



# **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

MNDC

### **Introduction**

This was a re-hearing of a hearing originally held on June 17, 2009 to deal with the tenant's Application for Dispute Resolution requesting monetary compensation for the lack of kitchen facilities and loss of quiet enjoyment during the tenancy.

This re-hearing was held pursuant to the landlord's successful application for Review Consideration which was granted in a decision dated August 7, 2009. The re-hearing was scheduled for 9:00 a.m. Tuesday, September 22, 2009 and both parties were notified by mail. The Notice of re-hearing was sent to the landlord at the address provided by the landlord on the landlord's Application for Review Consideration signed by the landlord on July 1, 2009. The hearing commenced on the scheduled date and time. The tenant appeared. However, despite being served, the landlord did not appear and the re-hearing proceeded in the landlord's absence.

### **Issue(s) to be Decided**

The issue to be determined based on the testimony and the evidence is whether the applicant tenant presented adequate proof of a devaluation to the tenancy due to the landlord's failure to fulfill the landlord's obligation by providing essential services as required under the Act and by ensuring that the tenant's right to quiet enjoyment was protected .

The burden of proof is on the applicant to prove that the services and facilities were not provided and the amount by which the tenancy was devalued, if any due to the violation of the agreement.

### **Background and Evidence**

The tenant testified that the tenancy began in May 2008 and ran for five months until it ended. It was then reinstated for one further month in December 2008. The tenant testified that the landlord did not supply any kitchen or cooking facilities in the rental unit and that in fact the parties had made a tenancy agreement for a residential rental which included a shared bath, but did not offer any food storage, preparation area nor cooking facilities. The tenant testified that, in addition to the problem of having no access to any kitchen facilities for preparing meals, he was also subjected to repeated disturbances from other residents in the complex. The tenant testified that the landlord permitted disruptive activities and took no action in regards to complaints that the tenant made. The tenant testified that the landlord ignored the problems despite intervention by police. The tenant testified that the activities that went on in the building and the landlord's refusal to ensure his quiet enjoyment had devalued the tenancy and the tenant is claiming compensation.

### **Analysis**

In regards to an applicant's right to claim damages from the other party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, 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 or agreement and that this non-compliance resulted in costs or losses to the

Applicant. 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

The tenant is alleging that the landlord did not comply with Act by providing the essential facilities. 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.

Section 27 of the Act also states that a landlord is not allowed to terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation and if providing the service or facility is a material term of the tenancy agreement.

The fact that the tenant and the landlord had made an agreement that the unit excluded any access to kitchen facilities does not function to release the landlord from its obligation under the sections 32 and 27 of the Act. In fact, section 5 of the Act makes it clear that landlords and tenants may not avoid or contract out of this Act or the regulations and specifically states that any attempt to avoid or contract out of the Act or the regulations is of no effect.

I find that the landlord was clearly in violation of the Act by neglecting to provide cooking or food preparation facilities to the tenant.

In regards to the tenant's complaint about loss of quiet enjoyment during the tenancy, I find that section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I accept the tenant's testimony that despite his efforts to ensure that the landlord was aware of the problems, these disturbances continued throughout the tenancy and had an impact on the tenant's quality of life.

Given the above, I find that the tenant has successfully met all elements of the test for damages. I find that the tenant suffered a devaluation of the tenancy due to the landlord's violation of the Act and that the tenant did try to mitigate the losses without success. Based on the evidence and the testimony, I find that a rental abatement of 40% for the duration of the initial 5-month tenancy, plus the one additional month is justified. The tenant had paid rent in the amount of \$395.00 for six months for a total of \$2,370.00 and is thus entitled to monetary compensation of \$948.00 representing 40% of the rent.

### **Conclusion**

I hereby grant the tenant a monetary order under section 67 for \$948.00, comprised of \$158.00 rent reduction per month for six months. This order must

be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This Order replaces and supplants the monetary order issued on June 17, 2009.

September 2009

Date of Decision

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Dispute Resolution Officer