Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation in the form of a retro-active rent abatement as damages for loss of value to the tenancy and an Order that the landlord make repairs.

Both parties appeared and gave testimony.

At the outset of the hearing, the tenant advised that the landlord has repaired the over-stove fan. Therefore the repair order has been resolved and is no longer at issue. However, the tenant is still seeking financial compensation for the delay in repairing the over-stove fan that impacted the tenant's enjoyment of the suite.

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 damages or loss. The burden of proof is on the applicant.

Background and Evidence

The tenancy began in as a fixed term on April 16, 2010 and will expire on April 30, 2011.The current rent was $1,700.00. A security deposit of $850.00 was paid.

The tenant testified that the over-stove fan, which was a combination microwave and vent stopped working and the landlord was notified on October 13, 2010. The tenant testified that repeated appointments were made and cancelled by the landlord and its technicians. The tenant provided a documented chronology that included a timeline and associated emails showing the course of events and contact between the parties. The tenant testified that, in addition to being impeded by the loss of the fan, the tenants were greatly inconvenienced by needlessly rearranging schedules and waiting for repair technicians who did not show up. The tenant felt that throughout the two-month period, they cooperated fully by providing many windows of availability in which the landlord

could schedule the repair. However, as time went on the repair was not made and the tenant was forced to endure fumes and residue from their cooking.

The tenant objected to an insinuation made by the landlord that the tenant had been responsible for the malfunction of the fan/microwave unit and was also concerned about the intrusive manner in which the landlord conducted an inspection of the rental unit.

The tenant's position was that the landlord had an obligation under the Act and agreement to repair the fan without undue delay and failed to fulfill that responsibility. The tenant was seeking compensation of $300.00 each month for two months.

The landlord testified that evidence shows the landlord responded to the tenant's initial request within days and had a technician look at the problem. According to the landlord, the first technician advised the landlord that the entire unit had to be disassembled and likely replaced. The landlord testified that it was initially prepared to follow this course and spent time trying to find a replacement unit. The landlord acknowledged that subsequent appointments for service were booked and cancelled, but stated that this was partly due to the availability of the repair personnel, who frequently refused to commit to specific times and partly due to the tenant's insistence that they be present in the unit while also imposing restrictive times for the service work to be done. The landlord testified that some of the technicians, after attending, were not willing to try to repair the fan and microwave and made comments that the unit was contaminated with oil. The landlord testified that it was evident that the best solution would be to have only the fan repaired and leave the microwave inoperable, as the tenant did not need to use the microwave. However this presented difficulty for the landlord in finding a technician willing to address only the fan issue and also caused some additional delay. The landlord felt that they did their best and eventually succeeded in rectifying the problem. The landlord was of the opinion that the tenant's request for $600.00 in compensation was exorbitant.

Analysis

In regard to the monetary claim, 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.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement. In some cases a landlord may terminate or restrict a service or facility, as long as it is not essential to the tenant's use of the rental unit as living accommodation and as long as the service or facility was not considered to be a material term of the tenancy. However, the landlord is required to give 30 days' written notice, in the approved form, of the termination or restriction, 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. (my emphasis)

I find that, although the landlord did not intentionally restrict this amenity, there was a contractual obligation to provide a functioning over-range fan based on the fact that the tenant had rented a unit featuring this as part of the tenancy.

I also find that section 32 of the Act imposes responsibilities on the landlord and states that 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. I find that this would include timely repairs of appliances, particularly those, such as an exhaust fan, which function to maintain health and hygiene.

I find that the tenant's claim meets elements 1, 2 and 3 of the above test for damages. The tenant was without a working fan for an extended period of time and the absence of this convenience did affect the value of the tenancy.

However in respect of element 4 of the test for damages, I find that there was a valid question of whether or not the tenant took reasonable steps to mitigate the loss by

trying to be more flexible and not restricting appointments to a time when the tenant was available to be home. I find that this limitation may have impeded the repairs to a small degree. I also find that the landlord did not significantly neglect its responsibilities in this matter. In fact, I find that the delays in servicing the fan was most likely primarily due to the nature of the appliance service business and the type of appliance to be repaired. The issue was also made more contentious by the parties losing patience with each other and the landlord's perception that the tenant damaged the unit. However, the fact is that the tenant was deprived of the use of a fan necessary to properly maintain the home and this served to devalue the tenancy to a significant degree. Accordingly, I find that the tenant is entitled to compensation in the form of a retro-active rent abatement in the amount of $400.00.

Conclusion

Based on the testimony and evidence discussed above, I hereby order that the tenant reduce the next rental payment owed to the landlord by $450.00, representing a one-time abatement of $400.00 and the $50.00 fee paid by the tenant for the application.

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: December 2010.

Dispute Resolution Officer