



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

On July 30, 2017, the Tenants applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“*the Act*”), regulation, or tenancy agreement. On January 22, 2018, the Tenants amended the Application to clarify the amount of the claim.

The Landlord and Tenants attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Application for Dispute Resolution contains the names of three Tenants who live in three separate rental units on the rental property under three different tenancy agreements.

When Tenants from different units wish to join applications to be heard at the same time they are required to complete and submit an application called a Tenants Application To Join Applications For Dispute Resolution. The Residential Tenancy Branch considers the application and makes a decision on whether or not the issues can be joined.

In this case before me, the Tenants failed to make an application to join their disputes. The Tenants were given the option to have the entire application dismissed with leave to reapply, or to proceed with one Tenant and granting leave to the others to reapply.

The Tenants in attendance, Mr. B.E. and Mr. J.O requested that the application proceed in the name of Mr. J.O. Mr. B.E. has leave to reapply. The Landlord provided documentary evidence that the third Tenant Mr. R.M. has withdrawn his claim.

Issues to be Decided

- Is the Tenant entitled to compensation for a loss of quiet enjoyment?

Background and Evidence

The parties testified that the tenancy began on August 1, 2014. The Tenant pays monthly rent of \$1,652.00 by the first day of each month. Prior to July 1, 2017, the Tenant paid monthly rent of \$1,594.00. The Tenant paid the Landlord a security deposit in the amount of \$775.00.

The Tenant submitted that his right to quiet enjoyment has been breached and he submitted that he is entitled to compensation.

The Tenant is seeking \$3,188.00 for a loss of quiet peaceful enjoyment due to noise related to the replacement of the roof at the apartment building.

The Tenant testified that the noise started on April 10, 2017 and continued until June 15, 2017. The Tenant testified that there was severe noise from radios and hammering and there was no privacy from 7:00 am until 6:00 pm including some weekends. The Tenant acknowledged that the Landlord has an obligation to perform the work but stated that the ongoing noise was ongoing and presented more than temporary discomfort.

The Tenant testified that he sent an email to the Landlord requesting compensation but did not hear back. The Tenant provided a copy of an email dated May 19, 2017, that he sent to the Landlord about the noise.

The Tenant is also seeking compensation for lost wages in the amount of \$3,000.00.

The Tenant testified that he was unable to sleep due to the noise and he missed 10 days of work. He testified that he started work in the evening into the morning and needed to sleep during the day. He submitted that he sent an email to the Landlord on May 19, 2017 and sent a letter on May 30, 2017.

The Tenant submitted that he missed eight days of work in April 2017, and two days of work in May 2017.

The Tenant provided an undated letter from an employer that indicates the Tenant worked periodically for the company and that the Tenant reported that he could not work due to lack of sleep on numerous occasions during April 2017, and May 2017.

In response, the Landlord submitted that the building contains 102 units and is 35 years old and that there were leaks in the roof that required the entire roof to be replaced. She testified that there are six units located on the top floor.

The Landlord testified that Landlord informed the occupants of the building about the roof replacement two weeks prior to starting the work. She testified that the construction team was working in accordance with the hours permitted within the city bylaws. She testified that she asked the workers to not play their music. The Landlord provided a copy of the notice of the roof repair that was sent to occupants in March 2017. The notice

The Landlord submitted that the work took place over 48 work days between April 10, 2017, to June 12, 2017. She testified that the work was intermittent and that work did not occur every day. She testified that there was not continuous noise. The Landlord provided a spreadsheet showing the dates and times when the roof construction occurred.

The Landlord also provided a copy of the noise bylaw regarding permitted construction hours.

Analysis

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.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

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]

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

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*

[my emphasis]

Section 32(1) of the Act states that 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 the tenant.*

Section 7 of the Act provides: if a Landlord or Tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results. A Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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

I find that there was construction on the rental property over a 48 day period between April 10, 2017, to June 12, 2017. I find that the construction was necessary for the Landlord to maintain

the rental property by replacing a leaking roof; however, I find that the ongoing noise of construction resulted in a loss of quiet enjoyment for the Tenant.

The Tenant lives in a penthouse unit on the top floor of the building. I accept the Tenant's testimony that the construction noise disturbed him to the extent that he had difficulty sleeping. I find that the construction noise that occurred over the 48 days of work was substantial. I find that the Tenant is entitled to compensation for a loss of quiet enjoyment of the rental property.

With consideration to the submissions and evidence from the Landlord and Tenant, I find the Tenant's claim to recover the full amount of rent for two months is not reasonable. The Tenant has not substantiated a loss of 100% of the monthly rent. Other than difficulty sleeping, the Tenant enjoyed full use of the rental unit. I find an award of 25% of the rent for the loss of quiet enjoyment to be more reasonable based on the evidence presented.

With respect to the Tenants' claim for a loss of wages, there is insufficient evidence before me to allow me to conclude that pursuant to section 7 of the Act, the Tenant did whatever is reasonable to minimize the damage or loss. The Tenant was notified in advance that the roof would be repaired and that the repairs can cause considerable noise. I find that the Tenant should have anticipated there would be noise.

When the Tenant first experienced an issue with noise, and missed work on April 11, 2017, there is no evidence before me that he took any action to resolve his concerns with noise until he sent an email dated May 19, 2017. The Tenants' evidence indicates that he missed 10 work shifts prior to reporting his noise concern to the Landlord. There was no evidence from the Tenant that he attempted to minimize the loss by taking other steps such as wearing ear protection to cancel out the noise. The Tenants claim for compensation for lost wages is dismissed.

The Tenant was paying rent in the amount of \$1,594.00 per month during the period of construction. The construction occurred began on April 10, 2017, and continued until June 12, 2017, a two month period of time. I award the Tenant compensation in the amount of 25% of the rent paid over a two month period. I grant the Tenant compensation in the amount of \$398.50 per month for two months, for a total amount of \$797.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant was partially successful with his application for compensation. I order the Landlord to repay the filing fee to the Tenant.

I order that the Tenant may deduct the total amount of \$897.00 from one (1) future rent payment.

Conclusion

The Tenant established that he suffered a loss of quiet enjoyment of the rental unit and is awarded \$797.00.

I order the Landlord to repay the \$100.00 filing fee to the Tenant.

I authorize the Tenant to deduct the amount of \$897.00 from one (1) future rent payment.

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: February 15, 2018

Residential Tenancy Branch