

Decision

Dispute Codes:

MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for loss of value of the rental suite over a 3 month period from early October 2009 until the end of December 2009 period during remediation from a flood in the rental unit.

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

Preliminary Issue(s)

The tenant had submitted evidence that was received on file but was not served on the other party. According to the Residential Tenancy Rules of Procedure, Rule 3.1, (*Documents that must be served*), in addition to the application the applicant must serve each respondent with copies of all of the following:

- the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- the details of any monetary claim being made, and
- any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

I also note that the Landlord and Tenant Fact Sheet contained in the hearing package makes it clear that “*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible.*”

In this instance I found that the supporting evidence submitted by the tenant for the purpose of this application would not be considered as it had not been served to the respondent landlord. The tenant was permitted to give verbal testimony on the matter.

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 and a retro-active rent abatement.

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 in September 2009 and ended on July 31, 2010. The rent was \$2,950.00. The tenant testified that a flood occurred in early October 2009 and this resulted in the floor needing replacement. The tenant stated that the remediation process took three months and the tenant was forced to endure living with bare concrete flooring in approximately half the area of the home. The tenant is seeking compensation of \$6,637.50 representing an abatement of 75% of the rent for 3 months. Moreover, according to the tenant, he was required to arrange access for the workers and contractors and, out of necessity, acted as a liaison on behalf of the landlord losing time off work. The tenant testified that the landlord did not give a contact phone number and was out of the country during this period. The tenant is claiming a further \$2,500.00 calculated based on 25 hours at \$100.00 per hour. The tenant is claiming \$200.00 compensation for service interruptions affecting access to T.V., internet and telephone during the tenancy caused by the landlord's failure to pay the bill for these included services.

The tenant was also seeking a that a monetary order be issued against the landlord because the landlord failed to follow the order previously issued on October 21, 2009 stating that \$50.00 must be deducted from the rent owed as a one-time reduction

The total claim was for \$9,387.50.

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.

I find that the landlord and tenant had contracted for a tenancy that included a rental unit that was comfortable and liveable. Through a flooding incident that was not caused by the landlord nor by the tenant, the premises being provided were temporarily compromised for a time while being restored. I find that the process of restoration was onerous for the tenant as it went on for up to 3 months. I find that for the duration of the remediation process, the tenant was required to pay rent in compliance with their obligation under the Act. However, at the same time the tenants clearly suffered a loss of value to the tenancy and their quality of life for a time.

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.

In this instance I find that there were deficiencies in the condition of the unit, if not under the Act, then under the contractual obligations of the tenancy agreement for the period in question. Given the above, I find that a rent abatement of 25% per month for 3 months at \$737.50 per month for a total of \$2,212.50 is warranted.

In regard to the tenant's claim of \$2,500.00 for handling the restoration process due to the landlord's absence and failure to provide adequate contact information, I find that Section 33(2) of the Act requires that a landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

While it is a normal expectation that a tenant participate in granting access to contractors and trades professionals and have some contact with them, I find that in this case the tenant landlord was apparently not available to make critical decisions in regard to the work being done and the tenant could only communicate with the landlord via email.

I find that the tenant did not prove a loss of employment income, but some recognition of the fact that the tenant made himself available during business hours is warranted and I find that the tenant is entitled to \$200.00 in compensation.

With respect to the claim for the loss of Internet and other services due to the landlord's failure to keep the payment of accounts current, I find that 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 that would qualify as a material term of the tenancy agreement. The Act also provides that when there is termination or restriction of a service or facility not considered to be essential or a material term of the tenancy this would require 30 days' written notice of the termination or restriction in the approved form, and must also a rent reduction 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. I accept the tenant's testimony that the tenant was deprived of services and facilities valued at \$200.00 and the tenant is entitled to this amount.

In regard to the tenant's allegation that the landlord failed to follow the order previously issued on October 21, 2009 I find that the tenant is still entitled to this amount and there will be a monetary order for \$50.00 to rectify this.

Conclusion

Based on the testimony and evidence discussed above, I hereby issue a monetary order in favour of the tenant in the amount of \$2,762.50 comprised of \$2,212.50 retroactive rent abatement for devalued tenancy, \$200.00 for assisting the landlord with the remediation, \$200.00 for 37 days loss of internet and other services, \$50.00 for the landlord's failure to comply with the order to reduce the rent owed and \$100.00 for the cost of this application. This order must be served on the landlord and may be enforced through Small Claims Court if necessary.

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 2011.

Residential Tenancy Branch