



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on September 01, 2013 for a nine month fixed term tenancy. Rent for this unit was \$1,050.00 per month due on the 1st day of each month. The tenancy ended on April 30, 2014.

The tenant testified that when she rented this building she choose it because the landlord had said it was a quiet building; however; on October 14, 2013 the tenant saw a notice posted in the elevator informing tenants that a deck project was going to be starting that would last for three to four weeks. The tenant testified that the landlord had not disclosed this project to the tenant before the tenant signed the tenancy agreement and as the landlord is both the owner of the unit and a realtor the landlord should have been aware of this project. The tenant testified that had they known about this project then they would not have selected this building to rent in.

The tenant testified that the project started on October 15, 2013 and went until November 21, 2013. This project resulted in disruptive noise, a loss of use of the balcony and interior space, a loss of privacy and security. The tenant testified that they had to remove a bike, plants; and a table and chairs from the patio and store them in the unit for the duration of the repair work; the tenants privacy was comprised as the unit was exposed to workers and passersby which resulted in the tenant leaving the blinds closed while the repairs took place; the front door to the building was propped open by the repair workers to allow them to run an extension cord through the front door. This compromised the security of the building; the workers caused disruption and noise and even worked over two weekends. The tenant agrees that the workers did not work every day and some of the work was completed at the rear of the building which did not affect the tenant's quiet enjoyment.

The tenant testified that she is a student who attended classes some mornings and evenings, the rest of time the tenant was at home in the unit. The tenant testified that this work breached the tenant's right to quiet enjoyment of the rental unit and the tenant seeks compensation from the landlord of \$450.00. The tenant also seeks to recover the \$50.00 filing fee.

The landlord testified that in February, 2013 the owners and Strata had a meeting and some projects were discussed to replace windows and balconies in the building. The owners had to contribute to this cost over a six month period. The windows were

replaced prior to the tenant moving into the unit. The work on the balconies was not scheduled to start until the summer of 2014. The landlord testified that as the tenancy would be over by that time there was no need to mention the proposed work as the owners had to raise the funds to do the work on the balconies before it could start. The landlord testified that they had not been made aware that the work was going to start in earlier in October, 2013. The landlord testified that he was made aware of this by the tenant. The landlord testified that he spoke with the Strata and was informed that they had found a contractor who was willing to do the work over a three to four week period and would cause minimum disruption for tenants and did not require payment until the funds were paid by the owners. The landlord testified that on October 15, 2014 the work did start at the rear of the building and therefore did not affect the tenants living in the units at the front. The work on this unit began on November 01, 2014. There was a further delay of two weeks due to the weather conditions and while the contractors waited for the railings.

The landlord testified that there was minimum disruption to the tenant as it took the contractors one day to remove the old railings and one day to fit the new ones. The landlord testified that this building is on a high traffic area street and the noise from the street would be far greater than the noise made by the contractors.

The landlord disputes that the tenant suffered from a loss of space. The tenants had one small table and a bike on the balcony and limited furniture inside the unit so would not have suffered from a loss of any significant space as a result of the balcony repair. The tenant's balcony also had a pony wall and a side wall that protruded out two feet from the building which would have also protected the tenant's privacy and helped with any noise from other balcony repairs. The tenant was only without railings for a total of 20 days. The landlord accepts that the tenants wanted to close their blinds for the period in which their balcony was being repaired; however, the landlord states as this was for a minimal amount of time the loss of light would not have been extensive.

The landlord testified that when he was informed that the building was left unsecure the landlord emailed the contractor and was told in a letter, a copy of which has been provided in evidence, that the outlet on the exterior of the building tripped the breaker and the contractor had to use the interior outlet until the breaker could be reset. This was for a limited period and a worker was by the front door to ensure the building remained secure.

The landlord testified that he had no knowledge that the contractors worked over two weekends but if so they still complied with the bylaws. The landlord testified that this work had to be completed on the building and any temporary discomfort or inconvenience suffered by the tenants does not constitute a breach of the covenant of quiet enjoyment. The work on the front of the building took 20 days. The landlord testified that he did offer the tenant an amount of \$100.00 in compensation but did not think the tenants claim for \$450.00 was justified considering the square footage of the unit and balcony. The landlord testified that this offer was not acceptable to the tenant and the tenant then made a complaint against the landlord with the real estate board and the real estate council.

The landlord refers to his documentary evidence, in particular a letter from the tenants next door neighbour, in which that neighbour states that she is a nurse who often works the night shift and is home sleeping during the day. The neighbour stated that the work done was not disruptive and the street noise is much louder than the noise from the construction.

The tenant disputes the landlord testimony and testified that her situation was different because she only had a short term lease and this work started a month into her tenancy. The tenant reiterates that the work done on her unit and the units around her did disturb her.

Analysis

I refer the parties to the Residential Tenancy Policy Guidelines # 6 states:

The *Act* (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. 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.

Having reviewed the documentary evidence and testimony before me I am not satisfied that the tenant's right to quiet enjoyment has been significantly disturbed with the repair to the tenant's balcony and the balconies' of other neighboring units. The tenant has stated that the work took from October 15 to November 21, 2013, however it is clear

that the work on the tenant's unit did not start until November 01, 2013. I find I am satisfied with the landlord's explanation that the work was not due to start until after the tenancy had ended but the start date was brought forward as the Strata had found a contractor to do the work prior to the funds being available.

While I accept that the tenant did lose the use of her balcony for a period of 20 days; as this was an essential repair to the building I find the landlord has a right and a responsibility to repair and maintain the building. As the tenant has not shown that the disruption was so significant that it significantly interfered with or disturbed the tenant for the full 20 days that the repair on the front of the building took place; I must dismiss the tenant's application for compensation for a loss of quiet enjoyment of her rental unit and find that this was a temporary and necessary repair.

As the tenant has been unsuccessful the tenant must bear the cost of filing her own application.

Conclusion

The tenant's 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: July 21, 2014

Residential Tenancy Branch

