

Decision

Dispute Codes:

MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for loss of peaceful enjoyment of their suite and devalued tenancy over a two month period during August 2009 and September 2009.

Service

The tenant testified that on August 26, 2009, the Notice of dispute Resolution Hearing was served in person to the landlord's representative, XY, from XRealty Services, who was the property manager of the building.

Despite being properly served with the Notice of Hearing, the landlord did not appear.

Issue(s) to be Decided

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

- Whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss and possibly a rent abatement. This determination depends upon whether or not the claimant has presented proof of the existence and value of the damage or loss and that the cause of it was the respondent's actions in violation of the Act or the tenancy agreement

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 – Monetary Claim

The tenancy began in 1999 and the current rent was \$530.00 per month. The tenant testified that the landlord issued a Two-Month Notice for Landlord's Use dated July 16, 2009 stating that the landlord needed vacant possession in order to conduct extensive renovations. The Notice was served on the tenant on July 21, 2009 and was effective to end the tenancy on October 4, 2009. The tenant testified that they considered disputing the Two-Month notice based on the fact that they were not in a good position to find an affordable place to move to. However, they were discouraged from proceeding with this application because a tenant's personal situation is not considered to be a valid reason to dispute the Notice under the Act. The tenant testified that they accepted the end of the tenancy and did move out on September 29, 2009.

According to the tenant, during the final few months of their tenancy while the landlord had workers refurbishing other vacated suites in the building around them, the tenant was disturbed continually by the sounds, dust and odours caused by ongoing renovations in neighbouring suites. The tenant testified that construction crews were on the premises dismantling plumbing, ripping out carpets, taking down drywall, installing fixtures, doing structural alterations and flooring. While all of these suites were being demolished and rebuilt, the tenant stated that they were forced to endure all of the activities associated with a vigorous construction site and that this devalued their tenancy. The tenant testified that they complained repeatedly to the property manager who responded by indicating that nothing could be done. The tenant also contacted health protection officials and the municipality, but neither was able to intervene to stop the disruption affecting the tenant's quality of life.

The tenant feels that a rent abatement should be granted for the two-month period of August and September during which this occurred and during which the tenant paid, or was credited with, full rent of \$530.00. The total claim is for \$1,060.00.

Analysis - Monetary Compensation

The tenant was requesting monetary compensation or rent reduction for the reduction of value due to ongoing noise, smell and disruptions during construction. In regards to an Applicant's right to claim damages from 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 has a burden of proof to establish 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 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.

In this instance, the burden of proof is on the tenant to prove a violation of the Act and a corresponding loss.

Section 28 of the Act states 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] and; (d) use of common areas for reasonable and lawful purposes, free from significant interference. (my emphasis)

I find that section 28 of the Act imposes responsibilities on the landlord to ensure that a tenant's right to freedom from unreasonable disturbance is protected. In this instance, I find that the landlord would have been aware that operating an active construction/destruction project in the building while rent-paying tenants were still inhabiting it in other suites, would significantly interfere with the tenant's quiet enjoyment of the suite and would be likely to unreasonably disturb tenants.

I find that the landlord's violation of the Act resulted in a loss to the tenant. I find that the tenant has successfully met all elements of the test for damage and loss and that the tenant is entitled to be compensated by the landlord. I find that a rent abatement of \$400 per month for two months is warranted.

Conclusion

Based on the testimony and evidence discussed above, I hereby issue a monetary order in favour of the tenant in the amount of \$800.00. This order must be served on the landlord or the landlord's agent in person or by registered mail and can be enforced in Small Claims court.

December 2009

Date of Decision

Dispute Resolution Officer