



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was scheduled in response to the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for damage or compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant, the tenant's advocate and the landlord's legal counsel attended the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Landlord's legal counsel submitted the landlord was incorrectly named in the tenant's application. During the hearing the tenant consented to an amendment to her application. Pursuant to section 64 of the *Act*, I amend the tenant's application to reflect the legal name as provided by landlord's legal counsel.

Preliminary Issue – Amendment of Tenant's Monetary Claim

At the outset of the hearing, the tenant requested to reduce the tenant's monetary claim. I find that a reduction of the tenant's monetary claim does not prejudice the landlord and as a result, I amend the tenant's claim from \$18,677.00 to the reduced amount of \$16,136.00 pursuant to section 64(3) of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for damage or compensation under the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the evidence and testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The parties submitted documentary evidence in the form of written submissions, photographs, audio recordings, affidavits, witness statements, notices, and past decisions issued by the Residential Tenancy Branch. The principal aspects of the tenant's claim and my findings around each are set out below.

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on February 1, 2003 on a month-to-month basis with a monthly rent of \$640.00. The monthly rent was increased; February 1, 2015 to \$918.00, February 1, 2016 to \$942.00, February 1, 2017 to \$956.00 and June 1, 2018 to \$991.03.

It is undisputed that in the fall of 2015 the landlord undertook a substantial renovation project of the complex in which the tenant resides. This included work on the corridor, lobby and entrance, security upgrades, elevator modernization, building envelope, balconies, windows and doors, unit renovations, energy efficient systems and mechanical equipment replacement.

The tenant submitted that this renovation project has interfered with her right to quiet enjoyment. She claimed that as a tenant of a ground level unit in close proximity to the construction zone, she has experienced a substantial reduction in the value of her tenancy. In an effort to substantiate her monetary claim, the tenant has identified twenty-three issues related to privacy, disturbance and use of common areas.

During the hearing, the tenant specified that she seeks a variable rent reduction for eight periods in the total amount of \$16,136.00;

Period	Date	Rent Reduction	Amount
1	December 2015 to June 2016	40%	\$2,566.00
2	July 2016 to December 2016	60%	\$3,313.00
3	January 2017 to February 2017	20%	\$368.00
4	March 2017 to August 2017	40%	\$2,248.00
5	September 2017 to February 2018	60%	\$3,433.00
6	March 2018 to September 2018	40%	\$2,730.00
7	October 2018 to February 2019	30%	\$1,486.00
8	Future Rent Reduction	15%	\$148.65/month
	Total		\$16,144.00

Upon review of the tenant's claim, I note that the above does not equate to \$16,136.00, but rather totals \$16,144.00. In accordance with section 64(3) of the *Act*, I amend the tenant's application to reflect the amount claimed to \$16,144.00.

In reply, legal counsel submitted that while a renovation of this size and scope may have inconvenienced the tenant at times, the monetary claim is excessive and without merit. Legal counsel contended that the work was required as it was undertaken to repair and maintain the building. Further, the landlord asserted that significant attempts have been made to minimize disruption while conducting the renovations.

Analysis

The tenant claimed that her tenancy has reduced in value as a result of the ongoing construction and therefore seeks \$16,144.00 in compensation.

Section 67 of the *Act* establishes that if loss results from a tenancy, an Arbitrator may determine the amount of that loss and order that party to pay compensation to the other party.

In this case, the onus is on the tenant to prove, on a balance of probabilities, the following four elements:

1. Proof that the loss exists;
2. Proof that the loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past or future rent if I determine that there has been “a reduction in the value of a tenancy agreement.”

Section 32 of the *Act* establishes that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 28 of the *Act* establishes a tenant’s entitlement to quiet enjoyment which includes rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord’s right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

Under section 1 of the *Act*, rent is defined as money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities.

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Pursuant to Residential Tenancy Policy Guideline #6, a tenant may be entitled to compensation for loss of use of a portion of the property that constitutes a loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

I find the landlord was within its right to undertake the renovation pursuant to its duty to maintain the premises under section 32 of the *Act*. I further find that the landlord has made reasonable attempts to reduce the effects of the construction project as evidenced by the many notices, updates and initial offer of compensation. Nonetheless, I find that in part due to the scope and duration of the project, the tenant has established some reduction in the value of her tenancy.

Privacy

Based on the evidence and testimony of the parties, I find the tenant's view and privacy was impacted as a result of the renovation project. The evidence shows that fencing and a swing stage was erected outside the tenant's ground floor unit which restricted the tenant's view, light and privacy for a significant amount of time. Therefore, I find the tenant is entitled to some monetary compensation for the "*loss of view and access to light*" and "*loss of privacy*."

Disturbances

I reject the tenant's claim that operational changes made by the new owners and management constitute a disturbance or breach of quiet enjoyment. The landlord is not obligated to provide an onsite building manager under the *Act*, and is at liberty to make the operational changes as described by the tenant. Although the effects of such operational changes could potentially form some breach of quiet enjoyment, the changes themselves do not. Therefore, I find the tenant is not entitled to monetary compensation for the "*loss of resident managers*" and "*introduction of pets to a formerly pet free building*."

I accept that as a result of this renovation, the tenant's right to quiet enjoyment has been breached by increased noise and dust. While these disturbances may be typical to a renovation, I consider the duration of such disturbances unreasonable. Accordingly, I find the tenant is entitled to some monetary compensation for the "*failure to maintain*"

cleanliness,” *“increase of dust and debris”*, *“noise from interior renovations”* and *“noise from exterior renovations.”* This compensation does not reflect the tenant’s claim for *“exterior of windows uncleaned”* and *“noise during quiet hours.”*

While the tenant has expressed security concerns in regards to doors being propped open by contractors, I find that she has provided insufficient evidence to establish this practice has resulted in any specific security disturbance. Therefore, I find the tenant is not entitled to monetary compensation for *“security issues.”*

I find a large portion of the tenant’s claim surround what can only be referred to as, the aesthetics of the renovation project. She described and provided evidence expected of a building undergoing a significant renovation. Although the incompleteness of some portions of the building and the existence of portable toilets, construction materials, equipment and tools in common areas are not to the tenant’s liking; I do not find this sufficient to form the basis of a breach to quiet enjoyment. Accordingly, I find the tenant is not entitled to monetary compensation for *“unsightly grounds”*, *“lobby/entrance as construction zone”* and *“hallways and commons unfinished.”*

I find that the tenant has provided insufficient evidence to establish that the window replacement in her unit constitutes anything other than a mere inconvenience. As evidenced by the tenant’s own testimony, the replacement only took a few days. I find this is a reasonable length of time to replace windows and therefore do not find the tenant is entitled to monetary compensation for *“multi-day disruption for window replacement.”*

I find the tenant’s claim for mismanagement of the renovation redundant. Any effects of such would be reflected in the tenant’s individual claims above. In the absence of medical records to substantiate a direct impact to the tenant’s health, I find the tenant has failed to establish any claim related to hazardous materials. Therefore, I find the tenant is not entitled to monetary compensation specific to *“contractor negligence, incompetence and conduct”* and *“exposure to hazardous materials.”*

Common Areas

Upon review of the testimony and evidence of the parties, I am satisfied that the tenant has experienced some loss of amenities and use of common areas as a result of the renovation.

Based on the undisputed evidence of the tenant that she has experienced disruption to the intercom system and water services, I find the tenant is entitled to some compensation for “*faulty intercom*” and “*plumbing failures and water shut-offs*.”

While I accept the tenant’s evidence that the renovation and subsequent stop work order prevented mail delivery directly to the complex for a short period, this service does not form part of her tenancy agreement and the evidence shows the tenant had the ability to pick up her mail offsite. For these reasons, I find the tenant is not entitled to monetary compensation for “*mail service disruption*.”

I find the tenant has provided insufficient evidence to establish the pool was unusable in the year 2016, however on the basis of the landlord’s admission that the pool was opened late by one month in 2016 I find the tenant is entitled to minimal compensation for the “*unusable or undesirable swimming pool*.”

Upon review of the evidence, I find the tenant has provided insufficient evidence to establish that her personal parking spot was affected by the renovation or that guest parking forms part of her tenancy agreement. Therefore, I find the tenant is not entitled to monetary compensation for “*reduced parking availability*.”

I find the tenant has failed to substantiate that the “main yard” is a common area that forms part of her tenancy. Therefore, I find the tenant is not entitled to monetary compensation for “*main yard lost to unsightly staging area*.” However, I do find that throughout the renovation, access to the lobby has been intermittently restricted therefore; I find the tenant is entitled to some monetary compensation for loss of use of this common area.

Summary

Although I find that the tenant has established some disturbances reduced the value of the tenancy, I do not find these disturbances are congruent with the amount sought by the tenant. The tenant maintained occupancy of her unit throughout the renovation, experienced mostly minor inconveniences typical of a renovation and made minimal efforts to minimize any loss. With consideration to the totality of the disturbances and duration of loss, I value the diminishment of the tenancy as 8%. I find that the tenancy has devalued from December 2015 to the hearing date of February 28, 2019. I consider this amount reasonable given the impact that the renovation has had on the tenant.

Period	Rent	8% Rent Reduction
December 2015 to January 2016	$\$918.00 \times 2 = \$1,836.00$	\$146.88
February 2016 to January 2017	$\$942.00 \times 12 = \$11,304.00$	\$904.32
February 2017 to May 2018	$\$956.00 \times 16 = \$15,296.00$	\$1223.68
June 2018 to February 2019	$\$991.03 \times 9 = \$8,919.27$	\$713.54
Total Award		\$2,988.42

I find the tenant's claim for a future rent reduction premature and therefore dismiss this portion of the tenant's claim, with leave to reapply.

As the tenant was partially successful in her application, I find the tenant is entitled to recover the \$100.00 filing fee for this application for a **total award of \$3,088.42**.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$3,088.42** for the reduction of value in tenancy.

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: March 15, 2019

Residential Tenancy Branch