Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC

OLC

ERP

RP

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order compelling the landlord to comply with the Act, Regulation or tenancy agreement; an Order compelling the landlord to make repairs and emergency repairs to the unit, site, property, an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided and reimbursement for the cost of the filing

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Preliminary Matter

At the outset of the hearing the tenant advised that the landlord has addressed all of the repairs and the tenant is now only seeking a rental abatement of $250.00 for the period of time during which certain rooms were not usable due to the water ingress or due to renovations that were being done. The tenant was also still seeking the cost of filing the application.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to a rent abatement under section 65(1) of the *Act* due to a loss of value of the tenancy. This determination is dependant upon answers to the following questions:
    - Has the tenant offered proof that the value of the tenancy was lowered sufficient to support a reduction in rent or compensation?
    - Has the tenant submitted proof that the landlord was responsible or that the landlord committed a violation under the Act?

The onus falls on the tenant/applicant to prove the case and show that due to the landlord's actions, the tenant is owed compensation for damage or loss.

Background and Evidence

The tenant has made an application for a past rent abatement under section 65(1) of the *Act* for a two-week to three week period which the tenant estimated an amount of $250.00 was warranted, plus the application filing fee of $50.00. This was based on the tenant's loss of the use of two rooms from January 6, 2009 until approximately January 21, 2009 a period of approximately 2 weeks. The tenant testified that on January 6, 2009 water suddenly poured into the foyer and two bedrooms of her suite from under the cement foundation. The tenant testified that the tenant frantically removed all furnishings and property from the area and contacted the landlord. The tenant testified that the landlord did not appear but sent the upstairs tenant down to check the problem. The following day, on January 7, 2009, the landlord arrived and the tenant testified that the landlord dropped off heaters and a shop-vac and told the tenant to call him when she was done. The tenant testified that she did not have time to do the work and was

worried because the carpets were starting to smell and the heaters only made this worse. The tenant testified that she was not satisfied with the landlord's lack of response and was not sure what the plan was to address the damage. The tenant testified that she was worried and her boyfriend contacted the landlord to complain. The tenant testified that it wasn't until the application for dispute resolution was filed that the landlord finally took appropriate action. The tenant testified that new flooring was installed and repairs made to the two rooms for which the tenant is now grateful to the landlord. The tenant testified that the work was done very well and that the tenant is satisfied with the end result. However, the tenant still believes that the tenant should be compensated for all of the inconvenience and losing the use of the rooms for a period during which family members had to sleep in the living/dining room.

The landlord testified that the landlord became aware of the emergency situation on the evening of January 6, 2009 but was not able to immediately go to the premises, so asked another resident in the building to investigate and received a report that there was water in the tenant's suite coming in from outside. The landlord testified that he took immediate action by buying two brand new heaters and a shop vac the following morning, as soon as the stores opened, and then brought them to the suite to dry out the rooms. The landlord testified that he also immediately located tradespersons to do the repair work. However, like any renovation work, the job was subject to availability of the repair crew. The landlord pointed out that the work was actually started without delay and the bulk of the repair was finished by the following week. The landlord testified that the tenant made this application for dispute resolution on January 9, 2009, only three days after the incident, making unfair allegations that the landlord had failed to meet the landlord's responsibilities under the Act without first giving the landlord a reasonable amount of time to address the situation.

The landlord testified that it was the landlord's belief that the tenant was partly to blame for the water coming in because the tenant failed to clear snow from the doorway. The landlord stated that there were never any previous incidents where water came into the

suite and also that no water entered any of the other lower suites in the same complex. The tenant denied that she failed to clear the snow and pointed out that the water only started to come in after the weather had turned to rain.

The landlord testified that everything within the landlord's control was done to alleviate the problem as quickly as possible to minimize inconvenience for the tenant and to rectify the damage, yet these efforts were not appreciated by the tenant. The landlord testified that the tenant and her friend spoke to the landlord in a rude and accusatory manner regarding this situation. The landlord testified that he feels that the application was filed by the tenant solely for monetary gain.

Analysis

Section 65(1) states that if it is found that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. I find that to justify the rent a past rent reduction, it would be necessary to prove both: a) that the value of the tenancy was reduced and; b) that the landlord has not complied with the Act.

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. It is important to note that in a claim for damage or loss under the Act, the party claiming the

damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

For a monetary claim under sections 65, 67, or 7 to succeed, the burden of proof is on the claimant, that being the tenant, to 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 landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that there is no doubt that the tenant endured a serious crisis when the water suddenly came into the unit and the tenant was faced with having to drop everything to clear out the rooms. It is understandable that the tenant would be distraught and in a panic and that under these conditions the tenant may have had an expectation that the problem should be put right immediately, whether or not this expectation was logical or reasonable.

Despite the “finger pointing” by the participants, I find that neither party could be seen to be at fault for the incident, nor at fault for the fact that the work took a certain amount of time to do. And I also find that both parties were inconvenienced by the unexpected event. However, I find that the tenancy was certainly devalued for a brief period of time. In other words, the tenant paid full rent for a unit with useful rooms, that were

suddenly not available for a period of time. The second question that must be answered is whether or not this occurred due to a violation of the Act by the landlord.

Section 32 (1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

It could be argued that a landlord knowingly renting out a unit that was not waterproof would be a clear violation of the Act. Failing to repair a unit once a problem occurs to make it fit for habitation, or even to restore it to the state of repair it was in when the tenant agreed to rent it would also be a violation of the Act, as would forcing a tenant to make or pay for repairs. But I find that none of these events transpired.

I find that the water leakage was not anticipated by either party and that once it was confirmed, the landlord did take immediate action, the first step of which was to get the place dried out as quickly as possible. I note that the landlord did not hesitate in supplying and delivering the necessary equipment at the landlord's cost the morning following the report. I find that there was no evidence presented by the tenant that the landlord ignored the situation or purposely delayed in putting an action plan into place. I find that the landlord's true intention was to accomplish a successful intervention as verified by the fact that the unit was repaired in a relatively short turn around time, as renovations go.

In regards to the tenant's right to quiet enjoyment, I find that the tenancy was first disrupted by the water ingress, and then by the renovations. However, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. According to the Residential Tenancy Guidelines, 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. But temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

I find that there was likely a communication problem that resulted in this hearing. I find that the landlord was put on the defensive by an understandably anxious and frustrated tenant and the landlord was not able to calm the tenant with assurances that the situation was being taken care of as quickly as humanly possible. I find that there was a corresponding lack of trust on the tenant's part in assuming that the landlord would neglect to take all steps necessary in a timely fashion. This is evidenced by the fact that the tenant made an application for dispute resolution only three days after the incident when, in fact, it was not possible at the time of filing that the tenant would even know what the actual losses may be nor whether or not the work would be done. There was also no consideration by the tenant of the possibility that the parties could mutually work out a satisfactory compromise after the crisis was over.

I note that, in the end, there was some benefit to the tenant as the unit was improved by new carpeting and flooring and all parties were in agreement that the final result was satisfactory.

Conclusion

Given the above, and based on the testimony and evidence, I find that the tenant is not entitled to monetary compensation under the Act and I find that the tenant is not entitled to be reimbursed for the cost of filing this application. I order that the tenant's application is dismissed without leave.

February, 2009 _____

Date of Decision

Dispute Resolution Officer