



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR, MNSD, MNDC, FF

Introduction

The hearing was convened to deal with an application by the landlord for a monetary order to retain the security deposit for damages and loss. The hearing was also convened to hear a cross-application by the tenant to obtain a rent abatement and monetary order for compensation for damage or loss under the Act and for the return of the tenant's security deposit.

Both parties appeared and gave testimony.

Issues to be Decided for the Landlord's Application.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to compensation under section 67 of the *Act* for damages, loss of rent and utilities owed.

Issues to be Decided for the Tenant's Application

- Whether or not the tenant was entitled to a retro-active reduction in rent based on problems with services and facilities during the tenancy
- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for expenses and damages.

Background and Evidence:

The landlord testified that the fixed term tenancy began on June 1, 2009 and expired on May 31, 2010 but was terminated by the tenant on November 30, 2009. The rent was \$1,600.00 and a security deposit of \$800.00 was paid.

The landlord testified that the tenant gave only 2 days notice and moved out of the unit in November 2009, breaking the fixed term tenancy agreement and this caused a loss of rental income in the amount of \$1,600.00 for December 2009 and \$800.00 for half of January 2010. The landlord testified that the tenant also left damage to the unit including a stained section of the carpet costing \$200.00, missing light fixture worth \$20.00, covers to light fixtures worth \$40.00 and holes and scrapes on the drywall and damage to a door frame. In addition the landlord was claiming \$10.00 to rekey the door due to failure to return keys, \$60.00 for the damaged bathroom door frame and additional labour costs of \$170.00. The landlord testified that a move-out inspection was done, but the tenant refused to sign the report.

The landlord acknowledged that there were problems with flooding and mould in the unit, but testified that these issues were addressed by professionals hired by the landlord without delay and resolved.

The tenant disputed the landlord's claims for rent owed for December and January on the basis that the tenant was forced to terminate the fixed term agreement due to chronic problems with the unit that included repeated flooding, ongoing renovation and repair work and persistent mould problems. The tenant stated that the landlord was well aware that the tenant felt she could no longer stay there under the circumstances. The tenant alleged that the landlord had even remarked that he would have no trouble re-renting the unit should she decide to leave. The tenant pointed out that, moreover, the purported delay in re-renting was likely attributable to the fact that repairs were underway by the landlord to address flooding and flood-damage problems. The tenant also disputed the landlord's claims for alleged carpet damage, cost for light fixtures,

purported damage to the walls and the charges claimed for labour. In regards to the missing key, the tenant testified that all keys that had been given were returned to the landlord. The tenant acknowledged a total of \$100.00 worth of damage to the door and one light fixture.

The tenant further testified that the tenancy was plagued with ongoing problems from the start including water infusion, broken appliances and mould. The tenant testified that the lower area repeatedly flooded, first from the washing machine, then from problems with leaks in the shower area of the bathroom and continually from water seeping in at the back door of the lower floor soaking the carpet. The tenant testified that they were also deprived of laundry facilities and the use of the dishwasher. The tenant stated that each time the landlord reported that the water problems were solved, another flooding occurred.

In regards to the mould, the tenant admitted that the landlord had addressed the issue, but mould returned and had possibly contaminated a large portion of the internal wall space as well. The tenant did not have any faith that the problem was resolved for good. The tenant testified that the landlord dried the carpet more than once using large fans, for which the tenant paid hydro costs.

The tenant pointed out that, although the landlord took the stance that the flooding problem was completely resolved, he made it clear that he was not going to replace the carpet, which had been affected by smelly mildew. The tenant stated that some of the occupants in the unit could not live in the lower portion for a significant period of time and ended up leaving. The tenant testified that by November, with the latest flood issue and fear of mould, the tenant decided she had no choice but to end the tenancy and did so without objection from the landlord. The tenant testified that the landlord had pre-written the move-out inspection report in her absence prior to the joint inspection and it contained incorrect data so she refused to sign it. The tenant stated that it was discovered that the unit had previously had water ingress problems in the past and was,

according to the neighbours, prone to flooding, a fact that the landlord had neglected to disclose.

The tenant testified that a request for the return of the security deposit went unanswered. The tenant was seeking the return of the deposit minus \$100.00 for the damages agreed to as being caused by the tenant.

The tenant is seeking \$400.00 rent abatements for each of June, July and August 2009 for loss of laundry facilities, \$1,600.00 abatement for each of the months of September, October and November 2009 due to flooding and disruptions and to be reimbursed for other costs including \$700.00 rent incurred at an alternate location and \$600.00 for loss of furnishings due to flooding and mould.

Analysis – Landlord’s Application

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 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 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

I find that the tenant unilaterally terminated the fixed term tenancy before the expiry date which would clearly be a violation of the agreement. However, I accept the tenant's argument that, after repeated and ongoing problems with flooding from different sources as well as the resurgence of mould a second time after the landlord's intervention and the continued renovations that had to be done while the tenant was occupying the suite, constituted a valid reason for the tenant to end the agreement.

I find that section 32 of the Act imposes responsibilities on the landlord who 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. While I find that the landlord did take reasonable steps to comply with the Act and agreement by repairing problems without inordinate delay as they arose, the frequency and the disruptive nature of the various problems and the resulting construction work, made it impossible for the landlord to sufficiently meet the obligation to rent this unit in a state of decoration and repair that complied with the health, safety and housing standards in the Act, not to mention honouring inherent contractual expectations for the provision of a dry liveable rental unit and provision of promised services and facilities.

In addition, section 28 of the Act protects a tenant's right to peace and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable purposes, free from significant interference.

I find that the numerous incidents of flooding and repeated episodes of repair work, during the tenancy served to disrupt the tenant's peaceful enjoyment of her home and that this came to a head in the latter part of November when, despite the repairs, flooding and mould again occurred in a portion of the suite.

I find that the landlord's argument that the deficiencies and disruption only affected a small area did not recognize the domino effect that they apparently had on the tenant's entire lifestyle, including the loss of co-tenants, rearranging of schedules and stress about the possible effects of mould that resurfaced after it had allegedly been "fixed". The tenant went so far as to live elsewhere for a time. I find that, even though the water and mould issues were restricted to a relatively small portion of the unit, the impact on the tenancy was significant, not as trivial as the landlord apparently believed.

After the issue of mould was resolved to the landlord's satisfaction in other areas of the unit, I find that the landlord's stated intention to merely dry the damp smelly carpets instead of replacing them was not an adequate response. I find it reasonable that, given the history of this tenancy, the tenant was not prepared to accept the landlord's latest assurances that the problem would not recur. Based on the evidence, although the tenant breached the terms by leaving, I find that the landlord must share the responsibility for the disintegration of the tenancy agreement.

Even without a fixed term, section 45 of the Act would require that a tenant provide the landlord with at least one month written notice to vacate and in this instance, the tenant ended the tenancy with extremely short notice to the landlord thereby making it impossible avoid loss of rent for December 2010. That being said, it is a fact as testified by both parties, that there were condition problems in the suite that were not caused by the tenant and that required renovations, a portion of which were still in progress during

the final weeks of November 2009 while the tenant was in possession of the rental unit. In fact, written testimony from the landlord's contractor confirmed that as late as November 28, 2009, the carpet was still soaked and was rolled up to be dried a second time. I find that, even if the tenant had given adequate notice of one full month, occurring before October 31, 2009, it is likely that the unit would still not be restored and ready to show to prospective renters during the month of November so as to re-rent by December 1, 2009, due to no fault of the tenant.

Based on the evidence and the landlord's role in the demise of the tenancy, I find that the claim for loss of rent does not meet element 2 of the test for damages and therefore must be dismissed.

In regards to the \$200.00 carpet damage, \$60.00 for light fixtures, \$60.00 for the door frame damage, \$10.00 cost of keys and the \$170.00 labour costs, I find that the landlord did not sufficiently prove that the tenant had damaged the carpet and failed to submit supportive evidence to confirm the above expenditures. However, the tenant did concede responsibility for the door frame and the light fixture agreeing to compensate the cost of \$100.00, and I find that the landlord is rightfully entitled to this amount.

In regards to the utility costs claimed by the landlord, I find that the electrical invoice was issued in the tenant's name on December 10, 2009 and the tenant had a right to be afforded an opportunity of 30 days in which to pay the invoice after receiving it.

Analysis – Tenant's Application

In regards to the tenant's claim for the security deposit, I find that under the Act, the tenant is to be credited with the deposit which is \$800.00 in this situation.

In regards to the tenant's claim for rent abatements of \$400.00 for June, \$400.00 for July and \$400.00 for August due to lack of laundry facilities, I find that this claim does not successfully satisfy element 4 of the test for damages. I find that the tenant failed to pursue remedies available under the Act to resolve the problem at the time. The expectation would be that, during the tenancy after submitting written complaints to the

landlord without result, the tenant could make an application for dispute resolution seeking an order of compliance or a rent abatement for loss of services. Accordingly I find that these claims must be dismissed.

In regards to the tenant's claim for 100% abatement for rent for September 2009, I find that the tenant still had the use of the rental unit, with the exception of a portion. I find that the loss of one bedroom and the bathroom would warrant an abatement of 20% equaling \$320.00 for the month of September.

In regards to the rent abatement of 100% claimed for each of October and November 2009, I find that the tenancy continued to be devalued by 20% for October for a total of \$320.00. I find that during the month of November 2009, due to the additional loss of quiet enjoyment because of the renovations, the tenancy was devalued by 30% for a total of \$480.00.

In regards to the tenant's claim for \$700.00 for "extra rent" paid by a third party who had evidently previously resided in the lower portion of the house, I find that the loss to the tenant was not sufficiently proven and this claim fails to meet the test for damages.

In regards to the \$600.00 cost of furniture, for having to discard a mattress and box spring on the advice of a doctor and a sofa that had allegedly been ruined in the flood, I find that the claim does not sufficiently satisfy all elements in the test for damages. Accordingly it must be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to damages in the amount of \$100.00 for damages and the tenant is entitled to total monetary compensation of \$ 2,020.00 comprised of \$800.00 credit for the security deposit, a rent abatement of \$320.00 for September, \$320.00 for October 2009, \$480.00 for November 2009 and the \$100.00 paid to file the application.

After setting off these two amounts I find that there is a remaining amount of \$1,920.00 owed in favour of the tenant .

I hereby grant the tenant a monetary order for \$1,920.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The remainder of the tenant's application and the landlord's application is dismissed without leave

April 2010

Date of Decision

Dispute Resolution Officer