



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

MNDC, MNR, RPP

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking monetary compensation including, a rent abatement for devalued tenancy, loss of use and peaceful enjoyment of the suite and reimbursement for destroyed property.

Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

The issue 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 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 on March 11, 2010 as a fixed term expiring on September 30, 2010. The rent for occupancy by two tenants was \$800.00 per month.

The tenant testified that written notice to end the tenancy effective August 31, 2010 was given. However, according to the tenant, they were forced to vacate the unit by mid-August due to unhealthy conditions.

The tenant testified that, beginning in June 2010, the tenants realized that there was a serious infestation of mice in the unit and they notified the landlord on June 24, 2010. According to the tenant, the landlord came the next day and looked for the entry holes where the mice were getting in and plugged up the gaps with steel wool. The tenant testified that this had no effect in controlling the pests. According to the tenant, in July, after several sightings of mice and numerous futile complaints to the landlord, things were only getting worse. The tenant stated that they were overrun with mice and their

droppings throughout the rental unit. The tenant testified that the infestation extended to contamination of their bedding, drawers, cupboards, even appliances and the tenants could even hear rodent activity at night. One of the tenants moved out of the unit to stay with a relative due to health concerns. The tenants testified that despite promises made by the landlord, it became evident that the landlord had no intention of calling in professional exterminators. For this reason, at the end of July, the tenant gave notice to end the tenancy effective August 31, 2010. The tenant testified that in the first week of August they cooperated and removed all of their food and dishes from the kitchen cupboards at the landlord's request so that traps could be placed in the kitchen area. This effort did not rectify the problem and the tenants found it impossible to remain in the unit. On August 20, 2010, the tenant received a visit from the Health Authority in response to complaints and they were told that the rental unit was not healthy and that they must wash or discard possessions that were likely contaminated by mice urine. The tenant submitted into evidence copies of Health Authority complaint records, witness statements, copies of communications and photographs of the damage. The tenant stated that information they received confirmed that the landlord was previously aware of a rodent recurring problem in the building. The tenant's position is that the landlord violated the Act and agreement by not promptly addressing the chronic infestation that forced the tenant to live in unsanitary, hazardous conditions. Based on the above, the tenant is claiming \$1,600.00 abatement for two months rent, \$217.00 for lost property that had to be discarded, \$74.75 for laundry costs and \$35.00 for upholstery cleaning pursuant to the instructions issued by the Health Authority. The total amount claimed is \$1,926.75.

The landlord disputed the tenant's claims. The landlord pointed out that she took immediate action and followed the verbal instructions she had received from a professional pest control company. The landlord stated that all of the access points were filled with steel wool and caulking. The landlord testified that she repeatedly went into the unit to inspect it for mice. The landlord testified that, although no poisons could be used because of the tenant's pets, she set out glue traps to catch the mice. However the traps remained empty. The landlord testified that her access to the unit was blocked by the fact that the tenant had gone away in August and was not available to grant permission for the landlord to enter. The landlord's position was that she did everything possible to eradicate the mice and the tenant is not entitled to be refunded any rent nor to be compensated by the landlord for property loss.

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, he or she 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, in good faith, contracted for a tenancy that included payment of rent to reside in a rental unit that was safe, comfortable and liveable. 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 addition, 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 I find that the landlord failed to comply with section 32 of the Act during the months of July and August 2010. I find that a well-established vermin infestation affecting a number of units in a complex would likely require one or more treatments by a professional pest control specialist. I find the measure taken by the landlord to control the problem by filling gaps with steel wool, was not adequate and should have been followed up with more intensive measures as soon as the tenant reported that the mice and droppings were still being seen. I find that the household environment became unhealthy enough to render the unit as uninhabitable and this was clearly a violation of the Act causing a loss of value to the tenant. I also find that the tenant took steps to mitigate the damages by ending the tenancy a month early. Accordingly, I find that the tenant's claim for a retro-active rent abatement has met the test for damages and the tenant is entitled to compensation of \$600.00 for the month of July and \$800.00 for the month of August 2010. I also find that the tenant is entitled to \$326.75 for damaged items and cleaning costs.

The tenant is entitled to total compensation of \$1,776.75 comprised of \$1,400.00 rent abatement, \$326.75 damages and the \$50.00 paid for the application.

Conclusion

Based on the testimony and evidence discussed above, I hereby grant the tenant a monetary order in the amount of \$1,776.75. This order must be served on the landlord and may be enforced by 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: March 2011.

Residential Tenancy Branch