building prior to the confirmation of asbestos and that they are working with government authorities on the matter to go forward with the renovations.

The Landlord argues that the Tenant has not provided any calculations or rationale for the amount claimed and that the amount is excessive. The Landlord argues that the work on the balconies did not start until June 27, 2016 and that in December 2016 there was only some construction. The Landlord argues that there must be consideration of the balance between the Landlord's obligation to maintain the unit and the inconvenience to the Tenant. The Landlord argues that the waiting for the elevator and the plastic floor covering is only an inconvenience. The Landlord argues that as the noise from the work on the balconies was not constant and occurred during allowable hours the noise is not unreasonable. The Landlord argues that the Tenant has not provided any evidence of loss in relation to the asbestos. The Landlord argues that the Tenant's evidence of water issues is vague and that the Tenant should have provided specific dates and time.

The Tenant states that the work on the building was shut down on March 3, 2016 by an environmental company. The Tenant states that this notice was not provided as evidence for this hearing however the Tenant read the contents of the notice. I note that the contents only states that the asbestos has been removed from the workplace in the areas of renovations and says nothing about shutting down the work.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given the undisputed evidence of noise from a jack hammer every day of the week and on a week-end day for a period of a bit over 2 months, I find that the Tenants have substantiated a significant disturbance resulting in a breach of their right to quiet enjoyment. I also find that the Tenants have substantiated the loss of use of the balcony and the loss of privacy from the presence of the workers on the balcony and going past the unit. For these breaches over two months I find that the Tenant has substantiated a loss equivalent to half a month`s rent for each month. Given the Landlord`s agreement, despite the move-out statement, with the Tenant`s evidence of the amount of rent payable I find that the Tenants are entitled to **$1,260.00**.

I accept that more cleaning would be required from the accumulation of dust during construction. However I also accept the Landlord's evidence that the construction occurred only as the units became vacant and was not therefore a continual accumulation of dust in the unit. I accept that this is a mere inconvenience that does not warrant compensation. There is no evidence of health problems. I also consider the plastic floor covering and longer wait times for the elevator to be mere inconveniences for which no compensation would be payable. For the above reasons I dismiss the remaining compensation claimed.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the

landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence of receipt of the forwarding address and considering that the Landlord neither returned the full deposit nor made a claim against it I find that the Landlord must now repay the Tenants double the security deposit plus zero interest in the amount of **$1,160.00**.

As the Tenants' claims have had merit I find that the Tenants are entitled to recovery of the **$100.00** filing fee for a total entitlement of **$2,520.00.** Deducting the **$515.20** already returned to the Tenant leaves **$2,004.80**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$2,004.80**. If necessary, this order may be filed in the Small Claims 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: December 15, 2017

Residential Tenancy Branch