Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant requested compensation for damage or loss under the Act and that she be allowed to make deductions from rent for repairs, services or facilities agreed upon but not provided.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I am considered all of the included and referenced evidence submissions.

Preliminary Matters

The tenant served the landlord with the Notice of hearing package on July 5, 2012; the landlord confirmed receipt of the package. The tenant submitted 9 pages of evidence with the application; which the landlord received.

The tenant served the landlord with an additional 39 pages of evidence and a flash drive device five days prior to the hearing; the landlord confirmed receipt of this evidence. The tenant served the Residential Tenancy Branch with the evidence 4 days prior to the hearing, outside of the required time-frame set out in the Rules of Procedure. Further, the late evidence submission contained the only detailed breakdown the monetary claim provided by the tenant.

The landlord indicated he was prepared to proceed and did not dispute reference to the evidence and detailed calculation of the claim; therefore, I determined that the monetary claim could proceed and that all evidence contained in the unnumbered 39 page submission would be referenced during the hearing, only as documents were individually identified.

The flash drive evidence submitted by the tenant was submitted to the Residential Tenancy Branch 4 days prior to the hearing. As this evidence was submitted late I determined it would not be referenced.

The landlord sent the tenant evidence, which was served late. This evidence contained copies of letters that the tenant had submitted for consideration; so the materials were considered as part of the tenant's written submission.

Issue(s) to be Decided

Is the tenant entitled to $24,900.00 as compensation for damage and loss under the Act and for repairs agreed upon but not provided?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on September 3, 2010. Rent is currently $980.00 per month, due on the first day of each month.

The tenant has made the following claim:

Storage costs	440.00
Loss of quiet enjoyment over 12 months	11,760.00
Loss of creative activity due to dust and noise	3,500.00
Coffee and snacks for 1 year	1,500.00
Misrepresenting the state of the apartment at the time of viewing	5,896.00
Lead and asbestos assessment	268.00
TOTAL	24,900.00

When the tenant was initially shown the rental unit in 2010 she was told certain issues would be dealt with. The tenant took possession of the unit and made no written complaint to the landlord until April 26, 2012 when the tenant gave the landlord a letter outlining promises that had been made when she viewed the rental unit at the start of the tenancy in 2012. The unit was not clean and some minor renovations were promised. This communication listed a number of issues such as: toxic poisoning from floor varnish, a fire outside near the building; a video camera placed in the elevators which the tenant says "creeps her out"; reports of pest problems. In the letter the tenant requested compensation in the sum of $40,260.00 and a 50% rent reduction.

On June 19, 2012, several weeks prior to filing her application for dispute resolution, the tenant gave the landlord a 2nd letter, which indicated the landlord had offered the tenant 2 month's rent as compensation which the tenant had rejected. The tenant asked the landlord to post permits and work orders in the lobby and asked for a copy of an "assay report on the paint and stucco" that had been removed from the building. The tenant stated that she was losing the quiet enjoyment of her unit as she had to keep the

windows closed and that dust was entering the unit. The tenant said she understood the landlord would be required to reimburse her for art studio storage and that she must leave the unit to obtain peace and quiet. The tenant reported seeing a mouse in her apartment. The tenant requested the landlord return her deposit and pay her a total of $3,900.00 as rent abatement and for expenses incurred.

Repair work commenced on the elevators in late 2010; the tenant could not recall exactly when the repairs commenced. The repairs took longer than the landlord had estimated. The tenant acknowledged that she had use of 1 of the 2 elevators during the period of repair and said she did not speak with the landlord about any inconvenience at the time.

The parties agreed that in September 2011 repair work commenced to the exterior of the building. This repair work has continued for the past 12 months and is expected to be completed, by the landlord's account, at the end of this month. The tenant has found the on-going building envelope repairs highly disruptive. The landlord has not properly communicated with the tenants, although a written notice was issued in March 2012, setting out some details of the balance of the construction. A copy of the notice was supplied as evidence. The tenant has not been able to enjoy her unit, has been unable to sleep and can longer enjoy her creative activities. A window that does not seal properly allows wind and dust to enter the tenant's unit. The tenant indicated she was having to eat in restaurants and planned a vacation in order to obtain peace and quiet.

The repair work takes place during the day, 5 days per week. The tenant is not absent from the home for the purpose of employment and provided no submission that she works from home.

In September 2011 the tenant had a storage unit but planned on moving items into her rental unit. As the construction created a lot of dust the tenant could not bring these items into the home and she has claimed the cost of storage. Storage invoices for September 2011, April, March, May, August and September 2012 were supplied as evidence.

Due to the noise and sounds of construction the tenant has not been able to focus on her artwork and, as a result, has claimed loss of creative activity due to the disturbance.

The tenant claimed costs for coffee and snacks over the past year, as she has found her rental unit too noisy during the day; no verification of this claim was supplied.

When she rented the unit in September 2010 the tenant had been seeking a quiet home. The tenant believes that she is entitled to compensation as a result of the building envelope work that commenced in September 2011 without prior notification and, as a result of the landlord's failure to properly prepare the unit before the tenant took possession. The tenant has claimed compensation in relation to this alleged misrepresentation.

The tenant hired a company to complete analysis of the paint being removed from the exterior of the building, so that the presence of asbestos and lead could be determined. The evidence submitted by the tenant showed that there was no presence of these compounds. The tenant had asked the landlord for copies of reports that had been completed and that the landlord refused to comply, so she obtained her own report. The tenant believes the landlord should pay her costs.

The landlord provided some comments during the hearing, in relation to details of the tenancy; however the landlord decline to make a submission in response to the tenant's claim.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

During the period of time covered by this claim, commencing September 2011, the tenant has paid rent totalling $11,760.00. The tenant has made a claim for compensation and rent reduction in the sum of $24,900.00; more than double the amount of rent paid.

Section 32 of the Act provides, in part:

> ***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.*

From the evidence before me I find that the landlord commenced work on the rental building 1 year after this tenancy began and that the landlord was complying with the requirement of the legislation. There was no evidence before me supporting the tenant's claim that she was unreasonably disturbed or that the landlord intentionally prolonged the repairs. The landlord has a responsibility as provided by the Act, to maintain the rental unit and by repairing the building envelope and the elevators the landlord was taking steps necessary to meet obligations imposed by the legislation.
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There was no evidence before me that the tenant could not store her belongings in the rental unit. The tenant had art supplies, which she claimed had to be stored as a result of the building envelope repairs; a claim that failed to prove that repairs, required by the

landlord to properly maintain the building, affected the level or quality of storage space in the tenant's rental unit. Therefore, this portion of the claim is dismissed.

In relation to the loss of use of the elevator; the tenant confirmed that the building has 2 elevators, 1 of which was available for use during the period of time the repairs were completed. As the tenant failed to prove, on the balance of probabilities, that she failed to have use of an elevator, I have dismissed this portion of the claim.

Section 7 of the Act provides:

> ***Liability for not complying with this Act or a tenancy agreement***
>
> ***7*** *(1) 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.*
>
> *(2) 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.*

There is no doubt that work on building remediation creates noise and some disturbance. I have considered the need to repair against the tenant's claim of loss of quiet enjoyment. If the tenant was disturbed by the sounds of construction, it would have been reasonable, as required by section 7 of the Act, for the tenant to bring her claim forward prior to the passage of twelve months. The tenant did not give the landlord any written communication outlining her concerns until April 26, 2012; yet she has made a claim that extends back at least 1 year. I find that the tenant has failed to take steps to minimize the loss that she is now claiming and that there is an absence of any demonstrable effort made on her part to communicate with the landlord up until April 26, 2012. Therefore, I find that the claim for loss of quiet enjoyment is dismissed.

The tenant has claimed compensation for the loss of "creative activity" which she indicated could form a part of her claim for loss of quiet enjoyment. I have rejected this portion of the claim as it is not contemplated by the Act and formed a separate and distinct portion of the details of the dispute.

In the absence of any verification and in the absence of evidence that the tenant did not have use of her own kitchen to prepare snacks and coffee, the claim for these items is dismissed.

If there were problems with the state of the rental unit at the start of the tenancy the tenant had the right to pursue orders that repairs required by the Act be completed. As the tenant has failed to show that she took any steps to mitigate the loss she has claimed in relation to "misrepresentation" of the rental unit; I find that this portion of the claim is dismissed.

The tenant decided to have reports completed in relation to possible lead and asbestos. The tenant was at liberty to obtain and pay for these reports; which were returned indicating no contaminates were present; however, there is no basis upon which the landlord should be Ordered to pay these costs. Therefore, this portion of the claim is dismissed.

There was no evidence before me that would require any repair Orders to be issued.

Conclusion

The application is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 17, 2012.

Residential Tenancy Branch