

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNDC, ERP, FF.*

Introduction

This hearing dealt with an application by the tenant for an order seeking emergency repairs to the rental unit pursuant to Section 32 of the *Residential Tenancy Act*. The tenant also applied for a monetary order for compensation and to recover the fee to file this application, pursuant to Sections 67 and 72 of the *Residential Tenancy Act*. The tenant applied for compensation in the amount of \$4,767.50 which is the equivalent of half of the total rent paid by the tenant for the months of August 2008 to February 2009.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

At the start of the hearing the tenant stated that the tenant had moved out of the rental unit and hence the portion of the tenant's application seeking emergency repairs is no longer relevant.

Issues to be decided

Is the tenant entitled to a monetary order for compensation in the amount of \$4,767.50 due to the stress endured during the tenancy from the presence of a skunk family living under the porch of the home? Was the landlord negligent in addressing the situation and taking action in a timely manner?

Background and Evidence

Based on the sworn affirmed testimony of both parties, the facts are as follows:

The tenancy started on November 01, 2008 and the tenant paid a security deposit of \$845.00 on January 08, 2009. The tenant rented part of the home prior to November 2008 and on November 01, 2008 entered into a six month lease to rent the entire home for \$1690 per month payable on the first of each month.

The tenant testified that on or about the end of August 2008, the tenant became aware of a family of skunks living under the home. A strong odour was present in the home and the tenant informed the landlord by way of a phone call. The tenant stated that in the following week, the landlord personally attended the property and initiated action to resolve the problem. According to the tenant the traps were set sometime in October or November and the skunks were finally removed in February 2009. The tenant admitted that the tenant was unsure of the dates and did not have any written documents to confirm the date the landlord was informed of the problem or the date that the landlord took steps to resolve the problem. The tenant stated that the tenant suffered the loss of quiet enjoyment of the property due to the constant odour and the associated stress.

The landlord testified that the tenant informed the landlord about the skunks by phone on November 09, 2008 along with other complaints that needed the attention of the landlord. The landlord contacted a commercial Pest Control company (APC) by email on November 10, 2008 and visited the tenant to check out the problem. APC replied on November 13, 2008 and visited the property on November 19, 2008, to set up traps. The landlord hired another commercial company (FM) to monitor the traps every 48 hours. The traps were regularly monitored until mid December, when a snow storm hit the area resulting in up to 50cm of snow on the ground until mid January. On January 14, 2009, the landlord called the tenant to follow up on the issue and the tenant stated that the smell was no longer present in the home. On January 19, 2009, the tenant called the landlord to report that the smell had returned. The landlord contacted APC who advised the landlord to use bleach in the skunk den to neutralize the odour. The landlord hired FM to perform this task. On January 24, 2009 the tenant called the landlord to advise the landlord that the problem was not resolved. The landlord contacted another pest control company (AAA) on the recommendation of the Canadian Pest Control. AAA was successful in excluding the skunks on February 02, 2009 and the landlord rented an ozone generator to assist the tenant with the removal of the odour inside the home. In consultation with the tenant, the landlord set up an appointment for February 06, 2009, with an environmental company to assess and treat the inside of the home. The tenant cancelled the appointment and the landlord requested the tenant to call back with a suitable time to reschedule the appointment.

The landlord stated that the appointment was never rescheduled as the tenant did not call back.

On February 10, 2009 the tenant called the landlord to discuss compensation and the landlord advised the tenant that compensation would not be considered.

Communications broke down following a heated conversation between the parties, regarding the appointment for the environmental company to attend to the odour inside the house. The landlord has submitted into evidence receipts and documents to support the landlord's verbal testimony.

Analysis

It is important for the claimant to know that to 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

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

In this instance, 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. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord has a responsibility to repair and maintain the rental unit and the reasonable efforts of a landlord to perform required repairs and maintenance cannot form the basis for a claim for compensation. Having reviewed the evidence and testimony of both parties, I find that the tenants have failed to prove that the presence of the skunks stemmed from a violation of the tenancy agreement or a contravention of the Act or negligence on the part of the landlord. Given the restrictions placed on the landlord by the weather, I find that the landlord acted reasonably and in a timely manner in addressing the problem

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy or there has been inaction on the part of the landlord which allows physical interference by an outside or external force which is within the landlord's power to control. I find that the landlord acted in a timely and responsible manner to address the problem and hence I find that the landlord has not interfered with the tenant's rights to quiet enjoyment which include:

- Reasonable privacy
- Freedom from unreasonable disturbance
- Exclusive possession
- Use of common areas for reasonable and lawful purposes, free from significant interference.

Conclusion

The tenant has not established a claim to compensation for loss of enjoyment under the Act and hence the tenant's application for compensation for loss under the Act in the amount of \$4,767.50 is dismissed. The tenant must bear the cost of filing this application.

Dated March 11, 2009.

Dispute Resolution Officer