



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC, RP, MNR, MNSD, FF

Introduction

The hearing was convened to hear an application by the tenant to obtain a monetary order for money owed or compensation for damage or loss under the Act, for the return of the tenant's security deposit and reimbursement for the cost of filing this application. The tenant was also seeking an order to force the landlord to do repairs.

The hearing was also convened to deal with an application by the landlord for a monetary order to retain the security deposit for damages and loss and reimbursement for the cost of filing this application. Both parties attended and gave testimony. At the outset of the hearing, the tenant advised that she had already vacated the unit and therefore, the request for an order for repairs was no longer applicable.

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 the landlord refusal to repair deficiencies and failure to provide, services and facilities that were required by the Act or included in rent as part of the agreement.

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 damages, rent owed and to retain the security deposit as compensation under section 67 of the *Act* for loss of rent and damages.

For the landlord's application, the landlord has a burden of proof to establish that the tenant failed to comply with the Act and that this failure resulted in damages or losses for the landlord.

For the tenant's application, the tenant has the burden of proof to establish that the landlord failed to fulfill the landlord's duties under the Act and that this caused a reduced value of the tenancy or resulted in damages and losses for which the tenant should be compensated.

Background and Evidence – Tenant's Application

The tenancy began in on June 16, 2009 with rent set at \$2,100.00 per month and a security deposit of \$1,000.00. According to the landlord, the rent was due on the 15th day of each month and the tenant vacated without notice and without paying rental arrears in mid June. According to the tenant, the rent was due on the 1st of each month and May 's rent was paid in full and the parties had agreed that the tenant's deposit would be used to pay for the portion of June that the tenant remained in the unit before vacating.

The tenant testified that the tenancy was devalued and that the tenant suffered losses due to the landlord's failure to repair the unit during the tenancy. The tenant stated that the landlord did not meet its obligation under the Act to address deficiencies that were reported to the landlord. The tenant testified that there was an issue regarding the water heater that occurred in December 2009 which was reported to the landlord. The tenant testified that the landlord did finally address the problem in March, but the tenant was left without hot water for a period of time. The tenant also reported problems with condensation and mold on the windows, mold in the bedrooms, cracks in the plaster, door hardware and various other problems. The tenant submitted some photos that apparently were not served on the landlord as required in the Residential Tenancy Rules of Procedure. The tenant also submitted a document dated May 10, 2010 addressed to the landlord listing the problems that needed to be fixed by the landlord

marked as "Appendix 2". The tenant testified that some of the tenant's furniture was ruined by moldy odours. The tenant's position was that the landlord should compensate the tenant for the devaluation of the tenancy due to all of the problems.

The landlord testified that all of the tenant's complaints about needed repairs were addressed in a timely fashion. This included repairs to the water heater, door hardware, plumbing and installation of new windows. The landlord testified that the mold damage would also have been taken care of had the tenant cooperated. The landlord submitted invoices from contractors showing that they were paid to complete repairs and replace windows. The invoices were dated March and April 2010. The landlord disagreed with the tenant's claim for compensation and alleged that the tenant was making the claim in an attempt to cloud the issue of the tenant's debt owed to the landlord for unpaid rent.

Background and Evidence – Landlord's Application

The landlord testified that the tenant had stated that the rent for June 2010 would not be paid and that the tenant was moving out on June 16, 2010.. The landlord stated that, at that time, the tenant owed one full month rent to cover the period from May 15, 2010 until June 14, 2010 and had also given inadequate notice under the Act to move out. The landlord denied that any agreement was made permitting the tenant to remain in the unit for half a month in June and for the security deposit to be allocated as rent for that period. The landlord was claiming \$2,100.00 for rent owed for June 2010 and was seeking to retain the security deposit as partial payment of the funds owed and a monetary order for the rest.

The tenant disputed that one month rent was owed and stated that under the tenancy agreement the rent was not due on the 15th day of each month but was due on the first day of each month. According to the tenant, the rent had been paid in full for the month of May 2010. The tenant acknowledged that no rent had been paid from June 1 until they moved out on June 16, 2010, but stated that the parties had agreed that the tenant's security deposit would cover the half-month's rent owed. The tenant stated that

it was urgent that they move out due to health issues caused by the condition of the unit. The tenant did not agree that \$2,100.00 was owed and took the position that the retention of the security deposit should be considered as payment in full for the portion of June that the tenant during which the tenant was still residing in the unit.

Analysis – Tenant's Application

In regards to the tenant's claim for damages in the form of a retro-active rent abatement, an Applicant's right to claim damages from another party is covered by , 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 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

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.

I find that a landlord would likely be in violation of section 32 if the landlord had been notified of the need for significant repairs of a problem that affected a tenant's health and then failed to act in a timely manner. In this instance, the tenant alleged that the landlord was notified of problems in December 2009 and did not take any action until months later. However, the landlord stated that it initiated remedial action as soon as possible after being notified.

I find that the documentary evidence submitted by the tenant established that the tenant gave written notification to the landlord listing repairs in a letter dated May 10, 2010. I find based on the evidence submitted by the landlord that repairs were actually initiated by the landlord prior to the letter in evidence and had been started sometime in March 2010. In fact, the landlord proved that the new windows were on order by April 14, 2010.

I find that the tenant has not succeeded in establishing sufficient proof to support the allegation made that the landlord did not act to repair the unit in a timely manner.

Therefore, I cannot find that the landlord was in violation of the Act. The elements in the test for damages outlined above have not be satisfied and therefore I find that I must dismiss the tenant's application for compensation.

Analysis – Landlord's Application

The landlord has requested retention of the security deposit as partial satisfaction for damages and losses being claimed by the landlord.

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement.

The tenancy agreement submitted into evidence does not indicate in the space provided on which day of the month rent was due. However, whether rent was due mid month or on the first day of the month, I find that the tenant did not pay the rent owed for the month of June 2010. Even if I accepted the tenant's version that the rent due on May 1, 2010 was paid in full by the tenant, this fact would still not excuse the tenant from paying her rent of \$2,100.00 for the month of June, which, according to the tenant would have been due on June 1, 2010. Moreover, if the parties had intended to allocate the tenant's deposit towards half a month rent for June during which the tenant resided in the unit, to be valid under the Act this agreement would have to be in writing as specified under section 38 of the Act. In any case, even if the tenant had fully funded her stay for the first half of the month of June, the landlord would have still incurred a loss of rent from June 16, 2010 until the end of the month because the tenant did not give proper notice to end the tenancy..

The rent loss could be claimed by the landlord because the tenant failed to comply with section 45 of the Act, which requires that a tenant's Notice to End Tenancy must be in writing and be effective on a date that: (a) is not earlier than one month after the date the landlord receives the notice, and: (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenant did not provide adequate notice to the landlord to end the tenancy in compliance with section 45 of the Act and would therefore, be liable for any damages or losses incurred due to this violation.

I find that the tenant's attempt to defend the noncompliance by stating that because of the landlord's failure to rectify condition issues in the unit, they were forced to vacate on short notice for health reasons was not a valid excuse. I find that a contravention of the Act or agreement by one party, even if proven, does not automatically indemnify the other party against its own reciprocal violations.

I find as a fact that the tenant moved out without proper notice and the landlord suffered a loss of rent as a result. I find as a fact that \$2,100.00 rent for June 2010 was due and payable by the tenant to the landlord as of June 1, 2010.

Accordingly, I find that the landlord is entitled to be compensated by the tenant in the amount of \$2,100.00 rent for June 2010 and is entitled to retain the tenant's \$1,000.00 security deposit and interest to satisfy part of this claim.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to a monetary claim of \$2,150.00 comprised of \$2,100.00 rent and loss of rent for June 2010 and the \$50.00 cost of the application. I order that the landlord retain the security deposit of \$1,000.00 in partial satisfaction of the claim leaving a balance due of \$1,150.00 still outstanding. I hereby issue a monetary order in favour of the landlord in the amount of \$1,150.00. This order must be served on the tenant and may be enforced in Small Claims court if necessary.

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

July 2010

Date of Decision

Dispute Resolution Officer