



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 a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement.

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:

- 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 for a service restricted or terminated. This determination is dependant upon answers to the following questions:
 - Has the tenant submitted proof that the landlord was responsible or that the landlord committed a violation under the Act or agreement by failing to provide services included in the rent?
 - Has the tenant offered proof that the value of the tenancy was lowered sufficient to support a reduction in rent or compensation?

The onus falls on the tenant/applicant to prove that compensation is warranted.

Background and Evidence

The tenancy began in November 2009 with rent set at \$1,300.00 and a security deposit of \$650.00 was paid. The tenant advised that they have now moved and provided their new address. The tenant was seeking compensation for loss of value to the tenancy during their occupancy of the unit because the landlord failed to fix the laundry facilities and disconnected the appliances. The tenant testified that they were deprived of the facilities from December 2009 onward and were forced to spend \$450.00 over several months to do laundry elsewhere. The claim was based on estimated laundry costs.

The landlord testified that although no written tenancy agreement was made, at no time was the use of on-site laundry part of the verbal tenancy agreement. The landlord testified that the machines were originally situated in the basement not accessible to the tenant, but had been temporarily moved out into the garage due to construction. The landlord testified that the tenant had a key to the garage solely for storage and the landlord was unaware that the tenant had started to use the laundry machines without the landlord's knowledge or permission. The landlord's position was that there was no restriction of services nor devaluation of the tenancy because the laundry facilities were never part of the agreement in the first place. The landlord stated that in any case, laundry costs should not exceed \$10.00 per week for a family of 3.

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 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 terms of their

agreement 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 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.

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 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.

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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. However a landlord may terminate or restrict a non-essential service but 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 find that the primary the question to be determined is whether or not on-site laundry facilities were included as part of the tenancy. Unfortunately, the determination of the above has been significantly impeded by the fact that the landlord failed to comply with section 13 of the Act which requires that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

However, according to the Act, terms that both parties agree-upon in verbal tenancy agreements may still be recognized and enforced. The Act, defines "tenancy agreement" as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

While verbal terms may be enforced, I find it impossible to determine precisely what verbal terms were agreed-upon in the contract because the parties are now in at odds regarding what was or was not to be included.

That being said, I find that in this case the tenant was provided with a key to the garage and I can accept the tenant's perspective on the matter. It seems reasonable that, finding the laundry machines situated in this common area, the tenant could have formed the logical belief that the machines were there for the tenant's use. To prevent this reasonable assumption, I find that the landlord should have specifically told the tenants that laundry machines were not part of the tenancy facilities and were not to be

used. I find that it was important to clarify this matter to avoid misunderstandings, particularly in a situation such as this where a landlord has neglected to furnish a written tenancy agreement.

On the question of whether the value of the tenancy was impacted by the lack of functioning laundry machines, I find being forced to do the laundry off-site was inconvenient for the tenant and imposed extra costs, although the precise expenditures were not proven by the tenant.

I find that during the seven months while the tenant was deprived of the laundry facilities, it was incumbent upon the tenant to raise this issue in a timely fashion and I must point out that in order to meet element 4 of the test for damages, the tenant should not have delayed pursuing this issue for over three months. Dispute resolution should have been sought long before March 9, 2010 when this application was made.

Accordingly, I find that while the tenant is entitled to be compensated, the entitlement must be reduced due to failure to take reasonable steps to minimize the damages and I set the amount to which the tenant is entitled at \$250.00 in addition to reimbursement for the cost of filing in the amount of \$50.00, for total compensation of \$300.00.

As the tenancy has ended and the tenant's forwarding address has now been communicated to the landlord during these proceedings, I caution the landlord that the tenant's security deposit must be administered in compliance with section 38 of the Act.

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 \$300.00 and hereby issue a monetary order in this amount. This order must be served on the landlord and may be enforced in Small claims court if necessary.

July 2010
Date of Decision

Dispute Resolution Officer