



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding S.D. WOODMAN MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 27, 2019 (the "Application"). The Tenant applied to dispute a rent increase that is above the amount allowed by law, for compensation for monetary loss or other money owed and for reimbursement for the filing fee.

The Tenant appeared at the hearing. The Agent for the Landlord appeared late. I explained the hearing process to the Tenant who did not have questions when asked. The parties provided affirmed testimony.

The Agent provided the correct name of the Landlord which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties and all documentary evidence pointed to during the hearing. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Has the Landlord imposed a rent increase that is above the amount allowed by law?
2. Is the Tenant entitled to compensation for monetary loss or other money owed?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant did not allege that the Landlord imposed a rent increase that does not comply with Part 3 of the *Residential Tenancy Act* (the "Act"). The Tenant sought \$22.00 per month in

compensation from January of 2019 until renovations to the balcony of the rental unit are complete.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started June 15, 2018 and is a month-to-month tenancy. The parties agreed rent increased from \$1,100.00 to \$1,122.00 July 01, 2019.

The Tenant testified as follows. Renovations on the balcony of the rental unit started in August of 2018. She was told the renovations would be done in December of 2018. In January of 2019, she found out the renovations had been stopped because of issues with the city. She was told the renovations would continue once the issue was resolved. She did not hear about when the renovations would be finished in January, February or March. She then received a rent increase. She asked the Landlord not to increase the rent until the balcony renovations were done. The Landlord would not agree to this.

The Tenant further testified as follows. She is seeking compensation because she has not been able to use the balcony and therefore not had use of the entire rental unit. In August of 2018, wood was put up blocking access to the balcony. It has been more than a year since the balcony was blocked off for renovations. She cannot use the balcony. The balcony was the main feature she wanted the rental unit for because the unit itself is small. Prior to the balcony being blocked off, she had a patio table on it where she would eat meals and enjoy the summer. She also had plants out on the balcony. The plants and table had to be moved inside the already small unit. The wood blocking access to the balcony takes up at least half of her view from the rental unit and makes the unit darker. The balcony is approximately $\frac{1}{4}$ of the entire rental unit.

The Tenant submitted that \$22.00 per month in compensation is appropriate. She said she is seeking this amount as it is the amount of the rent increase which she does not want to pay while the balcony remains inaccessible. She submitted that the loss of use of the balcony and her plants is more than the amount sought. The Tenant testified that she raised the balcony issue with the Building Manager, who is a liaison between her and the Landlord, or the Landlord in January, February and March.

The Agent testified as follows. The rent increase was a permitted rent increase. All residents received notice of the repairs. The city stopped the work. The strata is run by another company. They are waiting for a permit from the city which takes time. The situation is out of the owner's hands. No other tenant has received compensation. Nobody knows when the renovations will be complete.

The Agent pointed out that the rent increase occurred in July, yet the Tenant is seeking compensation starting in January.

The Tenant submitted photos showing the state of the balcony and the view from inside the rental unit.

Analysis

The Tenant did not allege that the rent increase does not comply with the *Act* and therefore this part of the claim is dismissed without leave to re-apply.

In relation to the request for compensation, section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

A tenant's right to quiet enjoyment is protected by section 28 of the *Act*.

Policy Guideline 6 deals with the right to quiet enjoyment and states in part:

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 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.

I accept the testimony of the Tenant that the balcony of the rental unit has been blocked and inaccessible since August of 2018 as the Agent did not dispute this. I accept the testimony of the Tenant that she has not been able to use the balcony as the Agent did not dispute this. Based on the photos submitted, I accept that the wood blocking access to the balcony also blocks part of the Tenant's view from the rental unit and causes the rental unit to be darker.

Based on Policy Guideline 6, I find the Tenant's right to quiet enjoyment has been breached. I find the interference substantial given the Tenant cannot use the balcony of the rental unit at all. I accept the testimony of the Tenant that the balcony is $\frac{1}{4}$ of the entire rental unit as the Agent did not dispute this. I accept the testimony of the Tenant that she used the balcony for plants and to sit and eat meals as the Agent did not dispute this. I accept that the loss of use of the balcony is more than an inconvenience in the circumstances. Further, the breach is frequent and ongoing as it has been a daily issue for more than a year. I also accept that the wood blocking the Tenant's view and light contributes to the breach of her right to quiet enjoyment.

In determining there has been a breach of the Tenant's right to quiet enjoyment, I have considered the Landlord's right and responsibility to maintain the premises. However, I accept that the situation with the balcony has gone on longer than expected and longer than what is reasonable. I acknowledge that this is because the strata is now waiting for a permit from the city; however, it is reasonable to expect that the strata would have had all necessary permits prior to starting the renovations.

I accept that loss has resulted from the breach. The Tenant has lost use of the balcony which is $\frac{1}{4}$ of the entire rental unit. Further, the value of the tenancy has been reduced by the wood blocking part of the Tenant's view and blocking light into the rental unit.

I accept that the Tenant raised the balcony issue with the Building Manager or Landlord in January, February and March as the Agent did not dispute this. I find the Tenant did what she could to minimize the loss by alerting the Landlord to the issue.

I accept that the Tenant is entitled to compensation starting in January of 2019 as I accept that the balcony issue has been ongoing since August of 2018. I find compensation starting in January reasonable as I accept that the renovations were supposed to be complete in December of 2018 as the Agent did not dispute this.

I find the \$22.00 per month requested to be reasonable. This is not an extravagant sum and is only a small portion of the rent.

I acknowledge that the balcony renovations were stopped by the city and that the strata is waiting for permits, the timeline of which is out of the owner's hands. However, the owner and Landlord rented the Tenant a rental unit with a view and a balcony. The view has been obstructed and the Tenant cannot use the balcony. Therefore, the value of the tenancy has been reduced and the Tenant is entitled to compensation for this until the view and use of the balcony are restored.

Given the Tenant was successful in this application, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Pursuant to section 67 of the *Act*, the Tenant is awarded compensation of \$22.00 per month from January to present for a total of \$220.00. The Tenant is entitled to \$320.00 at this point. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$320.00 from one future rent payment.

Further, the Tenant is entitled to compensation in the amount of \$22.00 per month until the balcony renovations are complete. Pursuant to section 65(1)(f) of the *Act*, I order that the Tenant can deduct \$22.00 per month from rent until the renovations to the balcony of the rental unit are complete.

Conclusion

The Tenant is awarded compensation of \$22.00 per month from January to present for a total of \$220.00.

Given the Tenant was successful in this application, I award her reimbursement for the \$100.00 filing fee.

The Tenant can deduct \$320.00 from one future rent payment.

Further, the Tenant is entitled to compensation in the amount of \$22.00 per month until the balcony renovations are complete. I order that the Tenant can deduct \$22.00 per month from rent until the renovations to the balcony of the rental unit are complete.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 09, 2019

Residential Tenancy Branch