



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC

RP

RR

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order compelling the landlord to make repairs to the unit, an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided and reimbursement for the cost of the filing

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Preliminary Matter

At the outset of the hearing the tenant advised that the landlord has addressed all of the repairs and the tenant is now only seeking a rental abatement of \$250.00 for the period of time during which certain rooms were not usable due to the water ingress or due to renovations that were being done. The tenant was also still seeking the cost of filing the application.

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 or a rent abatement under section 65(1) of the *Act* due to a loss of value of the tenancy. This determination is dependant upon answers to the following questions:
 - Has the tenant offered proof that the value of the tenancy was lowered sufficient to support a reduction in rent or compensation?
 - Has the tenant submitted proof that the landlord was responsible or that the landlord committed a violation under section 32 of the *Act* by failing to act in having appliances repaired?
 - Should the landlord be ordered to complete repairs?

The onus falls on the tenant/applicant to prove the case and show that due to the landlord's actions, the tenant is owed compensation for damage or loss.

Background and Evidence

The tenancy began on November 1, 2009 with rent set at \$1,350.00. The tenant has made an application for a past rent abatement under section 65(1) of the *Act* for loss of a dishwasher usage for a 23-day period which the tenant estimated had devalued the tenancy by \$252.00. The tenant testified that this was based on the cost of her time at \$42.00 per hour for 15 minutes each day. According to the tenant, the landlord was aware that the dishwasher at the time the tenancy began or possibly before then. The tenant testified that On November 10, 2009, the dishwasher was serviced. However, on November 17, 2009 when the tenant attempted to use the dishwasher, she found that it still leaked and notified the landlord. The tenant was dissatisfied with the landlord's evident delay in notifying the repair technician, which she learned about upon speaking with the office staff. On November 24, 2009, the dishwasher was successfully repaired.

The tenant was also claiming \$207.02 compensation for the loss of usage of the washing machine for a period from November 1, 2009 to the end of the month, during which she was forced to go to the local laundry on four occasions . The tenant's claim

includes \$20.00 for payment for four loads, \$25.00 for mileage at \$.50 per kilometer, and \$42.00 for one-hour of the tenant's time. The tenant pointed out that because she works at home, this time away should be considered as a loss of income. The tenant is also claiming the cost of the bleach she used to put through the cycle in the machine to eradicate the mould build-up. The tenant testified that the washer is still not fully functional in that a mould smell remains and one of the filters has cracked.

The landlord testified that the dishwasher was looked at on October 29th, 2009 by the regular appliance service technician, who then ordered a new gasket which was installed as soon as possible, on November 10, 2009. However, the landlord was notified by the tenant on November 17, 2009 that the dishwasher was still leaking and immediately attempted to contact the repair technician. The landlord later received a message that this individual was not available due to a sudden death in the family, so another technician was contacted, who looked at the machine and leveled it on November 24, 2009. The landlord had submitted into evidence an invoice dated November 12, 2009 for the initial work done and a second invoice dated November 24, 2009 for the second service call. The landlord pointed out that it had acted in a timely way and had the problem solved within a reasonable amount of time.

The landlord testified that the tenant had never lost the use of the washing machine, but chose not to use it. The tenant reported that there was a mouldy smell in the machine on November 17, 2009. The landlord testified that this was checked out as quickly as possible by the second technician who reported that it needed a "good bleaching". The filters were removed and put through the dishwasher by the tenant and bleach was run through the cycle. The appliance technician ordered new filters which have not yet arrived. However, according to the landlord, the washer is functional as it has been from the outset. The landlord stated that it was not aware that the tenant had any recent problems in regards to the clothing being affected nor was the landlord told, prior to this application, that the filter was cracked.

The landlord disagrees with the tenant's monetary claims for both of the appliances and testified that everything within the landlord's control was done to alleviate the problem as quickly as possible to minimize inconvenience for the tenant and to satisfy the tenant.

Analysis

Section 65(1) states that if it is found that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. I find that to justify the rent a past rent reduction, it would be necessary to prove both: a) that the value of the tenancy was reduced and; b) that the landlord has not complied with the Act.

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

For a monetary claim under sections 65, 67, or 7 to succeed, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that there is no doubt that the tenant endured a loss of use of the dishwasher for a period of time. However, establishing loss or damage is only one component of the test. To meet element 2 of the test for damages, the loss or damage must be found to be the fault of the landlord and in violation of the Act or agreement.

Section 32 (1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that, under normal circumstances, portions of the rental unit may, from time to time, require repairs and the standard under the Act would be that once the tenant reports a problem, the landlord is obligated to investigate the complaint and must take steps to repair any problem found without undue delay. While a tenant may have an expectation that a problem should be put right immediately, it is not necessarily reasonable to expect instantaneous service because of the need to rely on the expertise of third parties. Both the landlord and the tenant would have limited control over the scheduling of skilled repair technicians, particularly in more isolated areas where

availability is a factor. To find a violation of section 32 of the Act, it would be necessary to prove that the landlord did not take any action within a reasonable period of time. delay. In this instance, I find that, in regards to the leaking dishwasher and the odour in the washer, the landlord had responded without undue delay. Therefore, I find that the tenant has not met element 2 of the test for damages.

I find that section 27 of the Act states that a landlord must not terminate or restrict an essential service or facility or if it is considered to be a material term of the tenancy agreement. In some cases a landlord may terminate or restrict a non-essential service must 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 this instance, I do not find that the landlord had terminated or restricted services or facilities and in fact was intent on restoring them by taking measures to have repair work done as quickly as possible under the circumstances.

However, according to the Residential Tenancy Guidelines, a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in doing repairs or renovations.

On the question of whether the value of the tenancy was impacted to a degree by the lack of a functioning washing machine, I find that the fact that regardless of whether the tenant detected a musty odour in the appliance and found the filter was clogged with "mouldy lint", it was never established that this would prohibit its use for the purpose of washing clothing. The tenant's verbal testimony was disputed by the landlord who testified that, although the machine was functional, the tenant had chosen not to use it. The burden of proof was on the tenant to prove otherwise and I find that this burden was not sufficiently met. Therefore, I find no basis to grant compensation for loss of laundry facilities and this portion of the application must therefore be dismissed.

In regards to whether or not there was a loss due to a broken dishwasher, I find that there was a 3-week period during which the tenant had to do dishes by hand. The tenant has estimated the required time at 15 minutes per day for 24 days which would be 6 hours total. However, I find that, even if the appliance was working, the tenant still would have to spend time to load and unload the dishwasher, for at least 5 minutes per day. Accordingly, I find that the tenant lost 10 minutes per day totalling 4 hours use and enjoyment of the suite over the 24 days. I find that this would reduce the rent value by approximately one half day and set the pro-rated amount at \$22.29. I also find that the tenant is entitled to be reimbursed for the cost of the bleach in the amount of \$3.02.

In regards to the cost of filing, I find that the tenant is entitled to a prorated portion in the amount of \$6.00. The total monetary entitlement is \$31.31.

In regards to the tenant's request for an order compelling the landlord to complete repairs, I find insufficient support to order this as the evidence did not show that the landlord was ignoring the tenant's complaints or refusing to conduct necessary repairs.

Conclusion

Given the above, and based on the testimony and evidence, I find that the tenant is entitled to receive monetary compensation under the Act in the amount of \$31.31 and hereby order that the tenant may reduce the next month rental payment by \$31.31 as a one-time abatement.

The remainder of the tenant's application is dismissed without leave.

January 2009

Date of Decision

Dispute Resolution Officer