

DECISION

Dispute Codes: MNDC, RP, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants seeking a Monetary Order for money owed as a result of damage or loss under the *Act*, to request action by the Landlords to make repairs to the unit, allow the Tenants a rent abatement for inconvenience and injury sustained, and recovery of the filing fee from the Landlords.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served in person on August 28, 2010. The Landlords were deemed to be served the hearing documents on that date.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all other oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that the Tenants are withdrawing their claim for an order requiring the Landlords to make repairs as the repairs are now completed. I further note that the Tenants are not now seeking monetary compensation for an injury to their grandson.

Issue(s) to be Decided

Are the Tenants entitled to monetary compensation under section 67 of the *Residential Tenancy Act* and a reduction in rent for services or facilities agreed upon but not provided under section 65(1) of the *Residential Tenancy Act*?

Background and Evidence

The tenancy began on July 1, 1997, and continues on a month to month basis. The Tenants paid a security deposit of \$487.50 in July 1997. There was a rent increase and the current rent is \$1,201.05 per month, payable on the first day of each month.

Tenant SH testified that the hot water tank in the rental unit broke and flooded the two hallways and one bedroom. She further testified that the Landlords came that night to fix and replace the tank.

Tenant SH testified that the water damage was so bad, the carpets and flooring needed to be replaced and that she pulled the carpet up with permission from the Landlords. She stated that the Landlords kept promising her they would replace the flooring and carpet, but that the Landlords delayed this process until September 2, 2010, after the service of the Notice for this Dispute Resolution. Tenant SH further stated that the delay was due to the fact that the Landlords could not find the flooring on sale and that the handyman was busy.

Tenant SH stated that the total amount of time the Tenants were without flooring was five weeks and that they are owed compensation for the loss of use of two bedrooms and part of the living room and further are requesting rent abatement in the amount of \$100.00 per week.

Landlord TL testified that she and Landlord JL responded immediately when notified by the Tenants about the hot water tank and that the length of time for the Tenants to be without flooring was four weeks. Landlord TL admitted to the fact that the floors were damaged and to waiting for the flooring to go on sale before purchasing, but denied giving the Tenants permission to remove the carpeting.

Analysis

In regards to an Applicant's right to claim damages from the other part, Section 7 of the *Act* states that if the Landlord or Tenant does not comply with this *Act*, 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 sections 33 and 67 of the *Act*, 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

In this instance, the burden of proof is on the Tenants 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 Landlords. Once that has been established, the Tenants must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find the Landlords are in violation of section 32(1) (a) of the *Act* which states 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.

I find that the evidence supports the Tenants' claim that they endured a substantial devaluation of the tenancy during the five weeks with no flooring over a substantial portion of the rental unit and aggravation with getting the problem resolved. I find that retro-active rent abatement is justified applicable to rent already paid from the last week in July 2010, through September 2, 2010, a total of five weeks.

I find that the average weekly rent based on a rental payment of \$1,201.05 per month per year is \$277.17. I further find that the Tenants have suffered a loss of value and usage of the rental unit for the five week time period, reducing rent payable by \$75.00 per week, for a total of \$375.00.

I find that the Tenants have succeeded in large and that they should recover the filing fee from the Landlords.

I find that the Tenants have established a total monetary claim of **\$425.00** comprised of the rent abatement of **\$375.00** and the **\$50.00** fee paid by the Tenants for this application.

Under section 67 of the Act, I direct that the Tenants withhold the amount of \$425.00 from the next monthly rental payment in satisfaction of the monetary claim.

Conclusion

The Tenants are entitled to a Monetary Order including the filing fee for this proceeding in the amount of \$425.00 and are directed to withhold this amount from the next payment of rent.

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 04, 2010.

Dispute Resolution Officer