



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCT OLC FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was primarily represented by counsel (the "landlord").

As both parties were present service was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. The tenants confirmed receipt of the landlord's evidence. Based on the undisputed evidence I find that the materials were served on the respective party in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the tenants' claims and my findings around each are set out below.

The parties agree on the following facts. This tenancy started in March, 1998. The current rent is \$1,358.76 payable on the first of each month. During the disputed period the monthly rent was \$1,306.50. The rental unit is a suite in a multi-unit building that is approximately 30 years old.

In November, 2016 the landlord commenced construction and repairs to the building. The tenants submit that the nature of the work and the manner that it was conducted was disruptive and interfered with their right to quiet enjoyment of the property. The tenants submit that the construction work interfered with their daily lives and caused physical ailments requiring additional medical expenses. The tenants submitted into written evidence receipts from a naturopath who examined the tenants' son.

The tenants submit that the work on the exterior windows and patios resulted in an increase in energy usage as they were exposed to the elements. The tenants also submit that the construction work utilized the electricity from their home resulting in an increase in utility costs. The tenants submitted into evidence a spreadsheet showing utility charges they have paid prior to and during the construction.

The tenants characterize the nature of the work as intrusive. They say that workers would enter their rental unit frequently and freely. The tenants testified that the work was done in an unprofessional and discourteous manner with workers leaving scraps at the construction site, causing excessive noise and dust which permeated their suite and making derogatory remarks about the tenants.

The tenants testified that the construction ended in January, 2018. The tenants say that during the period of construction they were unable to use their patio entirely and several areas of their unit could not be used. The tenants testified that while they were able to remain in the rental unit throughout the period of construction, on two occasions their son needed to stay overnight at a relative's as the noises disrupted their ability to do school work.

The tenants sent numerous correspondences to the landlord reporting their concerns. The tenants say that the landlord failed to respond to their inquiries in a timely, respectful fashion.

The tenants seek a monetary award in the amount of \$5,621.10 for the following items:

Item	Amount
Increase in Utility Bills	\$140.10
Medical Expenses	\$255.00
Loss of Quiet Enjoyment (4 months x \$1,306.50)	\$5,226.00
TOTAL	\$5,621.10

The landlord testified that the nature and scope of work done on the rental building was reasonable and necessary. The landlord submits that the scope of work performed included replacing the sidings, installing new windows, waterproofing the balconies, replacing exterior railings, extending overhangs and replacing the roof. The landlord said that the work was undertaken based on the age of the building and recommendations in an engineer's report obtained. A copy of the engineering report was submitted into documentary evidence.

The landlord testified that the work was substantially completed in December, 2017 and that any disruption to the tenants was minor, necessary and reasonable given the nature of the work performed. The landlords dispute the tenant's evidence that their workers did not provide adequate notice when entering the rental unit or that they acted in an unprofessional manner.

Analysis

The tenant makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

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 a 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 covenant of 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.

The onus is on the party making the claim to show on a balance of probabilities that there has been a loss of quiet enjoyment as a result of the action or negligence of the landlords.

I find that there is insufficient evidence that the construction work has caused an unreasonable disturbance to the tenants. The tenants have provided general complaints about the work but I find there is insufficient evidence that the disturbance has been unreasonable. The tenants testified that throughout the year of work being done they were able to remain in the rental unit.

They testified that on two occasions their son stayed overnight at a relative's to do schoolwork. While the tenants testified about the intrusion and inconvenience, I find that there is little documentary evidence in support of their allegations. The landlords dispute that the tenants were unable to use their balcony for an extended period of time and that the tenants were able to fully utilize their rental suite throughout the course of the repairs. I find little evidence in support of the tenants' claim that they were unable to make full use of the rental suite due to the construction. Based on the scope of the work I find there is little evidence that the noise has been beyond what a reasonable person would expect in the circumstances. I find that the tenants evidence consists of subjective complaints and testimony that is not sufficiently supported in documentary evidence and has not met the burden of proof. Consequently, I dismiss this portion of the tenants' application.

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

I find that there is little evidence in support of the tenants' claim for damages and loss. I find that the receipts submitted claiming they are for medical treatments necessitated by the construction simply show that a naturopath was consulted on a few occasions. There is little evidence showing that the visits were a result of the construction or that the construction was done in a negligent manner by the landlords in contravention of the *Act*. The tenants testified at the hearing that they have not been able to obtain the full medical records in support of their application due to the cost of ordering the records. The onus to prove their claim is on the applicant and I do not find that the materials submitted by the tenants for this hearing to be sufficient to establish their claim on the balance of probabilities. While the tenants' son may have been seen by a naturopath on some occasions I find that is insufficient to conclude that the medical expenses were incurred as a result of the landlord.

Furthermore, a party has an onus to mitigate their damages and loss. If the tenants' son was suffering from medical issues I do not find it reasonable that they attended with a naturopathic doctor for a consultation. The evidence does not show that any treatment or course of action was recommended. The documentary evidence shows that the tenants' son attended with a naturopath on three occasions over a period of two months. I do not find this to be sufficient evidence of any ill effects.

Similarly, I find that the spreadsheet of utility bills to be insufficient to conclude that the increase in usage stems as a direct result of action or negligence on the part of the landlord. I find that

there is insufficient evidence to causally link the increased utility bills to any action or inaction on the part of the landlord. Simply because the utility bills are higher I do not find that to be sufficient to show that the charges are caused by the landlord. Accordingly, I dismiss this portion of the tenant's application.

As the tenants' application was not successful the tenants are not entitled to their filing fee.

Conclusion

I dismiss the entirety of the tenants' application 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: November 1, 2018

Residential Tenancy Branch