Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT RP RR FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to carry out repairs pursuant to section 33; and
- An order requiring the landlord to reimburse the tenant for the filing fee.

The tenant AS appeared for the tenants ("the tenants"). The landlord attended. Each party was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to carry out repairs pursuant to section 33; and
- An order requiring the landlord to reimburse the tenant for the filing fee.

Background and Evidence

The tenants entered into a tenancy with the landlord on September 1, 2013 which is oingoing. Monthly rent was initially $1,100.00, which increased to $1,223.00. The rent is currently $1,271.00. The increases are all within the authorized rent increase limits pursuant to the Act. A copy of the written tenancy agreement was submitted into evidence.

The unit is in an apartment building containing 30 units. The unit is a two-bedroom apartment in which the tenants reside with their two children.

A previous Decision was made on August 3, 2019 in an arbitration between the parties; reference to the file number appears on the first page. The parties referred to the Decision during the hearing. In that case, the Arbitrator ordered the landlord to conduct repairs to stop leaking in the unit and to repair a “hole” in the interior drywall, the repairs to be completed by September 30, 2018. The landlord was ordered to remove some construction debris from the unit’s balcony. The tenants were granted a $50.00 deduction in rent from September 2018 for ten months. The parties agreed the landlord complied with the Order.

The parties agreed that in February 2019 the landlord began scheduled construction on one side of the apartment building affecting ten units, including the tenants’ unit, to remove and replace aging balconies. The work is ongoing. The landlord estimated completion at the end of August 2019. The affected tenants were required to remove all items from the balconies. The tenants allege that the construction has led to a significant loss of enjoyment of the rental unit. The tenants sought a monetary award in the form of a return of rent during this construction and reimbursement of storage fees.

The parties agreed the tenants have continued to receive the $50.00 a month rent reduction since the previous Decision and will continue to do so until the end of August 2019 when the construction is anticipated to end.

The tenants stated that $50.00 a month rent reduction is inadequate for the inconvenience they have been undergoing since February 2019 and are currently undergoing. The tenants submitted a monetary order worksheet in which they stated that they are requesting an additional monthly rent reduction of $150.00 retroactive to February 2019 and continuing until the conclusion of the construction.

The parties agreed the landlord provided each unit in the building with a storage locker. The tenants said that the balcony contained items which were too large and numerous to store in the unit or in their storage locker. The tenants stated that they were required because of the construction to rent an off-site storage unit to store the items on the balcony. The tenants submitted copies of receipts for initial 6-week storage fees of $225.09 and subsequent monthly fees of $128.10. The tenants claim reimbursement of these past and expected expenses until the end of the construction.

The tenants stated that the work is progressing slowly and that the landlord failed to quickly and efficiently carry out the repairs. The landlord provided an estimate for the repairs of a couple of months and the work has been undergoing for four months without completing. The landlord testified that he is experienced in repairs of this nature and the work is proceeding normally. The landlord denied that the landlord has been unprofessional, slow or inattentive to the work.

Of the ten units affected by the construction, the landlord testified that the tenants are the only tenants to complain about the construction or about the inadequacy of the provided storage unit. The tenants are also the only tenants to receive the rent reduction. The landlord testified he characterized the tenants as “complainers”.

Both parties submitted substantial evidence including photographs. The landlord stated that the submitted photograph of the tenants’ balcony before construction indicates, “it’s a junk yard”. The landlord stated that the tenants were keeping buckets, cleaning supplies, tires, a shelving unit and other items on the balcony which are not supposed to be stored there and provided photographs in support of this assertion. The landlord testified to warnings to the tenants to remove unpermitted items from the balcony.

The tenants denied the characterization by the landlord of the items stored on balcony, although they acknowledged that the tires, which were only stored there temporarily, should have been removed. The tenants stated the balcony contained normal, acceptable items, such as a patio table, folding chairs, coolers, a barbecue, a barbecue tank, and so on. While the tenants acknowledge that the other items were on the balcony, they claimed there was nothing wrong with these items being placed in that location.

The landlord claimed that the tenants are not entitled to any further rent reduction and that they are not entitled to reimbursement for the cost of storage of items which were improperly stored on the balcony.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

The tenants submitted a claim for a monetary award in the amount of $150.00 reimbursement for rent from February 2019 in addition to the $50.00 rent reduction they receive until the construction ends in August 2019, a period of 7 months, for a total claim of $1,050.00. The tenants also claimed reimbursement of the cost of an off-site storage area for items from the balcony which had to be moved during the construction in the amount of $225.09 and subsequent monthly fees of $128.10 for 5 months.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

The tenants' claim is akin to a loss of quiet enjoyment claim pursuant to section 28 of the *Act*. That section provides in part:

> 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.*

The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states as follows:

> *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. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance,* ***but failed to take reasonable steps to correct these.***
>
> ***Temporary discomfort or inconvenience*** *does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.*
>
> *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****.*
> *…*
> *A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).*
>
> (*emphasis added*)

The onus is on the party making the claim to show on a balance of probabilities that there has been a loss of quiet enjoyment because of the action or negligence of the landlords.

The parties have testified that the rental building is undergoing necessary repairs including the replacement of aging balconies. The work has been ongoing since

February 2019 and began with one side of the building, thereby affecting the tenants' unit as they have no access to a balcony while it is being replaced.

The parties agreed the scope of work required each of the ten units, including the tenants' unit, to remove items from their balcony in February 2019 and store them either inside each unit or in the storage locker provided by the landlord.

The tenants provided evidence to the way they were affected by the removal and rebuilding of their balcony. Specifically, the tenants described being ordered to remove their possessions stored on the balcony without being offered adequate additional storage space to the locker provided by the landlord, thereby necessitating the rental and expense of an off-site storage unit.

I find the tenants were not using the balcony for ordinary and lawful enjoyment. I find the tenants stored items on the balcony which are not intended to be placed there; I find the landlord warned the tenants about the number and nature of items stored on the balcony. In reaching this conclusion, I reviewed the submitted photographs and warnings from the landlord which show the balcony was crowded with many items, including stacked tires, a container of flammable contents, many stacked plastic pails and coolers, a shelving unit, as well as table and chairs.

I find the landlord is conducting repairs to the premises as required by the Act. While the landlord was aware that the tenants were being inconvenienced to some extent by the loss of access to the balcony, I find the landlord has taken all normal and reasonable steps to conduct the repairs in a timely and responsible manner within a reasonable period. I find the interference or disturbance to the tenants to be temporary and not substantial. I find the landlord has not breached the Act or the tenancy agreement.

I also find the landlord has adequately compensated the tenants for any temporary discomfort by the $50.00 rent reduction which will continue until the end of August 2019.

I therefore find that the tenants have not met the burden of proof on a balance of probabilities with respect to this part of their claim.

I therefore deny the tenants' claim for a breach of entitlement to quiet enjoyment and damages; I dismiss the tenants' application for a further rent reduction or rent compensation.

I have considered the landlord's testimony regarding the scope of the repairs being undertaken and the time being taken for the work as well as the expected date of completion. I accept the landlord's evidence as a professional working in this area regarding the complexity of the project in replacing all the balconies in a building of this age and size. I accept his evidence that the work is progressing professionally and as quickly and efficiently as possible. While I understand the tenants are inconvenienced somewhat by the temporary loss of their balcony, I find the inconvenience is temporary and minor and the landlord is doing everything that can reasonably be expected to minimize the disturbance.

In considering the evidence of the parties, I find the tenant has failed to establish on a balance of probabilities that the landlord has not conducted and is not conducting the work in a timely and responsible manner; therefore, I dismiss the tenants' application for an order to compel the landlord to complete the repairs.

As the tenants are not successful in their application, I do not award reimbursement of the cost of the filing fee.

Conclusion

The tenants' application is dismissed without leave to reapply.

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: May 31, 2019

Residential Tenancy Branch