



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, RR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement, a rent reduction, and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s assistant, and the Landlord, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any order issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that two of the Applicants, D.T. and J.T., are the children of the Tenant N.C. and are not listed as tenants in the tenancy agreement. As D.T. and J.T. are actually occupants rather than tenants, the Application was amended to show only N.C., who is the Tenant, as the Applicant.

Preliminary Matter #2

The Tenant testified that she is not currently seeking to end the tenancy and withdrew her claim for an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement and allow her to end the fixed-term tenancy early. The Application was amended accordingly.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee?

Is the Tenant entitled to a rent reduction?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one-year fixed-term tenancy began on June 1, 2017, and that rent in the amount of \$3,000.00 is due on the first day of each month.

Both parties were in agreement that there is an ongoing re-piping project in the building, which is a 25 story building with 6 units on each floor, which has resulted in significant disturbance to the Tenant. The Landlord did not disagree that the Tenant is entitled to compensation for loss of use and loss of quiet enjoyment for the work being done in her rental unit; however, he disputed the amount sought by the Tenant. The documentary evidence before me from the strata indicates that a project to re-pipe the entire building began on October 31, 2017, and is sent to end in August or September, 2018, with a substantial project completion date of July 15, 2018. The documents before me from the strata and the construction company indicate that re-piping was scheduled to occur in the Tenant's rental unit from January 25, 2018 – February 15, 2018, however, the

Tenant testified that work was still ongoing in her unit until February 23, 2018. The Tenant has also submitted evidence that there have been water shut –offs to her unit for significant periods of time on January 10, 2018, January 26, 2018, January 30, 2018, February 7, 2018, and March 13, 2018.

The Tenant submitted photographic evidence of the construction in her rental unit and testified that the daily disturbance was quite significant as it was loud and dusty and workers need access to her rental unit from approximately 8:00 A.M. to 5:00 P.M. each weekday while working in her rental unit occurred. The Tenant stated that as a result of the work, she had to clear out her den, a closet and all of the bathroom cupboards resulting in significant inconvenience and loss of space for her and her two children, who also reside in the rental unit. The Landlord did not dispute this testimony.

The Tenant testified that the work was very disruptive and disturbing for her cat and significantly impacted her work as she works from home approximately three days per week for several hours a day. The Tenant testified that during the times she worked from home during the renovations in her unit, she was either significantly disturbed or unable to complete her work from home. However, the Tenant did acknowledge that aside from the times she worked from home, she was largely away from the rental unit during the day when work was being completed. The Tenant stated that the work in the rental unit and the building has also impacted her two children as one works from home and the other attends university and requires a place to study and complete her school work. As a result, the Tenant is seeking compensation for the loss of space and loss of quiet enjoyment in her rental unit in the amount of \$3,000.00, which is equivalent to one full month of rent.

There was also a dispute between the parties regarding the loss of use of a dishwasher. While the Tenant stated that the dishwasher was damaged by the workers, the Landlord denied this allegation and stated the Tenant has not provided any proof that this is the case. Further to this, the Landlord testified that he repaired the dishwasher as soon as he became aware of the issue. The Tenant also admitted that she initially e-mailed regarding the dishwasher to the wrong e-mail address.

The Tenant is also seeking a \$500.00 per month rent reduction, starting December 2017, and continuing until April 30, 2018, as she states that the noise from drilling, the inconvenience of water shut-offs, and the construction noise and dust from elsewhere in the building have and will continue to impact her quiet enjoyment of the rental unit and her ability to work from home. The Tenant testified that drilling for the pipes, which shook her unit, began in early December 2017, and continued until the end of February

2018. In addition to the shaking, the Tenant stated that the noise was so loud that she could not have telephone conversations.

The Tenant also alleged that the Landlord was aware of the re-piping project before signing the tenancy agreement and that she would not have entered into the tenancy had she known about the work to be completed. The Landlord denied the Tenant's allegation and testified that although the need for re-piping has been known for some time, it was not until October of 2017, that he became aware the project had been approved and scheduled, which was after the start of the tenancy. The Landlord stated that he did not disclose that re-piping may be needed in the building at the time the tenancy agreement was signed as he had no way of knowing if or when the project would begin.

Analysis

Section 28 of the *Act* states the following with regards to a tenant's right to quiet enjoyment:

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:
- (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 [*landlord's right to enter rental unit restricted*];
 - (d) use of common areas for reasonable and lawful purposes, free from significant interference.

However, a Tenant's right to quiet enjoyment must be balanced with a landlord's obligations to repair and maintain the rental unit as set out below in section 32 of the *Act* and Policy Guideline #6.

Landlord and tenant obligations to repair and maintain

- 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.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Residential Tenancy Policy Guideline (the "Policy Guideline") #6 states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected and that 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.

Policy Guideline #6 states that a breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises and that that temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment.

Frequent, ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment. However, Policy Guideline #6 states that in determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises and that the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

Although the Tenant alleged the Landlord failed to disclose the known work project prior to signing the tenancy agreement and that she would not have entered into the tenancy had she known of the work to be done; the Landlord denied this allegation. The strata documents before me indicate that a strata meeting was held with the owners on October 26, 2016, regarding the need for building re-piping, however, no deadline, approval, or work schedule appears to have been set at that time. Although the strata

documents show that approval for the work was granted by the strata corporation on September 18, 2017, it also indicates that a meeting for owners regarding the approval of the project was not held until October 18, 2017. Based on the above, I find the Landlord's testimony reliable with regards to the fact that he was aware re-piping may be needed before the tenancy agreement was signed but that no approval or schedule had been set.

Although the Landlord agreed that the Tenant is due compensation for loss of use and loss of quiet enjoyment, he testified that the amounts sought by the Tenant are unreasonable. However, he did not provide an alternative amount. Further to this, the Landlord stated that the Tenant requested to end the tenancy early without penalty and the Landlord agreed, but the Tenant has since rescinded this request and continued to reside in the rental unit.

Based on the testimony of the parties and the photographic and documentary evidence before me, I accept that the work being done in the Tenants rental unit from January 25, 2018 – February 23, 2018, resulted in a significant loss of use and loss of quiet enjoyment for 30 days. The photographs before me show that in addition to the requirement for the Tenant to clear the den, her bedroom closet, and all the bathroom cabinets, the equipment for the work being done took up a significant amount of the remaining living space during the time workers were in the unit each day. Further to this, I find that the nature and extent of the work being done, which includes the removal of drywall, piping, drilling and plumbing, has resulted in noise, dust, and other significant disturbances for the Tenant and her two daughters.

While the Tenant sought compensation in the amount of one month's rent for the duration of work in her rental unit, I find this amount excessive as the Tenant and her two children were able to remain in the rental unit throughout the work being completed and therefore had some use of it for living and the storage of their belongings. Further to this, the work in the rental unit was only completed on weekdays between approximately 8:00 A.M. and 5:00 P.M. Given that the Tenant and her two children were not always home during the work in their rental unit, the fact that their rental unit was available for their exclusive use and possession between approximately 5:00 P.M. and 8:00 A.M. on weekdays and 24-hours a day on weekends, I do not find the Tenant is entitled to one full month's rent for the 30 days in which work was completed in the rental unit. However, I do find that this was more than just a temporary inconvenience as the Tenant and her two children were unable to use the den, a bedroom closet, and all bathroom cabinets for the 30 days from January 25, 2018, - February 23, 2018, and that the level of disturbance and the loss of space was significant to both her and her

two children. Based on the above, and taking into consideration that the Tenant's right to quiet enjoyment must be balanced with the Landlord's right and obligation to repair and maintain the rental unit; I find that \$1,200.00 is a reasonable amount of compensation, which is 40% of the monthly rent. The Tenant is therefore entitled to compensation in the amount of \$1,200.00 for loss of use and loss of quiet enjoyment for the period in which re-piping work was completed in the her rental unit.

The Tenant also sought compensation for loss of use of the dishwasher, however, the Landlord testified that he fixed it as soon as he became aware there was an issue and the Tenant admitted that she initially sent the e-mail regarding the dishwasher to the wrong e-mail address. As a result, I find that the Tenant has failed to satisfy me that she suffered a loss regarding the dishwasher as a result of the Landlord's actions and her claim for compensation in relation to the loss of use of the dishwasher is dismissed without leave to reapply.

Although the Tenant also sought a \$500.00 per month rent reduction for loss of quiet enjoyment as a result of work being completed in other areas of the building from December, 2017 – April, 2017, I note that the Tenant's rental unit is located in a 25 floor concrete building. Although the Tenant testified that she has and will continue to be disturbed by the ongoing work in other areas of the building, she failed to provide me with sufficient evidence of where and when this work was or will be completed in other areas of the building, that the work in these other areas of the building can be heard in her unit, that any work that can in fact be heard in her unit is sufficient to constitute substantial interference with the ordinary and lawful enjoyment of the premises or that it is anything more than a temporary discomfort or inconvenience. Although the Tenant submitted proof of water shut-offs before and after the completion of the work in her unit, there was no evidence before me that the Tenant was in fact home during these shut-offs or that they in any meaningful way, impacted the Tenant's use or enjoyment of her rental unit. As a result, I find that the Tenant has failed to satisfy me that these additional water shut-offs were anything other than a temporary discomfort or inconvenience. As a result, the Tenant's Application for a rent reduction is dismissed without leave to reapply.

As the Tenant was only partially successful in her Application, I grant her recovery of only 50% of the \$100.00 filing fee pursuant to section 72 of the *Act*.

Based on the above, the Tenant is therefore entitled to monetary compensation in the amount of \$1,250.00. If the Tenancy is ongoing, the Tenant is entitled to deduct \$1,250.00 from the next month's rent in full satisfaction of the above noted amount. In

the event that the tenancy has ended, the Tenant may serve and enforce the attached Monetary Order on the Landlord as required.

Conclusion

The Tenant's Application for a rent reduction and compensation for loss of use of the dishwasher are dismissed without leave to reapply.

Pursuant to section 67 of the *Act*, the Tenant is entitled to compensation in the amount of \$1,250.00. If the Tenancy is ongoing, the Tenant is entitled to deduct \$1,250.00 from the next month's rent in full satisfaction of this amount. In the event that the tenancy has ended, I have issued and attached a Monetary Order to this decision. The Tenant is provided with this Monetary Order in the above terms and should the tenancy have ended, 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. The Tenant **must not** serve or seek to enforce this Order on the Landlord if the Tenant has otherwise recovered this amount from the Landlord.

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: April 30, 2018

Residential Tenancy Branch