

DECISION

Dispute Codes:

MNDC, OLC, RP, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for loss of value to the tenancy due to various problems, deficiencies and loss of services or facilities. The tenant was also seeking an order that the landlord comply with the Act, and make repairs to the property.

At the outset of the hearing, the parties advised that the outstanding repairs and deficiencies in regards to the toilet repairs and the fire damage had been addressed. Therefore the tenant's request for an order that the landlord be compelled to comply with the Act and make repairs has been resolved.

The only outstanding issues pertained to the monetary claims for a retro-active rent abatement in compensation for devalued tenancy due to services and facilities that were part of the tenancy not being provided.

Both parties appeared for the hearing originally scheduled on December 22, 2010. However, the landlord raised a concern about inadequate service of the Notice of Hearing and the parties agreed that the matter should be reconvened to allow the respondent adequate time to submit evidence in response to the tenant's claims. Both parties attended today's hearing and confirmed receipt of the evidence.

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 and a retroactive a rent abatement for repairs and lack of facilities and services.

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

Background and Evidence

The tenancy began in May 2010 with rent set at \$1,500.00 and a security deposit of \$750.00 was paid.

The tenant testified that there were various problems have occurred during the tenancy that impacted the value of the tenancy and the tenant's right to quiet enjoyment. The tenant was claiming \$1,000.00 for the litany of concerns below

The tenant testified that she reported a missing shelf in the freezer when she moved in and was promised a replacement but the landlord never provided one. The tenant provided a photograph of the freezer compartment. According to the tenant the interior freezer shelf was supposed to be a standard feature of the model and submitted a printout of the specifications from the manufacturer into evidence.

The tenant testified that there was a chronic problem with insects, particularly wasps and the fact that the unit had no screens forced the tenant to close the windows in the hot weather which resulted in the tenant being forced to send her daughter elsewhere to sleep in the hot weather and to purchase an air conditioner. The tenant stated that the landlord did spray but did not do a sufficiently thorough job, missing the nests higher in the trees. The tenant also had concerns about insects in the unit and coming in through the range-hood vent. The tenant submitted photos of the gnats stuck on the range-hood grate and photos of spiders, beetles and other insects seen on the floor. The tenant also submitted photos of the yard surrounding the building with "mole holes" in the ground.

The landlord disputed the tenant's allegation about the freezer shelf and stated that the freezer compartment included a shelf and was not provided with the appliance. The landlord's position was that the tenant rented the unit with a refrigerator having no shelf in the freezer compartment.

In regard to the insects, the landlord testified that the rental unit is situated in a wooded area with ample wildlife and insects and the landlord has no control over the surrounding landscape. In relation to the wasps, the landlord stated that the tenant is the only resident who has taken issue with them and the landlord did take steps to control the wasps to the best of its ability. The landlord stated that it always takes steps to promptly address any complaints about vermin within rental units. According to the landlord, the tenant has not made a formal complaint about bugs inside her suite. However, the landlord is willing to look into all reports of insect infestation and promised to respond accordingly.

The landlord stated that the landlord does not supply screens and the suites in the building are rented without them, but some residents have supplied their own as they see fit. The tenant is at liberty to buy an air conditioner or put screens up and the landlord felt that this would be only the tenant's responsibility, not a liability for the landlord.

The tenant complained that the landlord had failed to clear the snow so that the tenant could access her handicapped parking space on a day after heavy snowfall. The tenant stated that she was more affected than usual due to her disability. In regard to snow clearance, the landlord testified that the snow was cleared as quickly as possible and 2 people were working with shovels and sand without delay.

The tenant testified that there was a chronic lack of heat in one room and the furnace completely failed to function at one point. This required repeated calls to the landlord before it finally replaced the motor. The tenant stated that she endured 2 days without adequate heat and had to send her daughter to stay elsewhere.

The landlord testified that the tenant made two complaints which were responded to immediately by having a professional assess the furnace in the unit. During the first service call, no problem was found. However the next day when the tenant reported continuing problems, the landlord had the furnace motor replaced and the furnace now works fine. The landlord was not aware of a heat imbalance in the master bedroom as the tenant did not lodge any formal complaint regarding this. The landlord stated that it is willing to look into any of the tenant's concerns about heat.

The tenant testified that one of the toilets malfunctioned and that the landlord's failure to repair it greatly inconvenienced the tenant as she was required to share her bathroom with her lodger until the landlord finally replaced the chain and flapper in the fixture. The tenant was claiming compensation of \$175.00 per month totaling \$350.00. The landlord testified that all reports of complaints are logged and attended to without delay. The landlord testified that when the tenant first complained the landlord attended and the toilet was found to be working okay. According to the landlord, as soon as they heard from the tenant again, they hired a tradesperson who promptly attended to the problem and fixed it.

The tenant was claiming compensation for being deprived of a working fireplace which was part of her tenancy. The tenant testified that on September 24, 2010 smoke began pouring into the room from the fireplace and the fire department was called. The tenant testified that, although the Fire Inspector incorrectly reported that the smoke was caused by tenant's failure to open the vent, it was later confirmed that the smoke back-up was caused by a block of newspaper lodged in the flu. The tenant was aware that the fire department found that the landlord was not compliant with a bylaw that required

yearly inspections and cleaning of the chimneys. The order from the municipality required the landlord to inspect and clean the chimney within five days and the landlord failed to act within the time deadline. The tenant stated that she was then without the use of her fireplace through no fault of her own for several weeks over a critical period during Christmas.

The landlord did not dispute that the fireplace in the unit was not usable for a period of time until the landlord complied with the order to clean and inspect all of the chimneys and fireplaces in the complex. The landlord testified that the report from the inspector concluded that the tenant had failed to open the damper. The landlord stated that due to the magnitude of the order it took some time to restore use of the fireplaces to the tenants in the complex but the tenant's fireplace was restored before Christmas.

Analysis - Monetary Compensation

The tenant was requesting a rent abatement for the reduction of value of the tenancy given the disruption and reduced quality of the tenancy for the period in question.

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.

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that (i) are required or prohibited under this Act, or(ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities. In short, a dispute resolution officer has the authority to enforce both the Act and terms in a tenancy contract.

It is clear that there were some problems that occurred during this tenancy. However, I do not find that a missing shelf in the freezer or missing screens that were not present at the time the tenancy began to be a violation of the Act of the agreement. Nor would a delay in snow removal, failure to eradicate flying insects frequenting the property, or two days to repair a malfunctioning furnace.

In regard to the toilet, I accept that the tenant's testimony that she reported a problem and I accept the landlord's testimony that the landlord investigated but initially determined no action was necessary. I find it is not clear why the matter was left unattended by either the landlord or the tenant for two months. I find that if the tenant was making repeated complaints during this period, there would be some record of this. In any case, a tradesperson eventually attended to the problem and the matter was resolved. I do not find that the tenancy was significantly devalued due to this matter.

With respect to the unfortunate loss of use of the fireplace for several weeks during the holiday season, I find that, regardless of the cause of the Fire Marshal's intervention and order, the fact is that the landlord was found not to be in compliance with local bylaws concerning maintenance. While the delay in getting service restored was understandable, nonetheless the tenant was deprived of a service or facility that was part of the tenancy. I find that 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 27 of the Act states that a landlord must not terminate or restrict a service or facility without compensating the tenant accordingly. I find that the tenant is entitled to a rent abatement of %8 for the three months affected for a total abatement of \$360.00.

Conclusion

Based on the testimony and evidence discussed above, I hereby grant monetary compensation to the tenant of \$410.00 comprised of \$360.00 abatement for the loss of the fireplace and the \$50.00 cost of the application. This compensation will be paid through a single lump-sum rent abatement to be deducted from the next month rent owed to the landlord.

The remainder of the tenant's application is dismissed without leave.

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: January 18, 2011.

Residential Tenancy Branch