

Decision

Dispute Codes:

CNR, MNDC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent, an order that the landlord comply with the Act and agreement, and monetary compensation for loss of peaceful enjoyment of their suite or devalued tenancy.

At the outset of the hearing the parties advised that the tenant had paid the rental arrears within five days of receiving the Ten Day Notice to End Tenancy for Unpaid Rent to cancel the Notice. Accordingly the portion of the application dealing with the request for an order canceling the Notice has been resolved.

Both parties appeared and gave testimony.

Issue(s) to be Decided

The remaining 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 damages or loss and possibly a rent abatement and whether an order to compel the landlord to follow the Act is warranted..

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 tenancy began November 1, 2009 with rent set at \$750.00. A security deposit of \$375.00 and pet damage deposit of \$225.00 was paid. The tenant testified that in March 2010 the landlord rented the upper suite to renters with 3 large dogs and these residents were combative, noisy and did not respect the applicant tenant's right to quiet enjoyment of their suite. The tenant testified that the renters permitted their dogs to defecate in the yard and did not clean up the droppings. The tenant stated that they were responsible to do basic maintenance of the yard as part of their tenancy, but found

it impossible to cut the lawn with the contamination from the upper renter's dogs. In addition, the tenant was deprived of the use of the yard for their own enjoyment and could not let their child play in it or entertain guests. The tenant submitted photos into evidence showing the condition of the yard.

The tenant testified that the upstairs renters smoked cigarettes and marijuana inside the building that entered their suite through the vents and the people persisted with this activity even when politely asked not to do so and the fumes severely aggravated the tenant's son's medical condition. The tenant testified that they reported their concerns to the landlord repeatedly and nothing was done and the situation continued to deteriorate. The tenant testified that the upstairs renters got into a shouting match with the tenant and threatened violence. The tenant testified that because the renters apparently did not pay rent, the landlord finally decided to issue a Ten-Day Notice for Unpaid Rent and asked the tenants to assist with the eviction by serving the notice. The tenant declined fearing a bad reaction and possible retaliation from the upstairs renters.

The tenant testified that a portion of the rent was withheld because of the disruption and inability to use part of the premises in peace and on June 1, 2010, a person identifying himself as the "property manager" came to the tenant's door and gave the tenant a Ten Day Notice to End Tenancy for Unpaid Rent, with threats that they would be forcibly removed if they did not move out. Although this Notice was later rescinded by the landlord, the tenant stated that this incident caused extra stress on top of what was going on. The landlord reassured the tenants that the upper renters would be removed very soon. The tenant stated that the problems continued and days after the renters were supposed to be gone, the upstairs dogs were left unattended for so long that they urinated on the upper floor and it seeped down into the tenant's suite. The tenant testified that the upstairs tenants finally vacated in the middle of the night on August 16, 2010 but as a parting insult turned off the main power before locking all of the doors. The tenants testified that they awoke in a panic to a dark house with no hydro and could not reach the landlord. After some effort, the tenants managed to get into the upper suite to restore the power.

The tenant stated that they were seeking a retroactive rent abatement for the period during which they were affected. The tenant had applied for \$1,700.00 in compensation.

The landlord testified that efforts were made to address the situation and finally succeeded. The landlord stated that the tenants were already given a rent reduction because of the extra work in dealing with the yard. The landlord stated that basic yard maintenance valued at approximately \$50.00 was part of the tenancy and was reflected in the rental rate. The landlord disagreed with any abatement over \$100.00 per month.

Analysis

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 or agreement and a corresponding loss.

I find that the landlord and tenant had contracted for a tenancy that included a rental unit that was comfortable and liveable with shared use of the yard. Through a situation that was not necessarily caused by the landlord nor by the tenant, the premises being provided were compromised for a time because of other residents in the building. During this period the tenant continued to pay rent in compliance with their obligation under the Act. However, I find that at the same time the tenant clearly suffered a loss of value to the tenancy and their quality of life for the duration escalating until the wayward residents upstairs had finally vacated in mid August.

Section 32 of the Act requires a 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 28 of the Act protects a tenant's right to quiet enjoyment 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 and lawful purposes, free from significant interference.

In this instance whether within the control of the landlord or not, I find that there were deficiencies under the contractual obligations of the tenancy agreement for the period in question and contraventions of the Act affecting this tenancy. I find that the tenant's right to quiet enjoyment was significantly compromised and the condition of the common area was permitted to decline to below the health, safety and housing standards expected under the agreement. Given the above, I find that a rent abatement of 25% is warranted for half of March 2010, all of April, May, June and July 2010 and half of August 2010. I find that the tenant is entitled to \$987.50 comprised of \$937.50 for the rent abatement and the \$50.00 cost of this application.

I acknowledge that the landlord did reduce the rent for one month during the period in question. However, I find that this amount was to compensate the tenant for the extra yard clean-up only.

Conclusion

Based on the testimony and evidence discussed above, I hereby order that the tenant deduct \$493.75 from the next month's rent owed and \$493.75 from rent owed for the month following that to satisfy this monetary order in full.

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 2010.

Dispute Resolution Officer