

Decision

Dispute Codes:

MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for loss of peaceful enjoyment of the rental suite and devalued tenancy. According to the application this involved a period beginning in July 2009 until the tenant vacated in August 2009.

Service

The tenant testified that the landlord was properly served in person with the Notice of Dispute Resolution on October 8, 2009. A written communication from the landlord dated February 8, 2010 confirmed that the landlord would be represented at the hearing by an agent. However, nobody appeared for the landlord, despite being properly served with the Notice of Hearing and the matter proceeded in the landlord's absence.

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 in the form of a rent abatement for loss of value to the tenancy and loss of quiet enjoyment.

Background and Evidence

The tenancy began approximately 10 years ago and the most current rent was \$650.00 per month.

The tenant testified that the tenancy had been ended by the landlord pursuant to a Two-Month Notice to End Tenancy for Landlord's Use and the tenants accepted the end of the tenancy and vacated on August 31, 2009.

According to the tenant, at the end of May 2009 when a neighbouring tenant moved out, the landlord started to do construction on this and other vacant suites in the building around them. The tenant testified that the disruptions began sporadically during the month of June 2009 but by July 2009 the tenant was disturbed continually by the sounds, dust and odours caused by ongoing renovations between the hours of 8:00 a.m. until 6:00 or 7:00 p.m. daily, including many weekends.

The tenant testified that the building manager was approached with a complaint by the tenant and assured the tenant that the disturbances would cease. However, this did not occur. The tenant testified that construction crews returned to do the work on the premises and when the tenant asked the foreman whether he was aware of the landlord's promise, he indicated that he was told to continue the work as usual. The tenant stated that they were forced to endure noise dust and other renovation disruption. The tenant stated that two of the co-tenants were elderly and home all day and one was a child. This occurred during the summer months when windows and doors were opened and, according to the tenant, all of the occupants in her suite suffered allergic symptoms because of the dust.

The tenant feels that a rent abatement should be granted for the period from June 2009 until August 31, 2009 and September during which this occurred and during which the tenant paid, or was credited with rent of \$650.00. The total claim is for \$1,500.00.

Analysis - Monetary Compensation

The tenant was requesting monetary compensation or rent reduction for the reduction of value due to ongoing noise, dust and disruptions during the period of construction. 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 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 reasonable privacy and freedom from unreasonable disturbance and the landlord has a responsibility to ensure that each tenant's right to freedom from unreasonable disturbance is protected. In addition, I find that the tenant had contractually committed to rent a suite that was suitable for the tenant's purposes and that the amount of rent paid was in expectation of the same conditions that existed at the time the tenancy began, for this price.

In this instance, I find that the landlord was obviously aware that engaging in vigorous renovation projects in the building would adversely impact the environment for nearby inhabitants all of whom had a reasonable expectation of quiet enjoyment of their suites. Despite the fact that the tenancy was ending in the near future, I find that the landlord was still required to be diligent in regards to the rights of the existing tenants for the remainder of their tenancy.

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. Given the above, I find that a rent abatement of \$200.00 reduction in rent for the month of June 2009 is warranted and that an abatement of 70%, amounting to \$455.00 each month, for the months of July and August 2009 is justified. The total abatement granted is \$1,110.00.

Conclusion

Based on the testimony and evidence discussed above, I hereby issue a monetary order in favour of the tenant in the amount of \$1,160.00 comprised of \$1,110.00 rent abatement and the \$50.00 fee paid for this application . 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.

February 2010

Date of Decision

Dispute Resolution Officer