Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Codes MNDC, O, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the landlord.

This matter commenced on March 30, 2017, and was adjourned by the Arbitrator to June 22, 2017. An interim decision was made and should be read in conjunction with this decision.

On June 22, 2017, there were technical difficulties with the conferencing system as a result this matter was adjourned. An interim decision was made and should be read in conjunction with this decision.

Preliminary and procedural matters

At the outset of the hearing, counsel for the landlord indicated that the legal name of the landlord is incorrect. As a result, I have amended the style of cause to reflect the correct spelling of the landlord's name.

Issue to be Decided

Are the tenants entitled to a monetary order for compensation under the Act?

Background and Evidence

The parties entered into a fixed term tenancy that began on August 1, 2015. Rent in the amount of $995.00 was payable on the first of each month. The tenants paid a security deposit of $497.50. On August 1, 2016, rent was increase to the amount of $1,023.86. The tenancy ended April 26, 2017.

The tenants claim as follows:

a.	Return of 50% rent - January 1, 2016 to August 1, 2016	$3,552.50
b.	Return of 50% rent - August 1, 2016 to April 1, 2017	$4,175.44
c.	Filing fee	$ 100.00
	Total claimed	**$7,827.94**

The tenants testified that commencing December 3, 2015, the landlord started a major renovation of the building. The tenants stated that during this time they were unable to enjoy their daily activities or enjoy their living accommodations.

The tenants testified that in November 2016, they lost the use of their living room because the windows in the rental unit were being replaced and they were required to move their belonging four feet from the windows.

The tenants testified that the landlord gave notice of the dates the construction crew would be attending; however, on three occasions they did not attend and when they finally did attend to take the windows out ,the windows were not replaced for a couple of days. The tenants stated that the construction crew did not attempt to cover their belonging and they were left with dust and debris on them.

The tenants testified that on occasion there would be no running water, as it would be shut off for the entire building for the day.

The tenants testified that commencing June 27, 2016 and continuing for six months the balconies were being removed by a jackhammer. The tenants stated that the noise was unbearable.

The tenant KB stated that they are a student attending a local art college and most of their schooling was in the evening. KB stated that they could not go to the library or any other place during the day to do their school projects, as they were painting pictures and they had an art studio set up in the apartment to do their school projects.

The tenants testified that they rented the corner unit on the 11th floor of the building in part, for the view and the balcony. The tenants stated that they had no balcony from June 2016 to April 2017.

Counsel for the landlord stated that the ownership of the property undertook to maintain and repair the building as required by section 32 of the Act.

Counsel submits that the landlord had a property condition assessment completed and the report indicated the balconies were in a state of deterioration because of the report they had to be removed.

Counsel submits that the tenants were notified of the scope of the project and that the entire project was expected to take 36 months. Counsel submits the tenants were informed that there might be noise, and other inconvenience during this period.

Counsel submits the work was completed during the hours of 7:30 am to 3:30 pm, Monday to Friday and 8:00am to 3:30 pm Saturdays. No work was done on Sundays. Counsel submits this was in accordance with the bylaws.

Counsel submits the tenants did not notify the landlord during this time that they were having any problems, in order for the landlord to address their concerns. Counsel submits the landlord cannot be held responsible when they are not notified by the tenants that a problem exists.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 32 (1) of the Act, a landlord must 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 to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

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.

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

While I accept the evidence of the tenants that the removal of the balconies was loud and the noise unbearable, the removal was necessary based on the assessment report.

I further accept that the scheduled of the tenant KB, attending school in the evening had difficulties doing their school projects during the daytime. I find completing school work is a normal household function and KB was unable to take their projects to the library; however, the tenants provided no evidence that they notified the landlord that this was problem at the time, in order for the landlord to help assist the tenant KB in making alternate arrangements, such a providing a temporary space elsewhere.

I further accept that the requirement of removing the tenants' furniture away from the windows was inconvenient; however, this was a temporary discomfort. While I find the construction crew not replacing the windows on the same day that they were removed or securing the window in a safe manner troubling, I find the tenants provided no evidence that they notified the landlord at the time.

I am satisfied that the water was shut off during normal working hours in order for repairs to be completed. The tenants gave no specific dates as evidence. I find this is a temporary discomfort for the landlord to meet their obligations under the Act.

Further, I find the tenants did not provided any documentary evidence to support there was any health or safety issues. No letters were provided to the landlord or medical evidence submitted.

Based on the above, I find the tenants have failed to provide sufficient evidence that they suffered a loss of quiet enjoyment. As a landlord cannot be held responsible if the tenants do not notify them that a problem exists.

However, I am satisfied the tenants loss access to their balcony which was included in the rent. I find the tenants did not have access to their balcony from June 2016 to April 1, 2017, when the tenancy ended. I find ten months is not a temporary loss.

While the tenants seek compensation that equals 50% of their rent, I find that amount is unreasonable high, as a balcony does not have the same value, such a losing a kitchen, bathroom or other indoor living space.

In most cases the value of the loss of a balcony may be limited to the amount up to 5% of the rent, as the balcony is not a primary area of the rental unit. I accept the tenants rented this corner unit on the 11th floor for the view and the balcony. Therefore, I have considered a higher amount. I find an appropriate amount for loss of use of the balcony during this time is the amount of 10% of the rent.

The tenants were paying rent of $995.00 from June 1, 2016 to July 31, 2016. Therefore, I find the tenants are entitled to recover the amount of **$199.00.**

The tenants were paying rent of $1,023.86 from August 1, 2016 to April 1, 2017. Therefore, I find the tenants are entitled to recover the amount of **$819.08**

I find that the tenants have established a total monetary claim of **$1,118.08,** comprised of the above described amounts and the $100.00 fee paid for this application. I grant the tenants a formal order pursuant to section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order in the above noted amount.

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: November 22, 2017

Residential Tenancy Branch