

DECISION

Dispute Codes MNDC OLC RP FF

Preliminary Issues

The Tenant requested to amend her application to add the property management company name to her application. The Tenant explained that the Landlord listed on her application is the owner and that they have recently handed over management of the building to the property management company who employs the Landlord that attended the hearing today.

The Landlord confirmed that her employer manages the rental unit and the building is owned by the Landlord listed in the original application.

The testimony confirms that the Landlord is employed by the management company who is employed as the Agent for the Owner, managing the rental unit. I have confirmed that the Agent of the Landlord was properly served with notice of today's hearing and I hereby approve the Tenant's request to amend the Application to include the property management company's name, in accordance with section 2.5 of the Residential Tenancy Branch Rules of Procedure.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for compensation for damage or loss, Orders to have the Landlord comply with the Act, to make repairs to the unit site or property, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord on October 22, 2009.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to Orders under sections 32, 62, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed facts are the tenancy began as a one year fixed term on November 1, 2007 switching to a month to month tenancy after October 31, 2008. The current monthly rent is payable on the first of each month in the amount of \$910.00 and the Tenant paid a security deposit of \$437.50 on October 30, 2007. There was no move-in inspection report completed at the on-set of the tenancy.

The Tenant testified and referred to her documentary evidence where she provided the Landlord with a written request for service of five items. The Tenant argued that the Landlord had a maintenance person attend her rental unit on approximately September 19, 2009 who told the Tenant he would return to perform the work and then never returned.

The Tenant argued that sometime in March 2009 the tenants directly above her flooded their kitchen twice, which caused water to leak through the Tenant's ceiling in the kitchen and living room. The existing resident manager began her new job on April 1, 2009 and the Tenant testified that she waited for the new manager to settle in a few weeks before telling the manager about the water damage and request the repair. The Tenant stated that after the water leaked through the ceiling her kitchen light and an electrical outlet in the kitchen were not working. The Tenant confirmed that the light and the electrical outlet were repaired in April 2009 however the ceiling was never painted.

The Tenant is also seeking to have the following repairs completed, which were also requested in writing on September 19, 2009: 1) repair electrical outlet located in the dining room/living room that sparks when used but does not blow the breaker; 2) repair fridge door shelf which was broken due to normal wear and tear; 3) repair kitchen cabinet piece located on lower cabinet above the cabinet doors; 4) replace caulking around bathtub and kitchen sink where the caulking has been damaged or worn off; 5) re-seal window panels which are loose from the metal frames in the kitchen and living room.

The Tenant provided additional testimony about emergency repairs not being completed in a timely fashion. The Tenant spoke about an incident where a side glass door was broken and left unsecured overnight. When the Tenant saw the door still unsecured the next morning she called the emergency number and the glass was replaced however the broken glass was left lying around on the floor for three days before it was cleaned up. The Tenant also spoke about elevator repairs which are not completed in a timely fashion.

The Landlord testified and confirmed that she attended the Tenant's rental unit on

approximately September 19, 2009 with the maintenance person. When asked why the repairs were not completed the Landlord stated that the maintenance person told the Landlord that he overheard the Tenant on the phone saying she had bedbugs and that the maintenance person refused to go into the Tenant's apartment to complete the repairs. When asked what she did about the alleged presence of bed bugs in her building the Landlord stated that she did nothing to confirm the maintenance person's statement and the Landlord made no attempt to contact the Tenant to confirm or deny the allegations.

The Landlord testified that she was waiting for the Tenant to come to her and advise her that she had bedbugs again. The Landlord argued that the Tenant had bedbugs a few months earlier and that the Tenant informed the Landlord to get a pest control company for that instance.

The Landlord confirmed that she has made no attempt to arrange to have the repairs completed in the Tenant's apartment as she was waiting for the Tenant to tell the Landlord about bedbugs. However the Landlord confirmed she attended the rental unit after receiving the October 14, 2009 notice and that the Landlord made no additional maintenance requests.

When asked if she made any attempt to work with the Tenant after receiving notice of the Tenant's application for dispute resolution the Landlord confirmed that she has made no attempts to resolve any of the maintenance issues with the Tenant and did not put a request through to the maintenance staff.

The Landlord argued that she does not work on weekends and that the Tenants are provided with emergency numbers for the weekend. The Landlord confirmed that the side glass door was broken on a Saturday, repaired on Sunday, and the Landlord made no attempt to clean up the glass until Tuesday after receiving a complaint. The Landlord argued that she put off the cleanup of the glass as her vacuum was broken and in for repairs. The Landlord said that she was forced to pick up the glass with her bare hands after she received complaints about the mess still being there on Tuesday.

The Landlord argued that the broken electrical outlet was a result of the Tenant using appliances which draw too much electricity. The Landlord confirmed that the breaker was not being blown when the outlet was used.

The Landlord confirmed that the rental building was between 30 and 40 years old; that she had no records of repairs completed to the Tenant's rental unit and could not say when the last time the ceiling was painted or when any repairs were completed in the rental unit prior to her employment.

The Tenant is seeking a rent abatement of 10% of her monthly rent for a total of \$716.00 which represents 7.87 months at \$91.00, the time period since the damage was caused to her ceiling and lights.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Tenant 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, in this case the Tenant, bears the burden of proof and the evidence furnished by the Applicant Tenant 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 loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Tenant's right to claim damages from the Landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *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.

The evidence and testimony before me supports that the Tenant informed the Landlord of required repairs, both verbally and in writing, and that the Landlord initially acted upon the Tenant's written requests, however the Landlord failed to follow through with her duties to ensure the work was completed.

The Landlord argued that she was waiting for the Tenant to inform the Landlord that there was the presence of bedbugs in her apartment. As there had been a previous occurrence of bed bugs in the apartment which the Tenant informed the Landlord of in a timely manner, a reasonable person would conclude that if there was another presence of bed bugs the Tenant would advise the Landlord as soon as possible. A reasonable person would also conclude that if the Tenant did not inform the Landlord of the

presence of bed bugs after the maintenance person attended, then it would be reasonable to conclude that there were no bed bugs in the apartment.

Based on the above I find that the Landlord failed to meet their obligations under section 32 of the Act which provides that a Landlord must maintain the residential property in a state that complies with health, safety, and housing standards and to make the rental unit suitable for occupation. Based on the aforementioned I hereby approve the Tenant's claim for the issuance of a repair Order to the Landlord as follows: The Landlord is hereby ordered to complete the following repairs no later than the dates specified beside each item:

- 1) Repair the electrical outlet in the living room dining room no later than December 18, 2009; and
- 2) Paint the water damaged ceilings located in the kitchen and living room no later than January 15, 2010; and
- 3) Replace the broken shelf rack in the refrigerator door no later than January 15, 2010; and
- 4) Repair and/or fasten the loose piece of cupboard trim or edging to the kitchen cupboard no later than January 15, 2010; and
- 5) Re-caulk around the bathtub and kitchen sink, no later than January 15, 2010; and
- 6) Install or replace required weather stripping or padding around the windows in the kitchen and living room to prevent the windows from being loose from the metal frames, no later than January 15, 2010; and
- 7) The Landlord is hereby ordered to arrange for an after hour and weekend emergency service available to clean up debris that would possess a health and safety risk to the tenants (eg: broken glass spread in an entrance way used by tenants and their pets)

The Landlord has allowed the rental unit to be in a state of disrepair thus causing the tenancy to lose value and I find that the Tenant's entitlement to quiet enjoyment of the rental unit has been negatively affected, in contravention of section 28 of the Act. Based on the aforementioned I find that the Tenant has proven the test for damage and loss as listed above and I hereby approve the Tenant's request for rent abatement in the amount of \$91.00 per month for the months of April, 2009 through to part of November, 2009 for a total claim of \$716.00 (approximately \$91.00 x 7.87 months).

I further Order that the Tenant reduce her rent by \$91.00 per month effective January 1, 2010, for a new monthly rent payable in the amount of \$819.00 and continuing until such time as the repairs are completed as ordered above. I note that the Tenant is at liberty to apply for further compensation if the Landlord fails to have the repairs completed in full by the dates listed above.

There was opposing documentary evidence which spoke to the level of maintenance and cleaning service being provided by the Landlord. In the presence of this opposing evidence and in the absence of documentary proof to the contrary, the Tenant has failed to prove her claim for reduced services under section 27 of the Act, and I hereby dismiss the Tenant's claim without leave to reapply.

It is evident that the relationship between the Landlord and Tenant broke down at some point after the September 2009 written request for repairs was submitted to the Landlord by the Tenant and the communication between the two women has since become very demanding. It is important for both parties to look past their personal differences in order to provide a safe peaceful environment for the residents of the entire building to reside in.

As the Tenant has been primarily successful with her claim, I find that she is entitled to recover the \$50.00 filing fee from the Landlord.

Conclusion

The Landlord is HEREBY ORDERED to complete the above list of seven (7) repairs no later than the dates listed above.

The Tenant is HEREBY ORDERED to reduce her future rent by her monetary awards in the amount of \$857.00. (\$716 rent abatement + \$91 reduced January rent + \$50 filing fee). Based on the aforementioned the Tenant is ORDERED to pay only \$53.00 for January 2010 rent, in full satisfaction of her claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 07, 2009.

Dispute Resolution Officer