Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capital Region Housing Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and her witness; and three agents for the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for the loss of quiet enjoyment; for return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution and for the filing fee from a previous Application for Dispute Resolution, pursuant to Sections 28, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on July 6, 2007 for a month to month tenancy beginning on August 1, 2007 for a monthly rent of $785.00 due on the 1st day of each month with a security deposit of $392.50. The tenancy ended by March 18, 2013.

The move out condition inspection was scheduled for March 25, 2013. The landlord submitted into evidence a document titled "Security Deposit Return Form". The document lists the tenant's name; rental unit address; and tenant's forwarding address. In addition the center of the document is blocked off and subtitled "Damages to Rental Unit for Which the Tenant is Responsible"

The block includes several columns with three of the column are relevant to this claim. The relevant columns include a description; charge amount; and agreement to charges initial column. In the document submitted into evidence the tenant has agreed to the following items:

- Extra cleaning by caretaker in the amount of $50.00;
- Painting in the amount of $200.00;
- Drapery cleaning and/or replacement in the amount of $70.00; and
- Electrician install in the amount of $80.00.

The document indicates the tenant also agreed with a $20.00 for laundry and a $50.00 for parking spot cleaning but both of these are stroked out and noted as “removed”. The total agreed to by the tenant in this document is $400.00.

The tenant submits that while she did initial some of these items in the block she did not initial them all. She also states that she was not made aware by anyone at the time to the costs of these repairs but simply that she had agreed with the assessment of the condition of the unit.

The landlord, based on this document, the landlord determined the amount of the initial security deposit ($392.50) plus interest in the amount of $8.66 less the agreed upon deductions resulted in a net return to the tenant of $1.16. The landlord sent a cheque to the tenant in this amount on April 15, 2013.

That tenant submits that during the period of August 2011 to March 2012 and the period of August 2012 and December 2012 the residential property was undergoing some major repairs.

The parties agree that during the period August 2011 to March 2012 the landlord’s contractor was re-roofing the property and that during the period August 2012 to December 2012 the landlord had a contractor repairing other aspects of the building envelope both within the interior courtyard and the ground level walls.

The tenant submits that because of the location of her rental unit she suffered a greater loss of quiet enjoyment than any of her neighbours, beginning with the initial work on the roof. She states this is because the contractor established their main work site directly outside of their unit; that the contractor set up an office in the vacant unit next door to her unit; and that they used a portion of the parking garage directly unit her unit to drill and saw 8 hours a day 5 days a week.

During the next phase the tenant submits that the contractor found dry rot in the building and required that it was necessary to remove their door frame to inspect the flooring at the front door and they would need to remove some of the flooring around all of the exterior walls. The tenant submits that the door frame was removed in August 2012 and not replaced until December 2012.

When it was not fixed by October the tenant wrote a letter of complaint to the landlord. The tenant provided a copy of an email sent to the landlord on October 2, 2012, as evidence. In the email the tenant informs the landlord of the difficulties and loss of quiet enjoyment suffered when the roofing crew had been working during the period of

August 2011 to March 2012. She also states that since the new crew began working on the other building envelope issues in August 2012 she and her family had again been disturbed as a result of the location of the worksites set up by the contractors.

The tenant also notes in this email the issue of the lack of a door frame, particularly that it causes an inconvenience; a security issue and health and safety issues. The tenant closes the email by requesting compensation for both periods in the form of moving the tenants into another comparable unit or by way of a rental credit or rent reduction to reflect the many months of being deprived of the right of quiet enjoyment. The tenant seeks compensation in the amount of $3,000.00 for the loss of quiet enjoyment.

The landlord submits it was not the door frame that was removed but rather the trim around the door frame and that as such there was no risk to health, safety or security.

The landlord has provided into evidence copies of communications that the landlord provided to the tenants of the residential properties including:

- A notice dated August 23, 2011 advised the tenants of both major projects and the approximate timeline for the re-roofing project to be starting in late summer/fall of 2011 and the interior court yard walkway and ground level wall repairs would be starting in the winter of 2011/2012;
- A notice dated September 16, 2011 to the tenants advising that the contract for the re-roofing phase had been awarded and the work was set to begin on September 26, 2011;
- A notice dated July 24, 2012 advising tenants that the courtyard walkways and base of exterior walls work was set to begin on July 26, 2012.

Analysis

As part of her Application the tenant seeks return of her filing fee for a previous Dispute Resolution hearing that she was successful in. As that matter was adjudicated by a different arbitrator I cannot amend or alter her decision and as such, I dismiss this portion of the tenant's claim.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, 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 in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32 of the *Act* requires a landlord to 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 for the age, character and location of the rental unit make it suitable for occupation by a tenant.

Neither party disputes that the work completed by the landlord was required. As such, I make no findings on the matter of the necessity of the work.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelope would deteriorate occupant comfort and the long term condition of the building.

I accept the landlord's evidence and testimony that they took all reasonable steps to ensure the project would minimize impact to all tenants. I also acknowledge that the landlord understood that the work and its schedule was intensive and required intrusion into individual rental units. I note that the landlord even provided advance notice to the tenants of this.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

While I accept that the landlord and contractors took efforts to minimize the disturbances and noise for the tenants, I find it undeniable that the tenants suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of the tenancy for that period. As a result, I find the tenants are entitled to compensation for that loss subject only to the tenant's obligation to mitigate her damage or losses.

Section 7 of the *Act* stipulates that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement the non-complying party must compensate the other for damage or loss that results. The section goes on to say that a party who makes a claim against the other party for non-compliance must do whatever is reasonable to minimize that damage or loss.

As the first phase of the project began after the landlord had provided notice to all tenants about the work and the work was completed without complaint from the tenant to the landlord about any of the disturbances or inconveniences I find the tenant took absolutely not steps during the first phase of the project to mitigate any losses.

Steps that may have been taken were to identify the problems to the landlord and allow the landlord to take action and have the contractor move their work sites so that they would be less disturbing to the tenant. As the tenant never raised the issue the landlord did not have an opportunity to address the concerns therefore minimizing any compensatory responsibility.

Likewise for the period of the final phase of work, I find the tenant was notified prior to the start that the work would include intrusions into the rental unit. In addition, based on her previous experience from the first phase the tenant had an opportunity when she received the notice from the landlord dated July 24, 2012 to voice her objections and/or concerns to the landlord.

As the tenant failed to take any of these opportunities or steps to inform the landlord that the work was causing disturbances, I find the tenant failed to take any steps to mitigate her loss that is the basis of her claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit less any amounts mutually agreed upon in writing or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Despite the tenant's testimony that she never would have agreed to the deductions the landlord took off of her security deposit I find the tenant did initial and sign the document agreeing to the deductions.

Even if the document did not include actual dollar amounts, I find the form clearly identifies that the document lists "damages to rental unit for which the tenant is responsible"; it outlines a space for charges and a space for the tenant to agree to the charges. As such, the tenant should have been aware that if the lines were blank and she initialled them they represented a charge for the work that she agreed needed to be done. In essence, it would be like signing over a blank cheque to the landlord.

I find the landlord complied with the requirements under Section 38(1) and returned the balance of the security deposit less the mutually agreed upon deductions.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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: August 30, 2013

Residential Tenancy Branch