

Decision

Dispute Codes:

OLC, RR, MNDC, FF

Introduction

The hearing was convened to hear an application by the tenant to obtain a monetary order for money owed or compensation for damage or loss under the Act, an order that the landlord comply with the Act, a rent abatement for services and facilities not provided and reimbursement for the cost of filing this application.

The hearing was also convened to deal with a cross- application n application by the landlord for a monetary order for damages and loss, utilities owed and reimbursement for the cost of filing this application.

Issues to be Decided for the Tenant's Application

The tenant was seeking compensation for loss to the value of the tenancy and reimbursement for loss of enjoyment of the suite. The issues to be determined based on the testimony and the evidence are:

- Whether or not the tenant was entitled to a reduction in rent based on the landlord's restriction of, or failure to provide, services and facilities that were required by the Act or included in rent as part of the agreement.
- Whether the landlord should be ordered to comply with the Act
- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for loss of rent and damages by proving that the claim for damages or loss is supported and establishing:
 - Proof that the damages or losses were incurred due to the actions of the landlord in violation of the Act or Agreement

- Proof by the tenant that the actual amount or value being claimed is justified
- Proof that the tenant made reasonable effort to minimize the damages under section 7(2) of the Act.

Issues to be Decided for the Landlord's Application.

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

- Whether the landlord is entitled to utilities and damages. This determination is requires answers to the following questions:
 - Has the landlord proven that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing: a) that the costs were incurred due to the actions of the tenant in violation of the Act and; b) submitted proof of the value of damages and that reasonable efforts were made to minimize the damages under section 7(2) of the Act?

The tenant has the burden of proof to establish that the landlord failed to fulfill the landlord's duties under the Act and that this caused a reduced value of the tenancy or resulted in damages and losses for which the tenant should be compensated

For the landlord's application, the landlord has a burden of proof to establish that the tenant failed to comply with the Act and that this failure resulted in damages or loss.

Background and Evidence

The tenant testified that on the 27th of May 2009 the washing machine in the unit overflowed and flooded part of the unit including carpeting and this disrupted the tenancy. According to the tenant, the tenant was deprived of laundry facilities for an extended period and incurred costs of \$120.00. The tenant testified that they had to actually vacate the unit for a period of 9 days for which the tenant is claiming a pro-rated rent abatement of \$345.00. The tenant stated that the inability to stay in the unit and

the deprivation of the use of the kitchen resulted in costs for eating meals in restaurants. The tenant testified that, once they returned, they were forced to deal with issues involving the carpeting for another 7 days. The tenant testified that the landlord also refused to complete repairs on the kitchen faucet which was only capable of dribbling cold water and would not produce any hot water for a period of 21 days. The tenant stated that enduring the upheaval and stress with a young child and with a pregnancy in its sixth month also warranted compensation. Based on the above, the tenant felt that a further amount of \$500.00 compensation was warranted.

The landlord acknowledged that the flood occurred but testified that the tenant was partially responsible for the flooding in that the tenant chose to do laundry late in the evening at 9:30 or possibly later. The landlord testified that this is contrary to logic and the rules of the strata complex. No evidence was submitted to verify this. The landlord testified that the tenant also evidently failed to report the problem in a timely fashion and the repair professional was not called until 11:00 p.m. According to the landlord, this lapse resulted in further damage than would otherwise have occurred. The landlord is claiming \$1,065.00 reimbursement for the costs incurred in relation to the flood.

The landlord testified that when the tenant moved out of the unit, cleaning and repairs were necessary including carpet that was not shampooed, holes left in the walls, general cleaning and a broken faucet. The landlord is claiming \$400.00 for this work. The landlord submitted a move-in inspection report and some photos into evidence. However, no move-out inspection report or nor invoices were supplied.

The tenant disputed the landlord's claims. The tenant stated that they did not neglect to monitor the washing cycles and discovered the leak at 9:45 p.m. and called the building superintendant to report the leak immediately. The tenant stated that the building superintendant was responsible for calling the service professional, which was done at 11:00 p.m. The tenant testified that there was no undue delay. The tenant stated that when the tenant vacated on July 25, 2009 pursuant to the Order of Possession, the unit was left in a reasonably clean condition. The tenant refuted the landlord's statement

that the unit had been freshly painted when the tenant moved in and testified that only touch-up painting had been done. The tenant acknowledged that some holes were left in the walls where shelving had been installed and estimated the cost to repair them as minimal in the range of \$15.00.

. Analysis

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states 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 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 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 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

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

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. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear.

I find that under the Act, the maintenance and repair of appliances and fixtures such as faucets are the responsibility of the landlord.

In regards to the tenant's claim that the tenancy was devalued by \$345.00 due to the tenant being forced to vacate the premises for approximately 9 days, I find that this claim meets the criteria outlined in the test for damages. The washer malfunctioned and this resulted in an environment that rendered the unit not fit for habitation for a period of time, for which the tenant must be compensated. I find that the tenant had properly mitigated their losses by residing with friends instead of incurring the cost of a motel. I find that the tenant is entitled to be compensated in the amount of \$345.00 to compensate for the inability to use the premises and a further \$150.00 for the estimated costs of having to eat some meals in restaurants.

In regards to the loss of the use of the washer for 21 days, the loss of enjoyment of part of the residence due to incomplete flooring, and the loss of hot water and the use of the damaged faucet which the landlord neglected to repair, I find that section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential or if providing the service or facility is a material term of the tenancy

agreement. The Act provides that, in some cases a landlord may terminate or restrict a service or facility, as long as it is not essential to the tenant's use of the rental unit as living accommodation and not considered to be a material term of the tenancy. However, before doing this the landlord is required to give 30 days' written notice, in the approved form, and must also reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In the case of the loss of a washing machine and dryer, I find that the tenant would validly be entitled under the act to be compensated for the value and I find that the claim of \$120.00 is justified. In regards to the loss of the use of the water faucet in the kitchen, I find that the tenant is entitled to be compensated in the amount of \$60.00. In regards to the seven-day loss of enjoyment of a portion of the rental unit due to flooring problems, I find that the tenant is entitled to a further \$45.00.

Given the above, I find that the tenant's monetary entitlement for damage and losses is \$720.00 plus \$50.00 for the cost of filing.

In regards to the landlord's claim for compensation for the flood damage, I find no basis to conclude that the tenant violated the Act or agreement and therefore, this claim does not satisfy element 2 of the test for damages. I find that the portion of the landlord's application relating to the claim for \$1,065.00 for the flood repairs must be dismissed.

In regards to the landlord's claim for \$400.00 for compensation for the cleaning and repairs, I find that insufficient proof has been submitted to the claim for cleaning. The landlord did not provide a breakdown of the costs and tasks and the tenant disputed that the unit was left in a dirty condition. I find that the landlord is not entitled to be compensated for the damage to the faucet because, under the Act, a landlord is responsible for maintenance and repairs of plumbing fixtures. However, in regards to the holes left in the walls, I find that the landlord is entitled to be compensated for this damage. As no detailed accounting was submitted for the cost of materials and labour,

I estimate the compensation at \$45.00 for materials and labour to fill the holes and touch-up the painting. Accordingly, I find that the landlord is entitled to monetary compensation of \$45.00.

Conclusion

I find that the tenant has established entitlement to monetary compensation under section 67 of the Act in the amount of \$770.00, comprised of \$345.00 rent abatement for the devaluation of the tenancy for 9 days, \$150.00 for the cost of eating in restaurants, \$120.00 for laundry, \$60.00 for loss of use of hot water in the kitchen, \$45.00 for flooring issues and the \$50.00 cost of filing this application.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to damages in the amount of \$45.00 for wall repairs. The remainder of the landlord's application is dismissed without leave.

I hereby issue a monetary order in favour of the tenant in the amount of \$725.00 reflecting a reduction for the \$45.00 compensation owed to the landlord. 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.

Date of Decision:

December 2009

Dispute Resolution Officer