Dispute Resolution Services

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

DECISION AND REASONS

Dispute codes: MNDC

Introduction

This was an application by the tenant for a monetary order. The hearing was conducted by conference call. The tenant attended and was represented by his advocate. The landlords attended and participated in the hearing.

Background and evidence

The rental unit was a manufactured home on a lot. The tenancy began in July, 2006. The only record of a tenancy agreement is in the form of an e-mail created and sent by the landlord and signed by the tenant on July 18, 2006. The agreement provided for monthly rent of $800.00. The tenant was required to pay the utilities and put the utility accounts in his name. The landlord specified that: "(the tenant) also agrees that the trailer is being rented **AS IS** and is fully aware of the water damage that occurred." (emphasis in original). The document provided further that: "(the tenant) also agrees that all repairs to the property and building are his sole responsibility." The agreement was stated to be month to month "interim" agreement, to be in place only until the landlord had time to draw up a "Rental/Purchase agreement". The agreement was to expire when the Rental/Purchase agreement was created and signed. The tenant agreed that he would not hold the landlord liable "for any injuries sustained while living or renovating the home."

A Rental/Purchase agreement was never created; according to the landlord he determined that the tenant and his wife were incapable of purchasing the rental unit because they were receiving disability assistance and the rent was paid directly to the landlord by the government on behalf of the tenants. He said that he made it clear to the tenant that there would be no Rental/Purchase agreement and it was merely a

tenancy. According to the tenant he considered throughout the tenancy that there he was making payments with respect to a rental purchase agreement. He testified that the monthly rental amount he paid was significantly higher than the rent paid by the previous tenants and that was before the trailer sustained serious water damage. He said that he took the trailer “as is” and it was up to him to make repairs, notwithstanding that the landlord received an insurance settlement with respect to the damage to the trailer.

The tenancy ended in October, 2008 after the landlord sold the trailer to a third party and gave the tenant a two month Notice to End Tenancy. The tenant contested the Notice, but he did move out and the sale completed.

The tenant has claimed payment of the sum of $1,558.72 from the landlords as compensation for expenses incurred during the tenancy. He testified that the unit was uninhabitable when he took possession of it; for example the floor was rotten and his son fell through it, injuring himself. The floor had to be repaired. Wall repairs were required. The plumbing had to be fixed and new flooring and carpet put in. He provided receipts for expenditures. He included a claim for rent for August and September, 2006 in the amount of $400 incurred because the rental unit could not be inhabited for a period before and during the performance of repairs to the rental unit. The tenant claimed the sum of $900.00 paid for repairs and supplies, including replacement carpet and underlay for the rental unit. The tenant submitted a further invoice in the amount of $258.72 for plumbing repairs and repairs to the hot water tank.

The landlord objected to the tenant’s claim. He disputed the legitimacy of the tenant’s claims. He said that the tenant had not contacted him before having the work done and he said that the work did not constitute emergency repairs therefore the tenant should have spoken to him to have the work done or obtained his permission before proceeding. He suggested that the repairs and renovations had little value and were not reflected in the purchase price paid for the rental unit, but he declined to disclose the price paid for the rental unit. The landlord produced documents said to have been obtained from the plumbing firm that submitted the invoice for $258.72. The landlord’s documents purported to show that the invoice had not been paid because the tenant’s

cheque could not be cashed. The landlord submitted a photocopy of the counterfoil sender's copy of a postal money order in the amount of $800.00 payable to the tenant and dated October 10, 2006. The words: "Home Repairs" was written on the sender's copy. The tenant denied that he ever received the payment. The landlord insisted that the amount had been paid and the money order cashed although he had not checked to confirm that it had been negotiated. I was not told how this payment came to be made or for what repair work it was intended to provide compensation.

Analysis and conclusion

The first issue I must address is whether I have jurisdiction to entertain this claim, given that the agreement contemplated the tenant's purchase of the unit. Residential Policy Guideline 15 sets principles with respect to jurisdiction under the Act; it provides in part as follows:

> If the relationship between the parties is that of seller and purchaser of real estate, the Legislation would not apply as the parties have not entered into a "Tenancy Agreement" as defined in section 1 of the Acts. It does not matter if the parties have called the agreement a tenancy agreement. If the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into.
> Similarly, a tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the Acts, is the right to possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the arbitrator may again decline jurisdiction because the Acts would not apply.
> In the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets either of the tests outlined above, then the Acts may not apply. However, if the parties intended a tenancy to exist prior to the exercise of the right to purchase, and the right was not exercised, and the monies which were paid were not paid towards the purchase price, then the Acts may apply and the arbitrator may assume jurisdiction. Generally speaking, the Acts apply until the relationship of the parties has changed from landlord and tenant to seller and purchaser.

Because the rent to own agreement was never consummated due to the landlord's unilateral rejection of the arrangement; because the landlord continued to collect rent and because the tenant moved out pursuant to the landlord's Notice to End Tenancy

without contesting the sale of the trailer to a third party I find that I do have jurisdiction to consider this claim.

I reject the landlord's argument that the tenant's claim should be dismissed because the tenant did not contact him before embarking on the repairs. Pursuant to the *Residential Tenancy Act*, it is the landlord's obligation to provide and maintain residential in a state of decoration and repair that complies with health, safety and housing standards required by law and suitable for occupation by a tenant. Despite his statutory obligation the landlord purported to rent the property "as is" and to make the tenant solely responsible for repairs. Having made that agreement in contravention of the Act, the landlord cannot now complain that he was not consulted and not given the opportunity to perform repairs.

I accept the tenant's evidence about his expenditures as evidenced by the receipts he submitted and I accept that they were payment for work and materials to improve the rental unit, to make it habitable and to pay for alternative accommodation for several months until he and his family could occupy the rental unit.

I do not accept the landlord's evidence that the tenant's work to the rental unit was valueless. I accept the tenant's evidence that the unit was not habitable when he first rented it. The tenant did the work to make the rental unit livable as he was required to do under the tenancy agreement. The rental unit that the landlord ultimately sold to a third party had the benefit of that work. I find that the tenant is entitled to be compensated for that work, either on the basis that the landlord authorized the work pursuant to the tenancy agreement, or alternatively on the basis of *quantum meruit*. This is a remedy that provides for the payment of compensation from one party to another in the absence of express contractual obligations in circumstances where there would otherwise be an unjust enrichment of one party at the expense of the other. With respect to the plumbing bill in the amount of $258.72, whether or not the bill has been paid (and I make no finding on that point) the bill is to the tenant and he is liable to pay it; therefore it is a legitimate part of his claim. I allow the tenant's application and grant him a monetary award in the amount claimed, namely: $1,558.72. I find on a balance of probabilities that the tenant did receive the $800.00 payment from the landlord, but did

not recall receiving it. I find that the payment was made as partial compensation for the tenant's work on the rental unit and I deduct that amount from the award to the tenant. The net award to the tenant is the sum of $758.72 and I grant the tenant an order under section 67 in the said amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated April 2, 2009.