



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC Money Owed or Compensation for Damage or Loss

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act. The tenant is also seeking an order for compensation based on damages that stemmed from the landlord's failure to provide services and facilities that were supposed to be offered by the landlord under the tenancy agreement.

The tenant appeared and testified that the landlord was served in person on November 30, 2009. The landlord did not appear.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for \$800.00 representing damages. The tenant was also seeking an Order to force the landlord to make repairs to the unit site property. The tenant's claim was described on the tenant's application under

Details of the Dispute as:

"He has done a few minor repairs; but the wind wissels (Blows) through the house the water still runs through the basement. I lived across the street and saw the last tenant break the railing and he insists I did it in public".

The issues to be determined based are:

- Whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss. This determination is dependant upon answers to the following questions:
 - Has the tenant submitted proof that the landlord has denied or reduced services or facilities required under the Act or which the landlord is required to provide under the tenancy agreement?
 - Has the tenant presented proof that the tenancy was devalued warranting the monetary compensation being claimed in damages?
 - Has the tenant submitted sufficient proof to establish that the landlord is in violation of the Act and should be ordered to complete repairs.

The burden of proof is on the applicant tenant .

Background and Evidence

The tenant testified that the tenancy began approximately 7 years ago and that the tenant has suffered losses and damages including slashed tires and thefts of the tenant's personal possessions that the tenant attributed to associates of another resident in the complex who, according to the tenant, is evidently a girlfriend of the landlord. The tenant stated that the landlord is responsible for the situation as the landlord has failed to act in evicting the other residents bothering the tenant.

The tenant testified that the rental unit is in a serious state of disrepair and that he has repeatedly approached the landlord with requests to do the repairs. The tenant stated that copies of written complaints were not submitted into evidence because the tenant only made verbal complaints and personally showed the landlord the deficiencies in the unit. The tenant testified that the basement has a severe water problem which has been ignored by the landlord for a long period of time and has damaged the tenant's property beyond repair. The tenant testified that photographs were taken by the tenant showing the conditions and the damage and these photos were shown to the

“government agent”. The tenant testified that this evidence was not submitted as the tenant did not have any hardcopies of the photos to send in and could not download the photos onto the computer without an expensive program. The tenant requested that the government agent be contacted to confirm that the photographic evidence does exist and was shown to the agent.

The tenant stated that the RCMP have attended and that police reports are available. No copies of any reports were submitted into evidence. Again the tenant requested that the RCMP detachment be contacted to confirm the problems occurring at the rental unit.

The tenant’s demands that the dispute resolution officer contact the third-parties to gather testimonial evidence in support of the tenant’s claims were refused and the tenant was advised that it is not within the role nor authority of a dispute resolution officer to investigate on behalf of an applicant. The tenant’s response to the refusal included derogatory comments and the tenant requested to be connected with a “supervisor”. When informed that this was not possible, the applicant became verbally abusive and ceased participating in the hearing.

Analysis

In regards to an Applicant’s right to claim damages from the another party, Section 7 of the Act states that if a tenant or a landlord does not comply with this Act, the regulations or the 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 tenancy agreement and that this non-compliance resulted in costs or losses, such as a reduction in services, 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

- a. Proof that the damage or loss exists,
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent landlord in violation of the Act or agreement
- c. Verification of the actual amounts required to compensate for the claimed loss or to rectify the damage.
- d. 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 onus is on the claimant/ tenant, to prove the damage or loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord.

While I do accept the tenant's testimony that there are condition problems in the unit and that he is genuinely dissatisfied with the landlord's failure or refusal to deal with these problems, I find that, other than making verbal allegations, the tenant failed to offer adequate documentary proof that the landlord was guilty of violating any of the terms of the tenancy agreement or the Act. The tenant did not supply photos nor copies of written complaints made to the landlord.

I find that the verbal and written allegations before me do not carry sufficient weight in the absence of independent tangible proof to support a monetary order or order to comply. I also find that the tenant was not able to provide enough detail about the specific nature of the complaints nor what prior steps he had taken to resolve the issues

with the landlord. The precise basis for the value of the monetary claim was also not sufficiently established and proven.

Based on the testimony of the tenant, I find that none of elements in the test for damages have been satisfied to support the tenant's claims and I find that the request for monetary compensation must be dismissed. I further find that there was no proven basis to justify issuing a specific order for repairs against the landlord and this portion of the tenant's application must also be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, the requests for an order for repairs and the monetary order must be denied and the tenant's application is hereby dismissed in its entirety without leave to reapply.

January 2010

Date of Decision

Dispute Resolution Officer