

DECISION

Dispute Codes:

MNDC, ERP, RP

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation as damages for losses to the tenancy in violation of the Act by the landlord and an Order that the landlord complete repairs and emergency repairs. Both parties appeared and gave testimony.

At the outset of the hearing the parties advised that the tenant had vacated in February 2011 pursuant to a One-Month Notice to End Tenancy for Cause. Therefore the tenant's request for an order that the landlord complete repairs is no longer an issue affecting the tenancy, and this request will therefore not be dealt with during this hearing.

Issue(s) to be Decided

The remaining issue to be determined based on the testimony and the evidence is whether or not 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.

Preliminary Issue(s)

The tenant had submitted evidence that was received on file and according to the tenant was served on the other party in person in front of a witness. However, the landlord stated that no evidence was received.

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. (my emphasis)

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 consisted mostly of written testimony. The tenant and witnesses were permitted to give this testimony verbally during the hearing.

The documentation submitted into evidence by the tenant related to matters that I found were not material to the tenant’s application and monetary claim, such as receipts for the tenant’s moving costs, doctor’s notes, title searches, financial records and an information letter from Revenue Canada.

While I accept that the evidence was served, I find that, in any case, the nature of the evidence would not impact the hearing to the extent that the respondent would be prejudiced, even if it had it not been properly served.

Background and Evidence

The tenancy began about 30 years ago and the current rent was \$600.00. The tenant testified that the landlord was her father and he had promised to take care of her for the rest of her life.

The tenant testified that when the landlord had issued a One Month Notice to End Tenancy for Cause, she did not file an application for dispute resolution to dispute the Notice within the required 10 days, and instead chose to comply. The tenant vacated the rental unit near the end of February 2011 and she testified that she left the unit cleaned and undamaged. Two witnesses supported this testimony.

The tenant testified that for the duration of the tenancy the landlord refused to complete necessary repairs and the tenant was forced to endure conditions such as a leaking roof, water leaks, a worn-out hot water heater, plumbing problems, a dangerous furnace, improper wiring that was deemed a “fire hazard”, missing insulation, rotting floor boards, mould, windows that were nailed shut and a tunnel in the basement that permitted the heat from the tenant’s unit to flow into an adjacent unit occupied by the landlord. The tenant stated that she was also subjected to other violations of the Act including being intermittently deprived of water and hydro services by the landlord, who

made it a practice to turn off the utilities at will. The tenant stated that there were intrusions by the landlord entering the tenant's rental unit without proper notice and without the tenant's permission. The tenant alleged that some of her possessions were missing and she found it necessary to have an alarm system installed. The tenant testified that she had made many complaints to the landlord about these conditions and most of her complaints were not properly addressed.

In answer to the question of why the tenant did not make an application for dispute resolution to force the landlord stop contravening the Act, the tenant stated that she has a disabling condition and was not aware of the process nor her rights under the Act.

A witness, who stated that he was professionally involved in installing furnaces, stated that, prior to the landlord replacing the old furnace, he had observed flames coming out of it and felt it should be condemned as dangerous. The witness confirmed that the furnace did function to supply heat and that no accidents had actually occurred. The witness did not consider the electrical system or the household plumbing to be up to a safe standard either.

A second witness, who was a relative of another renter in the same building, testified that there were some serious condition problems with the building and his granddaughter was advised to move out for her safety, because of the serious deficiencies. The witness confirmed that, during his granddaughter's tenancy, he was aware of the water and hydro being turned off but did not actually witness the landlord perpetrating this act. However, according to the witness, this occurred at times when no repairs were in process and in his opinion, it was evident that the landlord was responsible for tampering with the utilities.

Based on the above, the tenant is seeking compensation of \$25,000.00 from the landlord.

The landlord's agent testified that the tenancy was validly ended through the One-Month Notice for Cause and stated that the tenant would not be entitled to any damages stemming from the termination of this tenancy, such as moving costs. The landlord testified that the landlord never entered the tenant's unit except to complete repairs and, in fact, the tenant had broken into the landlord's unit and stolen some documents.

The landlord disputed all of the tenant's allegations about the unit being in bad repair and alleged that the tenant had perpetrated some damage to the plumbing herself. The landlord testified that, the only time the heat or hydro was ever cut off, was to do repairs such as replacing the hot water heater and the furnace. The landlord disputed the tenant's claim that there was a tunnel in the basement through which the tenant's heat escaped and the windows were not nailed shut. The landlord stated that there was no

evidence submitted to prove that any unaddressed complaints were ever made by the tenant during the tenancy.

The landlord pointed out that the tenant and witnesses did not provide sufficient data, such as dates, specific detailed examples, photographs and failed to prove nor did the tenant properly quantify the claimed losses. The landlord also pointed out that the tenant had failed to take reasonable steps to mitigate the losses and damage by neglecting to pursue the alleged contraventions of the Act earlier during the tenancy. The landlord took the position that the witness testimony appeared to consist of speculation by individuals who lacked the necessary expertise in electrical, plumbing or heating systems. The landlord also took issue with the fact that the witness testimony consisted of second-hand communications reported to the witnesses by others.

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.

I find that section 32 of the Act imposes responsibilities on the 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, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. I find that if the tenant's description of the condition of the unit had been proven to be

true, then the landlord would be in violation of section 32 of the Act and the claim would meet the first two elements in the test for damages.

In the case before me, I find that the bulk of the tenant's concerns could be categorized as maintenance issues that would naturally arise during this long term tenancy as a result of normal wear and tear. I find that there would be an expectation that the landlord resolve each of these as they arose without undue delay, failing which the landlord would be in violation of the Act. Although the parties were completely at odds, I do accept the tenant's testimony that, on a balance of probabilities, certain maintenance issues were not attended to by the landlord in a timely manner.

However, for the tenant to successfully meet element 3 of the test for damages, it is important that the tenant prove and accurately calculate the value of the loss or damages. I find that the tenant has set the value of the loss at \$25,000 but then neglected to provide a detailed breakdown of how the amount of the claim related in a tangible way to a genuine reduction in the value of the tenancy.

I also find that the tenant did not fully meet element 4 of the test, in that there was an obligation for the tenant to take reasonable steps to mitigate the damage claim by pursuing each problem as soon as possible during the tenancy, instead of delaying making her application for dispute resolution for so long.

Given the above, I am not prepared assess any damages for matters that date back for more than one year. Accordingly, I find that the tenant's entitlement is restricted to a rent abatement of 10% of the total rent paid for the final year of tenancy, in the total amount of \$720.00.

Conclusion

Based on the testimony and evidence discussed above, I hereby grant a monetary order to the tenant for \$720.00. The tenant must serve this on the landlord and the order may be enforced through an application to Small Claims Court if it remains unpaid.

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

