

Residential Tenancies Tribunal

Decision 20-0102-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 24 June 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. The respondent, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”.

Issues before the Tribunal

3. The tenant is seeking a payment of \$9309.97 in compensation for inconvenience.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 14 of the *Residential Tenancies Act, 2018*.

Issue 1: Compensation for Inconvenience - \$9309.97

Relevant Submissions

The Tenant’s Position

6. The tenant and the landlord entered into a 1-year, fixed-term rental agreement on 01 October 2018. The agreed rent was set at \$1525.00 and the tenant had paid a security deposit of \$1145.00. The tenant vacated the premises on 31 March 2020.

7. The tenant stated that in July 2019, the landlord had discovered some structural defects in the complex that had to be addressed and this included the removal of the tenant's patio.
8. The tenant stated that he was without the use of a patio for a period of 3 months, from 23 July 2019 to 11 November 2015. He also complained that during the month of October 2019, the contractors who had been hired to carry out the repairs at the complex had removed some casing and trim around the patio door and these materials were stored in his apartment.
9. The tenant stated that his apartment measured 1006 square feet and that based on his monthly rental rate of \$1525.00, he calculated that he was paying \$0.05 per square foot per day. According to a chart that he submitted, the tenant calculated that since his patio measured 48 sq ft, he was entitled to a rebate of rent in the amount of \$278.93.
10. Also, according to the tenant's chart, as he was without the use of 272 sq ft of living room while materials were stored there he calculated that he is entitled to a rebate of \$426.07. He corrected that claim at the hearing and stated that he was actually without use of approximately 100 sq ft of space in the living room.
11. The tenant also complained that, from 01 October 2019 to the date he vacated, the privacy blind that had initially covered the patio door was removed. He complained that the contractors, and any passerby or driver on that side of the complex, were able to see directly into his apartment. Because of this lack of privacy, the tenant further argued that he could not use his living room. The blind was missing for a period of 190 days and he calculated that he is entitled to a further rebate of \$2611.40 as he was without the use of 272 sq ft of his apartment during that period. At the hearing, the tenant corrected that claim and stated that he was seeking approximately \$800.00.
12. The tenant also complained that when he was informed that his patio would be removed, he was instructed to remove his barbeque and patio furniture. According to his submitted breakdown, he is seeking compensation in the amount of \$378.30 for 4 hours of his personal labour to carry out that work. He acknowledged at the hearing that that calculation was incorrect, as he was seeking \$19.50 in compensation for each hour of his labour.
13. Additionally, the tenant claimed that because of the construction that had been taking place on his patio and throughout the complex, he was required to carry out additional cleaning at his apartment. According to his submitted breakdown, he had paid a cleaner \$13.69 to carry out 1 hour of cleaning at the unit and he is also seeking compensation for 9 hours of cleaning that he had carried out himself.
14. The tenant also stated that he spent 8 hours meeting with other tenants at the complex whose units were also undergoing renovations and he is seeking an

additional \$378.30 for compensation for 8 hours of his time attending these meetings.

15. Besides these costs, the tenant is also seeking \$5000.00 for what he referred to as “punitive damages”. According to the tenant, this money would be compensation for the additional inconvenience he had suffered while the construction was taking place at the complex.
16. According to his submissions, this included the extra and excessive noise from the contractors’ tools as well as their radio. He claimed that this noise made it difficult for him to have conversations in his apartment and he could not watch TV. He also pointed out that he had no privacy and there were contractors right outside of his window and he had no privacy blind.
17. He also complained that the patio door was not adequately secured and he claimed that the removal of the patio also left him without a fire egress.
18. The tenant also complained that because he did not have use of his living room and because of the issues with noise and the dirt and debris from the construction work, he was unable to entertain at his apartment. He also stated that he was unable to invite his grandchildren over to his apartment from sleepovers.
19. The tenant also stated that he had never received any written notification from the landlord that any construction would be taking place at the unit. He also pointed out that the workers would oftentimes show up at his apartment unannounced and that in some cases when arrangements were made to enter at a specified time, they would not show up at all.

The Landlord’s Position

20. The landlord acknowledged that there construction was ongoing at the complex from July 2019 through to October 2019. He testified that there was a flaw in the construction of the building, leading to water infiltration issues, and he was required to hire an engineer to assess the problem and carry out repairs. These repairs necessitated the removal of the tenant’s patio.
21. The landlord stated that these repairs were necessary for the safety of the residents at the complex and he acknowledged that they may have inconvenienced the tenant while they were ongoing. However, the landlord argued that there was never any deliberate intention to deprive the tenant of his balcony or to put him through any hardship. He claimed that the repairs to the complex were carried out with the well-being of the tenants in mind.
22. Regarding the tenant’s complaints, the landlord acknowledged that he had suffered some inconvenience as a result of the work that had to be carried out and he also acknowledged that there were some delays in having the work completed.

23. With respect to the costs the tenant is seeking here, the landlord agreed that he was entitled to some compensation. For instance, he agreed that as the tenant did not have a patio for 3 months, he was entitled to the \$278.93 he was seeking here, based on the square footage calculation. The landlord also acknowledged that the tenant was without approximately 100 sq ft of his living room for a month while the contractors were plastering and repairing the trim work.
24. Regarding the cleaning, the landlord stated that it has to be expected that during a renovation like this one, there would inevitably be some dirt and debris left around. He pointed out, though, that his contractors had been using a heavy plaster which fell to the ground when sanded, as opposed to causing clouds of dust. Nevertheless, the landlord conceded that some cleaning may have been required over and above what the tenant would normally have to do, and he agreed that the tenant is entitled to the approximately \$175.00 in compensation he is seeking here.
25. However, regarding the \$2611.40 that the tenant is claiming as he had no privacy blind, the landlord argued that the tenant is not entitled to that full amount. He claimed that even without a privacy blind, that living room was still usable. He also argued that there is very little traffic on that side of the building and that, besides the contractors, not many people would have been able to see into the unit.
26. The landlord also argued that the tenant is not entitled to the costs of moving his patio furniture. He claimed that had the tenant asked for assistance from the resident manager, he would have moved that furniture for him. He likewise argued that the tenant should not be compensated for any inconvenience that resulted from the noise of the contractors. He claimed that had the tenant asked the contractors to turn off their radio, they would have obliged. Regarding the noise from the construction itself, the landlord argued that some noise has to be expected when this sort of work is taking place and he pointed out that the work was only carried out during the daytime.
27. The landlord also argued that the tenant should not be compensated for the inconvenience of not being able to entertain at his apartment. He stated that there were numerous common areas at the complex, as well as at the adjoining complex, which could have been used for entertainment purposes.

Analysis

28. Subsections 16.(5) and (6) of the *Residential Tenancies Act 2018*, states:

(5) Where a landlord discontinues a service, privilege, accommodation or benefit or a service, privilege, accommodation or benefit is unavailable for a period of time, and the discontinuance or unavailability results in a reduction of the tenant's use and enjoyment of the residential premises, the value of the discontinued service, privilege,

accommodation or benefit is considered to be an increase in the amount of rent payable.

(6) The director may, upon hearing an application under section 42, value a service, privilege, accommodation or benefit discontinued or unavailable for a time under subsection (5).

29. That is, where a landlord is carrying out renovations on a rental unit which would lead to a reduction in the tenant's use and enjoyment of the property, he is required to provide the tenant with a minimum of 6 month's notification and such renovations cannot be carried out within the first 12 months after the tenancy begins. Those are the rental increase notice requirements.
30. Where such notice is not given, the reduction in the tenant's enjoyment of the rented premises is considered to be an improper rental increase and the Director can value that improper rental increase and order an appropriate refund.
31. As indicated above, the landlord did acknowledge that the tenant did suffer some inconveniences and he was without the use of the patio and a portion of his apartment for a period of time. As there was no contest concerning these claims, I calculate that the landlord has conceded that the tenant is entitled to the following in compensation:

• Loss of patio	\$278.93
• Loss of 100 sq ft of living space	\$155.00
• Cleaning	\$189.19
Total	<u>\$623.12</u>

32. With respect to the removal of the patio furniture, I accept the tenant's claim that it took him 4 hours to remove those items and store them, and I therefore find that he is entitled to compensation for his personal labour to carry out that work. Policy with this Section is that an applicant may claim \$19.40 in compensation for each hour of his personal labour. So that claim succeeds in the amount of \$77.60.
33. I also agree with the tenant that as he was without a privacy blind his enjoyment of his living space was reduced, especially while contractors were working directly outside of his apartment. I also agree with the tenant that the noises and smells coming from the construction project also would have decreased his enjoyment of his apartment and limited his opportunities to entertain family and friends. So, in addition to the costs outlined in the last 2 paragraphs, I find that the tenant is entitled to an additional \$500.00 in compensation for the general inconvenience caused by the construction project.

Decision

34. The tenant’s claim for compensation for inconvenience succeeds in the amount of \$1220.22, determined as follows

- Loss of patio \$278.93
- Loss of 100 sq ft of living space \$155.00
- Cleaning \$189.19
- Labour to remove patio furniture \$77.60
- Loss of privacy/general inconvenience \$500.00

- Total \$1200.72

Issue 2: Hearing Expenses

35. The tenant paid a fee of \$20.00 to file this application. As his claim has been successful, the landlord shall pay that hearing expense.

Summary of Decision

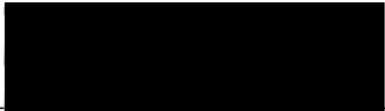
36. The tenant is entitled to the following:

- Compensation for Inconvenience \$1200.72
- Hearing Expenses \$20.00

- Total Owing to Tenant \$1220.72

06 August 2020

Date



John R. Cook
Residential Tenancies Tribunal