



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes: RR

Introduction

This hearing was to deal with an application by the tenant for an order allowing the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided.

Despite being served by registered mail sent on October 16, 2009, the landlord did not appear.

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

- Whether the landlord has continued to deprive the tenant of services and facilities required by law and failed to follow a previous order.
- If it is found that the landlord has continued to deprive the tenant of essential services and refused to comply with the previous order:
 - Should another order to comply be issued?
 - Is the tenant entitled to monetary compensation under section 67 of the Act for damages or loss and possibly a rent abatement?
- Whether the landlord has failed to meet its obligations under the Act to repair and maintain the unit.

The burden of proof is on the applicant to prove all of the claims and requests contained in the tenant's application.

Background and Evidence

The tenancy began in the summer of 2003. The tenant testified that she is an elderly person with a mobility disablement and she must rely on a motorized scooter to get around. The tenant testified that a wheelchair ramp that used to be in place to access the building became unstable and was removed by the landlord some time ago. Since that time, the tenant has not been able to utilize her motorized scooter and has had to rely on assistance from others to get up and down the five steps to enter and exit every time she goes out to do errands or to visit the doctor. Moreover, the tenant has been forced to conduct her errands and activities without the use of the motorized scooter which remains in her rental unit.

The tenant testified that on May 27, 2009 a dispute resolution hearing was held on file number #####, and the tenant obtained an order against the landlord, ordering that the landlord was to immediately provide wheelchair access to the subject facility in compliance with the Act.

The tenant submitted a copy of this decision which determined “*that the wheelchair ramp is essential to the tenant’s use of the rental unit as living accommodation. Pursuant to the statutory requirements set out in section 27 of the Act, as above, the landlord may not terminate wheelchair access to the rental unit.*” The tenant testified that the order was served on the landlord but it has taken no action despite the order. The tenant testified that a letter was sent to the landlord on June 24, 2009 in regards to the order that was issued. The tenant stated that the landlord’s obligation under the Act and pursuant to the order was also discussed with the landlord. The tenant testified that, although the property manager presented some ideas that the landlord may be considering, no new ramp or means of access has yet been supplied and the tenant’s access is still restricted. The tenant is seeking an order to compel the landlord to comply with the previous order.

The tenant also testified that there were some longstanding repair issues in her unit that the landlord has been aware of for several years, but has steadfastly refused to address, despite repeated approaches by the tenant. These include a malfunctioning stove and water leaking down the wall behind the toilet. The tenant testified that the stove needs to be fixed and that the leak has worsened to the point where she is unable to use her own toilet and has been forced to go to a neighbour's suite to use their toilet. The tenant was seeking an order to rectify the situation so that she could function in her own home and have the level of peaceful enjoyment that the Act guarantees to tenants.

Analysis

In regards to the tenant's claim for the repairs to the stove and to the toilet, I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. And a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.

Section 33(1) of the Act describes "emergency repairs" as repairs that are (a) urgent, (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and (c) made for the purpose of repairing such things as major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, the electrical systems or other serious problem of this nature. The Act states that a tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(5) requires a landlord to reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. If a landlord does not reimburse the tenant, as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The tenant's application requested that the rent be reduced for repairs, services or facilities not provided. In regards to compensating a party for the loss of services or other damages suffered, I find that section 67, permits a party to be reimbursed for losses and damages if the burden of proof has been met to establish that the other party did not comply with the Act and that this non-compliance resulted in costs or losses, pursuant to section 7. 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.

In this instance, I find as a fact that the landlord had been apprised of the repair issues involving the stove and the toilet. I further find that the nature of these two repairs would be considered to be emergency repairs under section 33 of the Act, in that the malfunctioning stove could present a safety issue and the use of a toilet is absolutely essential to the tenant's ability to live in the unit. I further find that the landlord has persistently refused to address these problems in violation of the Act.

Accordingly, in regards to the repairs, I find the following remedy is warranted:

- An order compelling the landlord to repair the leaking water pipe and replace the defective stove.
- An Order that, should the landlord not repair the toilet within three weeks of the date of this decision, the tenant is permitted to have the plumbing repair done by a professional and is entitled to be reimbursed in full by the landlord, pursuant to section 33 of the Act.
- An Order will be issued ordering that, should the landlord not replace the stove within three weeks of the date of this decision, the tenant is permitted purchase a new stove for which the landlord must reimburse the tenant pursuant to section 33 of the Act.
- Until the leaking water pipe is repaired and the defective stove has been replaced by either the landlord or the tenant, the tenant is entitled to a rent abatement of \$100.00 per month for the water leak behind the toilet and \$50.00 per month for the stove, amounts which may be deducted off of the rent normally due and payable to the landlord.

These rental abatements shall continue until the Landlord makes an application for dispute resolution and provides proof that the plumbing repairs and stove replacement have been completed and also successfully obtains an order

through a dispute resolution hearing that each of these rent abatements should cease and serves this order on the tenant.

- A monetary order in favour of the tenant reflecting a retro-active rent abatement to compensate the tenant for \$150.00 per month for the past 12 months during which the tenant was forced to endure these conditions. The total monetary compensation for devalued tenancy for one year is set at \$1,800.00.

In regards to the alleged failure to provide a wheelchair ramp, I find as a fact that the landlord neglected to satisfy the order issued on May 27, 2009. The landlord had been ordered to provide an essential wheelchair ramp or other accessible means “forthwith” to allow the tenant to enter and exit the building, and given that over six months have passed since the May 27, 2009 Order was issued, I find it evident that the landlord has refused to comply with this order. Although the tenant did request *another* order to force the landlord to follow the previous order, I do not find it appropriate to re-issue a second order on the same matter that was already determined on May 26, 2009. This previous order is still in effect and must be complied with by the landlord under the Act.

However, as mentioned earlier in this analysis, section 7 of the Act provides 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 regards to the wheelchair ramp and access issue, each element of the four-part test for damages has been met in the tenant’s evidence and testimony.

Therefore I find that the tenant is entitled to compensation in the form of a rent abatement in the amount of \$250.00 per month until the completion of a new wheelchair ramp or installation of other means of access that would permit the tenant to use her motorized scooter in entering or exiting the complex. This rental abatement shall continue until the landlord has made an application for dispute resolution to prove that

the ramp or other comparable access has been installed and obtains an order that the \$250.00 rent abatement should cease, and serves this order on the tenant.

I also find that the tenant is entitled to a retroactive rent abatement reflecting the past hardship suffered by the tenant caused by the landlord's failure to comply with the order issued on May 27, 2009. I find that the access situation should have been corrected by the landlord within three months of the previous order and therefore a rent abatement of \$250.00 is warranted for the months of August 2009, September 2009, October 2009 and December 2009 totalling monetary compensation of \$1,000.00.

In summary, I find that the tenant is entitled to reduce the rent owed by \$100.00 per month for the water leak and \$50.00 per month for the stove, and a further \$250.00 per month for the continued noncompliance of the landlord in regards to the order that a wheelchair ramp be provided. Accordingly, the monthly rent has been reduced to \$101.00 per month pending the above corrections by, or on behalf of, the landlord and the landlord obtains an order that the abatements cease.

I further find that the tenant is entitled to a monetary order in the amount of \$2,800.00 comprised of \$1,200.00 for 12 months loss of the use of the toilet due to a water leak, \$600.00 for twelve months dealing with a malfunctioning stove and \$1,000.00 for four months of the continued accessibility problems stemming from the landlord's failure to comply with an order and provide a wheelchair ramp or other means of access into the building for the disabled tenant.

Conclusion

Based on the testimony and evidence discussed above, I hereby order that the landlord repair the leaking water pipe and replace the defective stove.

I further order that should the landlord fail to repair the toilet within three weeks of the date of this decision, the tenant is permitted to have the plumbing repair done by a professional and is entitled to be reimbursed in full by the landlord.

I further order that should the landlord not replace the stove within three weeks of the date of this decision, the tenant is permitted purchase a new stove for which the landlord must reimburse the tenant.

Based on the testimony and evidence, I hereby order that the tenant may deduct each month from rent owed,

- \$100.00 per month until the water leak has been fixed, and an order obtained and served by the landlord that the abatement must cease,
- \$50.00 per month until the stove has been replaced and an order obtained by the landlord that the abatement must cease and a further
- \$250.00 per month so long as a wheelchair ramp or other means of access for a motorized scooter has not been installed and unless, on that basis, the landlord has successfully obtained an order that the \$250.00 abatement must cease.

Based on the testimony and evidence, I hereby grant a monetary order in favour of the tenant in the amount of \$2,800.00 which must be paid by the landlord. This order must be served on the landlord and may be enforced in Small Claims court.

December 2009

Date of Decision

Dispute Resolution Officer