Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC, OLC, PSF, ERP, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a purported One-Month Notice to End Tenancy apparently for landlord use, a monetary order for money owed or compensation for damage or loss under the Act or tenancy agreement; an abatement in rent for repairs or services not provided, an Order compelling the landlord to comply with the Act, an order to compel the landlord to provide services or facilities agreed upon, and an order to force the landlord to complete repairs and emergency repairs.

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

.**Issue(s) to be Decided**

- The issues to be determined based on the testimony and the evidence are a) Whether the One-Month Notice to End Tenancy should be canceled; b) Whether the tenant is entitled to monetary compensation or a rent abatement under section 67 of the *Act* due to a loss of value of the tenancy because the landlord withheld a service or failed to do repairs; c) Whether the landlord should be ordered to comply with the Act by restoring services or facilities withheld and completing repairs.

Preliminary Matter

A One-Month Notice was submitted into evidence dated January 24, 2010 which purported to be effective on February 28, 2010. The landlord testified that the Notice

was served to the tenant in person on February 18, 2010. The Notice indicated that it was issued for repeated late payment of rent and because the tenant had caused extraordinary damage to the rental unit. However, the landlord testified that it was seeking to terminate the tenancy for landlord's use as a close relative would be occupying the unit, and had issued a letter to the tenant dated January 24, 2010 stating this. The tenant was requesting that the One-Month Notice be cancelled. It became evident that the intention of the landlord was to issue a Notice to End Tenancy for Landlord Use, which would have to be a Two-Month Notice under section 49 of the Act. Section 52 requires that the Notice be on the approved form. Therefore, I find that the One-Month Notice dated January 24, 2010 is cancelled. The landlord is at liberty to issue the intended Two-Month notice on the correct form in compliance with the Act.

Background and Evidence

The tenancy began on July 1, 2009 with rent set at $ 575.00 and a deposit of $300.00 was paid. No written tenancy agreement was signed. The tenant testified that Indian cable, laundry and parking were included in the tenancy but the tenant found that there was no on-site parking, only street parking and the laundry services were sudden withheld in mid-February 2010. The tenant stated that because of the lack of parking, they were forced to sell one of their two cars at a loss of $1,500.00 which was part of the claim for compensation being sought from the landlord. The tenant testified that the heat was deficient and they had to purchase a space heater at a cost of $61.99 which is also being claimed. The tenant testified that the landlord unsuccessfully attempted to raise the rent by $25.00 and did not complete repairs when requested. The tenant pointed out that they had to buy a shower curtain to replace shower enclosure door.

The tenant testified that the landlord's failure to complete repairs caused an incident in which the tenant was injured. According to the tenant, in January 2010 the tenant had asked the landlord to repair a bi-fold door in the closet and the landlord did not respond. On February 20, 2010 the closet door, which was leaning against the wall fell onto the tenant striking her shoulder and head. The tenant testified that when she went to the

doctor on February 22, 2010, it was confirmed that she had a bump on the head and she was prescribed antibiotics. The tenant testified that she was scheduled to go on a trip on February 24 to February 27, 2010 and due to the bump on her head was unable to enjoy the vacation thereby wasting approximately $600.00 on the tickets and a further loss of time off work valued at $336.00 as well as her daughter's time off work worth $226.00. The tenant is claiming compensation from the landlord for these amounts.

The tenant stated that after the door fell on her, she also felt pain on the right side of her mouth. Her teeth were xrayed when she went to the dentist on March 3, 2010 and it was found that a tooth had broken and had apparently become septic thereby requiring a root canal at a cost of $464.00 and a cap estimated at $2,000.00. The tenant is claiming compensation for these expenditures from the landlord.

In addition to the above, the tenant is claiming $500.00 moving costs and the return of the $300.00 security deposit. The tenant also expressed a concern that the landlord was not depositing the tenant's cheques in a timely manner and then alleging that the tenant had paid late for the purpose of justifying an eviction for cause.

The landlord agreed to reimburse the tenant for the space heater on the condition that it now would belong to the landlord. In regards to the inclusion of laundry in the tenancy, the landlord testified that the tenant was permitted access to laundry and to storage in the garage as a courtesy, rather than a feature of the tenancy. However, the landlord stated that they are willing to restore access to the laundry so that the tenant can use the machines each Saturday. In regards to the provision of on-site parking, the landlord testified that, whatever the tenant may have otherwise presumed, the tenancy only offered street parking. The driveway was reserved for the use of the landlord alone. The landlord testified that the tenant may have been seeking parking for customers who visited the tenant for hair cutting and styling services. The landlord disputed the tenant's claim for compensation for the loss of $1,500.00 incurred by having to sell one of the cars.

In regards to the tenant's claim that the landlord neglected to repair the closet door, the landlord disputed that the expenses being claimed by the tenant were caused by the landlord. The landlord testified that the tenant had only informed the landlord of the broken door on February 19th and the landlord had it repaired without delay. The landlord submitted an invoice dated March 2, 2010 showing that the door was repaired.

In answer to the tenant's concern that the landlord was delaying depositing the rent cheques, the landlord agreed to issue receipts for all payments at the time of the payment.

Analysis

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 the 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 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

In this instance, 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 respondent. Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant made a reasonable attempt to mitigate the damage or losses that were incurred

On the question of whether or not there was a violation of the Act by the landlord, 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.

In this instance, a landlord would be in violation of the Act if the landlord was advised of the repair issue and refused to fix it within a reasonable period of time.

I find that, there was a broken door, but the landlord did take steps to repair it. However, even if I found that the landlord had not complied with the Act, the tenant would have to prove that the damages being claimed met each element in the test for damages. I find that the tenant had not sufficiently proven the cause of the injury nor the relationship between the cost of treatment to the alleged door incident. In regards to the alleged loss of enjoyment during the vacation, I find that the tenant's subjective description of the inter-related course of events does not adequately support a monetary claim against the landlord. I also find that the damages being claimed are too remote to be considered as a tenancy matter.

In regards to the tenant's claim of a loss of value to the tenancy, I find that section 27 of the Act states that a landlord must not terminate or restrict an essential service or facility or one that is considered to be a material term of the tenancy agreement. In some cases a landlord may terminate or restrict a non-essential service after giving 30 days' written notice in the approved form. However, the landlord must then 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.

Section 65(1) states that if it is found that a landlord or tenant has not complied with the Act or tenancy agreement, an order may be issued requiring that past rent be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. I find that justifying a past rent reduction, could be supported by proving both: a) that the value of the tenancy was reduced and; b) that the landlord has not complied with the Act or agreement. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

In this instance, the question of what was agreed-upon at the time the tenancy began is difficult to determine. Section 13 of the Act requires that the landlord prepare a written tenancy agreement and this was not done. I find that when a property being rented has a driveway that appears to be available, a tenant may logically presume that it is included, unless the landlord takes measures to ensure that the tenant understands that there is a term in the tenancy agreement that specifically excludes on-site parking. Such a term would likely be featured if there was a written agreement. If it is a verbal tenancy and nothing is said, then the landlord invites the risk of a misunderstanding over the issue. I find that the tenant in this case was not sufficiently informed by the landlord about the street-parking only term. Therefore, I find that some compensation is in order for the absence of a facility that was expected but not granted. Due to the confusion caused by the unclear terms, I find that the tenant is entitled to a token amount of $60.00 for the loss of parking as a one-time abatement. However, I find that the tenancy does not include driveway parking for the tenant.

In regards to the approximately 6 weeks during which the tenant was denied access to the laundry facilities, I find that the landlord has already committed to restore the service to its previous level. However, I find that the tenant is still entitled to a one-time abatement of $60.00 representing $10.00 per week for the duration that no laundry was available.

The landlord has also committed to providing the tenant with a written receipt for rent paid, even if paid by cheque and to reimburse the cost of the space heater claimed by the tenant, thereby resolving these matters in the dispute.

Based on the above, I find that the tenant is entitled to total monetary compensation of $231.99 comprised of $61.99 compensation for the purchase of a space heater now to be owned by the landlord, $60.00 lump sum as token compensation for the unclear parking terms, $60.00 retroactive rent abatement for the 6 week loss of laundry facilities and the $50.00 fee paid for this application. The tenant is ordered to reduce the next rent payment owed by $231.99 as a one-time abatement in rent.

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 $231.99 as a one-time abatement. The landlord is ordered to restore laundry access on Saturdays and to issue rent receipts each time the tenant pays rent. I further Order that the One-Month Notice dated January 24, 2010 be cancelled and of no force nor effect.

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

March 2010 _____

Date of Decision

Dispute Resolution Officer