

Decision

Dispute Codes:

MNDC, OLC, RP

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 over a 98 day period during remediation from a flood in the rental unit.

Despite being properly served with the Notice of Hearing, the landlord did not appear.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the tenant is entitled to monetary compensation under section 67 of the Act for the landlord's violation of the Act and agreement and a future rent abatement for devalued tenancy due to services and facilities promised but not provided.

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

Background and Evidence

The tenant testified that the tenancy began in August 2010 at which time a security deposit of \$700.00 was paid and a \$350.00 pet damage deposit was credited to the tenant for all of the move-in cleaning completed by the tenant. The tenant testified that the tenancy agreement included 2 kitchen areas, one situated upstairs and the lower level also having a stove and refrigerator. The tenant submitted a copy of the agreement.

The tenant testified that, despite these facilities being part of the tenancy agreement, for the first three weeks of the tenancy the tenant did not even have a working stove in either location and was without a refrigerator on the lower level. The tenant testified that this continued until the landlord finally rectified the situation on August 21, 2010.

The tenant testified that the food preparation area in the lower unit is still missing an over-the-range fan, making it impossible to enjoy full use of the facilities . The tenant testified that the bedrooms and den in the lower unit were also not completed as promised and in fact one of the two bedrooms is not even fit for habitation. In addition to the esthetic considerations, portions of the floors, trim, walls, closets and doors need to be addressed. The tenant's position was that they should not be paying full rent given that the value of the rental unit is substantially less than that contracted for.

The tenant is seeking a retroactive rent refund of \$600.00 representing a portion of the \$1,400.00 rent already paid for the month of August during which the tenant was without a working stove, without one of the refrigerators and unable to use all of the lower level. In addition to the rent reduction for the past deficiencies, the tenant is also seeking a rent abatement of \$400.00 or \$500.00 per month pending the elimination of the deficiencies. The tenant has requested that this abatement continue until the landlord has fully completed the interior finishes in the lower level of the rental unit.

The tenant stated that the landlord had also promised to reimburse the tenant for the cost of professional carpet cleaning. However the Landlord has failed to do so despite the submission of the invoice for \$291.76 paid by the tenant and the tenant is seeking a monetary order in this amount as well.

Analysis - Monetary Compensation

The tenant was requesting a past rent abatement for the reduction of value of the tenancy given the deficiencies and a future rent reduction until the lower level is fully inhabitable for the tenant's use.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, 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 agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence 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 the landlord and tenant had contracted for a tenancy that included two stoves and refrigerators and lower bedrooms with the expectation that the rental premises would be comfortable and liveable. Section 32 of the Act also imposes responsibilities on the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and 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 if it is considered to be a material term of the tenancy agreement.

I find that being deprived of the use of the stoves, lacking one of the refrigerators and enduring the unfinished state of the lower level at the start of the tenancy some

compensation is warranted and I find a retroactive rent abatement of \$600.00 for the month of August to be reasonable.

In regards to the condition of the lower level, I find that the tenant has been unfairly deprived of a portion of the value of this rental unit during the months of September and October because the landlord had failed to meet its contractual obligations. Accordingly I find that a retroactive reduction of the rent in the amount of \$400.00 for the month of September and \$400.00 for the month of October is warranted.

In addition to the above, I find that the landlord is required to reimburse the tenant for the cost of cleaning the carpet in the amount of \$291.76.

The total amount owed by the landlord to the tenant is \$1,691.76. Section 72 of the Act states in the case of payment from a landlord to a tenant, the dispute resolution officer may order that the amount be deducted from any rent due to the landlord.

As the landlord has not yet completed the required finishing, I find it necessary to order a rent abatement. I order that the rent will be reduced \$400.00 to \$1,000.00 per month starting on November 1, 2010 and continuing until the end of the month during which the lower level of the rental unit has finally been completed by the landlord.

Given the above, I find that the \$1,691.76 owed by the landlord for devalued tenancy and carpet cleaning must be deducted by the tenant from future rent owed to the landlord in 2 equal installments. Accordingly half of this debt will be paid by deducting \$845.88 from the \$1,000.00 rent owed for November 2010, leaving \$154.12 remaining rent to be paid by the tenant for November 2010, (presuming that the completion of the lower unit still remains outstanding) . The second increment of \$845.88 will be deducted from whatever rent is owed for December 2010.

Conclusion

Based on the testimony and evidence discussed above, I hereby order that the monthly rent for the unit is now reduced from \$1,400.00 per month to \$1,000.00 per month rent until the first day of the month following full completion of the lower level of the unit by the landlord.

Based on the testimony and evidence discussed above, I hereby order that tenant being entitled to \$1,691.76 in compensation from the landlord will satisfy this debt by deducting \$845.88 from the rent owed for November 2010 and deduct the final \$845.88 from the rent owed for December 2010.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 05, 2010.

Dispute Resolution Officer