



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

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 for a due to flooding which affected the tenant's use of one bedroom in the four-bedroom house. Both parties appeared and gave testimony

Issue(s) to be Decided

The issue 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.

The burden of proof is on the applicant to prove all of the claims and requests contained in the tenant's application.

Preliminary Issue

The tenant advised that evidence submitted by the landlord was never received. The landlord acknowledged that the evidence was not served on the tenant and stated that this was because the tenant had not provided an address for service after vacating.

The Residential Tenancy Rules of Procedure, Rule 4.1, requires that if the respondent intends to dispute an Application for Dispute Resolution, copies of all evidence that the respondent intends to rely upon at the dispute resolution proceeding must be received

by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five days before the dispute resolution proceeding. .

I also note that the Landlord and Tenant Fact Sheet contained in the hearing package makes it clear that “*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible.*”

However, the landlord's reason for not serving the evidence was based on the tenant's failure under the Act to provide a forwarding address after moving. In this instance I find that the tenant was responsible for not receiving the evidence from the landlord, who had a right to submit a defence against the claim. Therefore, the landlord was permitted to give verbal testimony on the evidence in question and the tenant was given an opportunity to respond verbally to this evidence.

Background and Evidence

The tenancy began in approximately 2006 and rent was \$1,100.00 per month. The tenant testified that a flood occurred in January 2009 which affected the fourth bedroom. The tenant acknowledged that the room was used briefly for storage but the tenant was not able to use it for habitation for ten months. The tenant was seeking compensation of \$100.00 per month for a total of \$1,000.00.

The landlord disputed the claim that the room could not be used and pointed out that he had witnessed the tenant using the room. The landlord testified that the repairs on the drainage could not be done until spring due to the weather. The landlord testified that on January 10, 2009 he compensated the tenants for the inconvenience by giving them \$1,000.00 in cash for which the tenants both signed a receipt.

The landlord stated that the water problem was resolved in July 2009. The landlord gave other testimony about the tenant adding additional occupants during the tenancy.

The tenant disputed the allegation that the landlord had ever paid them \$1,000.00 compensation for the loss of use of the flooded room and stated that they had never signed any receipt for these alleged funds. The tenant also disputed that the repair was completed by July 2009. The tenant stated that only the exterior drainage issue was resolved, but the damage to the room was left unaddressed by the landlord.

Analysis - Monetary Compensation

The tenant was requesting monetary compensation or rent reduction for the diminished value of the tenancy. Section 7 of the Act states that if a landlord or tenant does not comply with the 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.

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.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or qualifies as a material term of the tenancy agreement. However, in some cases a landlord may terminate or restrict a service or facility, as long as it is not essential to the tenant's use of the rental unit as living accommodation and as long as the service or facility was not considered to be a material term of the tenancy.

However, the landlord is required to give 30 days' written notice of the termination or restriction 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 find that there were deficiencies in the condition of the unit caused by flooding that made the bedroom not usable for its purpose. I find that the room may have been suited for storage, but that the value was minimal to the tenant, who had anticipated using the bedroom as sleeping accommodation for guests.

In regards to the landlord's claim that he paid the tenant in cash in the amount of \$1,000.00, I find that this claim was vehemently disputed by the tenants who stated that they did not sign anything of the sort. The landlord did not explain why he chose to make a substantial monetary settlement with the tenant in cash as opposed to a cheque

nor why this compensation was made significantly in advance of the time frame anticipated for the expected disruption by the flood that would occur in future.

While I believe that the landlord may well have taken care of the drain problems by July 2009, I find that this was still an inordinate delay given the gravity of the situation and I find that once winter had abated it could have been done earlier in the warm season.

I find that the landlord's position that all of the repair work had been completed by July was not supported by sufficient evidence. No verification was submitted to prove that the room was fully restored to livable condition as of July 2009 or at any time thereafter. Such evidence would have been available to the landlord who was at liberty to take photos, as he stated he had done.

In any case, I accept that the lack of a fourth bedroom for the duration of ten months exceeded any reasonable delay that could be blamed on the weather or other factors. Once the drainage had been fixed, the expectation would be that the room would be refurbished in July or August 2009 immediately following the exterior repairs.

Given the above, I find that the tenant is entitled to a rent abatement for devalued tenancy for the period in question in the amount of \$1,000.00.

Conclusion

Based on the testimony and evidence, I hereby issue a monetary order in favour of the tenant in the amount of \$1,000.00.

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.

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

March 2010

Date of Decision

Dispute Resolution Officer