

DECISION

Dispute Codes MNDC, OLC, RP, PSF

Introduction

This hearing dealt with an application by the tenants for money owed or compensation due to damage or loss, for the landlord to comply with the Act, for the landlord to make repairs and for the landlord to provide services or facilities.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began April 1, 2008 with monthly rent of \$1650.00 and the tenants paid a security deposit of \$825.00.

The tenants testified that during their tenancy there have been numerous issues that they have had to contend with that have significantly reduced their peace and quiet enjoyment of the rental unit. The tenants stated that there have been issues with the elevators in the building, a lack of water and hot water, repeated floods in the building, excessive noise from fans on the roof, poor air circulation, noise from construction and second hand smoke.

Floods & Stained Carpet

The tenants stated that during their tenancy there have been at least 4 floods in the building and they believe that because of the floods, there is likely mold in the walls. The tenants stated that when they moved in they had to vacate the rental unit for 2 weeks as there had been a flood and their rental unit had been affected. The tenants stated that the carpet in their rental unit is 14 years old and has been damaged by the floods and that now, even with professional cleaning the carpets will not come clean. The tenants stated that there are black marks that cannot be cleaned off the bottom of the tub and they believe the black marks are mold and are caused by the floods. The tenants also maintain that there are black marks on the walls which they believe to be mold. The tenants have tried to clean the black marks with various cleaning products to no avail. The tenants stated that they had a city inspector come in and check the walls and carpet but they have not brought in a professional to verify if the marks on the carpets, walls or tub are in fact mold and the tenants believe that this should be the

landlord's responsibility. The tenants stated that the city inspector had advised them that a special paint should be use on the walls to stop any mold from coming through.

The landlord stated that there had been a flood on the 10th floor and water leaked down to the main floor but that a restoration company had been brought in to place drying equipment throughout the building. The landlord stated that she and her handyman inspected the tub and carpet and determined that the marks are a result of normal wear and tear and not a result of flooding. The landlord commented that the marks on the carpet are in a high traffic area and the bottom of a tub will get dirty and that this is not something that a landlord would be responsible for. The landlord also stated that her handyman provided a new cleaner to the tenants for the tub. The landlord stated that the city inspector had contacted her, advised her that there was no evidence of mold and that there would not be any further investigation by the city.

The landlord did acknowledge that the carpet in the rental unit is over 14 years old and thought to be in reasonable condition and only stained in the high traffic areas. The tenant stated that the move in condition inspection report does note a number of stains on the carpet.

The tenants commented that they had tried the new cleaner provide by the landlord and that it did help to remove the black stains but that the bottom of the tub still gets dirty. The tenants also commented that they typically used the shower in the other bathroom because of the black marks in the bottom of the bath tub.

Hot Water

The tenants stated that for an entire year the water in the building was only warm and not hot and that they had to 'run the taps' for 2 to 5 minutes to get warmer water. The tenants stated that for the first 2 years of the tenancy they had hot water and it was after the pipes were continually bursting that they started to have problems. The tenants stated that notices have repeatedly been posted advising tenants that the water will be shut off due to the renovations in the building however on one occasion the water was off for 4 days without notice to the tenants.

The landlord responded by stating that the 4 days water shut off was due to a pipe breaking and as that was out of the landlord's control, there had been no way to inform the tenants of the issue. The landlord stated that any other times that the water was shut off that notice was provided and this disruption in service had been to the going renovations in the building and again, this was out of the landlord's control. The landlord stated that the strata had been working on the issue of the broken pipes and lack of hot water and it had been a frustrating process for the landlord and tenants. The landlord stated that during her recent inspection of the rental unit that the water had to be run for a minute or so but that it did get hot.

Elevators

The tenants stated that the elevators frequently break down resulting in the tenant to have to walk up the stairs which makes the tenant ill. The tenants stated that the

elevators were out of service January 4-6, 2012, January 14-15, 2012 in addition to some ½ days, 4 days in May 2012 and that there was typically only 1 elevator working in January 2012. The tenants did acknowledge that typically only one of the two elevators was ever out of service at one time but that the working elevator was often being used by construction staff. The tenants stated that the elevator is also used to move tenants in and out of the building and if only one of the two elevators was working, tenants sometimes had to wait up to an hour for access as the elevator would be locked.

The landlord stated that she had spoken to the building manager a number of times about the elevators and was always advised that the issue was being addressed. The landlord commented that apart from contacting the strata and building manager that the issue of the elevators was out of the landlord's control.

Air Circulation

The tenants stated that there is poor air circulation in the building and their rental unit gets very stuffy. The tenants believe that there was no air circulation at all for 8 days in May 2012 and after contacting a city health inspector, the city health inspector directed the building manager to get the equipment fixed that same day.

The landlord stated that she has noticed the poor air circulation on her last trip to the building and had spoken to the building manager about the problem.

Fan Noise

The tenants stated that the fan on the roof of the building next door is very noisy and that when the fans come on the noise startles the tenants. The tenants stated that they specifically asked the landlord if the fans made noise when they viewed the rental unit and the landlord had advised them that to her knowledge they did not. The tenants maintained that the previous tenant and their neighbours had complained about the noise to the owner of the neighbouring building and that the city has ordered that building owner to complete repairs.

The landlord responded by stating that the fans are on the building next door and out of her control to do anything about. The landlord also stated that the previous tenant had been in the rental unit for 5 years and never complained about noise from the fans.

Construction

The tenants stated that all during the past year the building had undergone renovations and that there has been loud hammering and drilling. The tenants stated that the landlord had also never advised them that there was going to be major construction next door and across the street from their apartment building. The tenants stated that as one of them requires quiet in the rental unit to conduct a business, the construction noise has been very disruptive.

The landlord responded by stating that the building has undergone an extensive renovation to address any issues with the plumbing. The landlord also commented that they had absolutely no control over construction taking place either across the street or next door to the tenant's building. The landlord stated that at the start of the tenancy she was not aware of the plans for development on the sites in question and that there was nothing from the strata or in the strata minutes about upcoming development projects.

The tenants countered this testimony by stating that to their knowledge, all owners had been made aware of the neighbouring development projects 6 months prior to them being started which was prior to the start of the tenancy.

Second Hand Smoke

The tenants maintain that they believed the building to be non-smoking however in 2011 the tenants had to deal with second hand smoke in their rental unit from the neighbouring rental unit. The tenants stated that the issue of the smoke, which was marijuana smoke, went on for 8 months but has since been resolved as the tenants in question have either vacated or were evicted.

The landlord stated that the tenants did not ask of the building was no smoking however the tenants refuted this testimony and stated that when they inquired the landlord stated 'not as far as she was aware' was smoking allowed. The landlord stated that she has since checked with the building manager and found out that the building is designated as a no-smoking in the common areas however the individual units in the building are not designated as no smoking. The landlord stated that when the tenants advised them about the second hand smoke the landlord immediately contacted the strata to have the matter looked into.

Repairs

The tenants stated that they have made repeated requests for repairs and in some case the landlord responded very quickly, however in other instances there was no response. The tenants counsel referred to exhibit 'M' which is a list of items the tenants brought to the landlord's attention at the start of the tenancy in 2008. The tenants at this time are seeking to have the 14+ year old carpet replaced, have the rental unit re-painted and have the bath tub replaced. The tenants also believe that the landlords did not make a reasonable effort to minimize the disruptions that the tenants have suffered through.

The landlord responded by stating that the repairs being completed in the building are all necessary and not something the landlord has control over. The landlord stated that although the carpet in the rental unit is over 14 years old and has some stains which were there prior to the start of this tenancy, the carpet is acceptable.

The tenant commented that as of 2 months ago there is a new building manager who is committed to 'making all the wrongs right' and that this manager is very responsive to tenants concerns. The tenant stated that she has also been invited to meet with the new building manager to advise him of all the past and present problems as past strata

meeting minutes are missing pertinent information. The tenants stated that they would like to look for alternate housing but that it will take time to find suitable accommodations. The tenants also stated that they had come to this office over a year ago to get information on what to do but that they had found the process to be very confusing and were only able to move forward with their claim after receiving assistance.

The landlord stated that they felt the tenants did not have grounds for compensation or a rent reduction as many of the issues the tenant's brought forward were out of the landlord's control.

The tenants in this application are seeking \$2950.00 compensation for a reduced value in the tenancy, loss of their peace and quiet enjoyment and anticipated moving expenses. The tenants are also seeking a rent reduction of \$105.00 per month.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenants have met the burden of proving that they have grounds for entitlement to a monetary order for compensation due to damage or loss, services or facilities agreed to but not provided and a rent reduction.

Floods & Stained Carpet

It is recognized that while floods caused by burst pipes may be directly out of the landlord's control, consideration must be given to the fact that tenants have a right to freedom from unreasonable disturbance. For tenants to deal with repeated flooding and a lack of basic maintenance for an excessive amount of time is unreasonable therefore I will allow the tenants \$200.00 claim for compensation in regards to the stained, 14 year old carpet. As there is no evidence to prove that there is mold in the rental unit, the landlord will not be ordered to have the rental unit inspected by a professional however the tenants are at liberty to do so at their own expense.

Residential Tenancy Policy Guideline 40 Useful Life of Building Elements notes the useful life of a carpet to be 10 years and **I hereby order that the 14+ year old carpet in the rental unit be replaced at the landlord's expense no later than October 1, 2012.** If the carpet is not replaced by October 1, 2012 the tenants will be entitled to a rent reduction of \$50.00 per month until such time as the carpet is replaced with minimal disruption to the tenants.

I am not completely satisfied that the bath tub is permanently stained as the tenants stated that the bottom of the bath tub was better after they had used the cleaner provided by the landlord. It is also not known if the protective coating on the fibreglass bath tub has since been scratched by the tenant's efforts to scrub the black marks out. The marks on the bottom of the bath tub do not in any way hinder the use of the bath tub and it would seem that it is more of an aesthetic issue for the tenants. That said, the

tenants may want to consider purchasing a bath mat for this area of the bath tub to help keep it clean and to cover the black marks.

Residential Tenancy Policy Guideline 40 Useful Life of Building Elements notes the useful life of interior paint to be 4 years and **I hereby order that the entire rental unit be re-painted at the landlord's expense no later than November 1, 2012.** If the entire rental unit is not re-painted by November 1, 2012 the tenants will be entitled to a rent reduction of \$50.00 per month until such time as the entire rental unit is re-painted with minimal disruption to the tenants.

Hot Water

In regards to the tenant's request for \$250.00 compensation for a lack of hot water, I find that the tenant's are entitled to this amount. It is recognized that a lack of or an inconsistent supply of hot water may be directly out of the landlord's control, consideration must be given to the fact that tenants have a right to this very basic service or facility. I do not allow a future rent reduction in this regard however if a lack of hot water creates problems for the tenants in the future, the tenants are at liberty to return to this office an file for compensation.

Elevators

In regards to the tenant's request for \$175.00 compensation for elevator breakdowns, I find that the tenant's are entitled to this amount. It is recognized that the repeated elevator breakdowns may be directly out of the landlord's control, however consideration must be given to the fact that tenants have a right to this very basic service or facility. As the elevators are currently in working order I do not find that the tenants are entitled to a future rent reduction in this regard however if repeated elevator breakdowns create problems for the tenants in the future, the tenants are at liberty to return to this office an file for compensation.

Air Circulation

In regards to the tenant's request for \$175.00 compensation for poor air circulation, I find that the tenant's are entitled to the limited amount of \$75.00 amount. Documentation in this regard is minimal at best with the main complaint about poor air circulation being the 12 days in May 2012. As repairs have been made to the equipment that caused the problem and the matter at this time is resolved, I do not find that the tenants are entitled to a future rent reduction in this regard however if poor air circulation creates problems for the tenants in the future, the tenants are at liberty to return to this office an file for compensation.

Fan Noise

In regards to the noise from the fans on the roof of the neighbouring building, I find that the tenants are not entitled to their \$225.00 claim. I accept the landlord's testimony that she did not know that the fan on the adjacent building was problematic and that she had ever been made aware of the issue. It also appears that many of the complaining tenants have complained to the owners of the building i question and not their respective individual landlords. I also do not find it reasonable to hold the landlord

responsible for a concern not related to the building that the rental unit is located in. Therefore this portion of the tenant's claim is dismissed without leave to reapply.

Construction

In regards to the tenant's request for \$225.00 compensation for disruption of their peace and quiet enjoyment I find that the tenant's are entitled to this amount due to the on-going construction in the tenant's building. I accept the landlord's testimony that she did not have knowledge of the up-coming construction projects in the neighbourhood and therefore do not however find it reasonable to hold the landlord responsible for outside construction noise.

Second Hand Smoke

In regards to the \$200.00 claim for the tenant's peace and quiet enjoyment being disturbed by second hand smoke, I find that when the tenant's brought their concern to the landlord, the landlord contacted the strata to see what could be done. As the landlord responded in a timely manner, I find that the tenants are not entitled to any compensation. It must also be considered that in this circumstance, unlike that in the judicial review submitted into evidence, the landlord had no control over who occupied the rental unit in question and that when the landlord was made aware of the second hand smoke they immediately contacted the strata to address the concern.

Anticipated Moving Expenses

The tenants in this hearing stated that they would consider moving, would like to move and that it would take time for them to find suitable accommodations. And while the tenants seek \$1500.00 for moving expenses in this application, I am not satisfied that the tenancy will in fact be coming to an end and I find it punitive to have the landlord pay this amount. Therefore the tenant's request for \$1500.00 in anticipated moving expenses is dismissed without leave to reapply.

Accordingly I find that the tenants are entitled to a monetary order for \$925.00 for the following:

- \$200.00 compensation for the stained, 14 year old carpet
- \$250.00 compensation for a lack of hot water, lack of water
- \$175.00 compensation for repeated elevator breakdowns
- \$75.00 compensation for poor air circulation
- \$225.00 compensation for disruption of their peace and quiet enjoyment due to the on-going repairs and lack of services or facilities.

As the tenants have been successful in their application the tenants are entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenants have established a monetary claim for \$925.00 for compensation due to damage or loss and services or facilities agreed to but not provided. The tenant is also entitled to recovery of the \$50.00 filing fee.

The tenants may deduct \$975.00 one time, from future rent owed to the landlord for recovery of the monetary award and filing fee paid to bring their application forward.

I hereby order that the 14+ year old carpet in the rental unit be replaced at the landlord's expense no later than October 1, 2012. If the carpet is not replaced by October 1, 2012 the tenants will be entitled to a rent reduction of \$50.00 per month until such time as the carpet is replaced with minimal disruption to the tenants.

I hereby order that the entire rental unit be re-painted at the landlord's expense no later than November 1, 2012. If the entire rental unit is not re-painted by November 1, 2012 the tenants will be entitled to a rent reduction of \$50.00 per month until such time as the entire rental unit is re-painted with minimal disruption to the tenants.

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 3, 2012

Residential Tenancy Branch