Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, MNSD, 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. The tenant's application includes a claim for the return of the $400.00 security deposit, a refund of the $800.00 rent paid for the month of November 2010 and a 10% retroactive rent abatement for rent paid from October 2009 to October 2010 in the amount of $1,040.00.

Both parties appeared and gave testimony.

Issue(s) to be Decided

The parties advised that the security deposit has already been returned. Therefore the remaining 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.

Background and Evidence

The tenancy began October 2009 with rent set at $800.00. A security deposit was paid and was refunded when the tenant moved out at the end of November, 2010.

The tenant testified that early on in the tenancy the tenant was impeded from using his parked car due to being repeatedly blocked in by other residents in the complex. The tenant testified that this occurred 80% of the time when he needed to access his vehicle. The tenant testified that he made numerous verbal complaints directly to the other residents and also to the landlord, and finally put his concerns in writing to the landlord beginning in May 2010. The tenant stated that on one occasion he was prevented from picking up his children who were waiting for him at a sporting event for a substantial amount of time. The tenant supplied copies of ongoing correspondence with the landlord regarding this problem and stated that it was never fully resolved for the duration of the tenancy.

The landlord testified that he did take action to verbally discuss the parking matter with the tenant and other residents and eventually issued warning notices, copies of which were in evidence. The landlord's position was that the parking situation was not as bad as that being represented by the tenant and, in fact, had been more-or-less resolved after May 2010. The landlord stated that any compensation due to the tenant would be negligible.

The tenant testified that his tenancy was also impacted by excessive noise from the other residents. The tenant stated that he had approached the residents without result and had discussed the problem with the landlord early on in the tenancy. The tenant stated that the residents continued to hold loud parties and gatherings often beginning on Thursday night and continuing for the entire weekend with disturbances usually persisting until 4:00 a.m. The tenant testified that he put his complaints in writing to the landlord and supplied copies of this correspondence in evidence. The tenant stated that he was also forced to contact the police regarding the noise. The tenant was requesting a 10% rent abatement for the entire duration of the tenancy.

The landlord testified that only a couple of the incidents of noise that had been alleged were verified and one related to a wedding celebration. The landlord stated that he investigated the tenant's complaints by asking another occupant in an adjacent suite whether or not the noise was excessive and received reports that they were not bothered by any excessive noise from the suite in question. The landlord stated that he was aware that the tenant had contacted police, but did not know the details and his request for the file number was never honoured by the tenant.

The tenant also took exception to the fact that the landlord had permitted other people into his suite while marketing it for re-rental. This occurred when the tenant was not present. The tenant felt that this was inappropriate as his work involved protected information. The tenant was requesting 100% of the $800.00 rent abated for the month of November due to "invasion of privacy".

With respect to the showing of the suite to potential renters, the landlord pointed out that it was only showed three times during the last month of the tenancy and that proper notice was given. The landlord does not feel that any compensation is warranted.

Analysis

Section 7 of the Act states that if a party fails to comply with the Act, or 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 authority to determine the amount and to order payment under such 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 or agreement and a corresponding loss.

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, lawful purposes, free from interference.

I find that the landlord and tenant had contracted for a tenancy that included a rental unit that was comfortable and liveable and included parking with the expectation that the tenant would not be impeded from accessing his vehicle.

I find that the obligation of the landlord would be to investigate complaints and if found that they were valid, to take action to ensure that the terms of the contract are honoured and the rights of the tenant under the Act are protected. I find that the tenant began complaining about the vehicle issue in writing in May 2009, and the noise problem early in the tenancy. The tenant resorted to calling police for a disturbance in September and ended the tenancy in November 2010. I find that, while the tenant feels the landlord did not do nearly enough to take charge of the situation during the tenancy, the landlord did intervene to a degree in response to the tenant's complaints by making inquiries to

other residents sharing the complex and by issuing warnings to the offending occupants. In doing so, I find that the landlord met his obligations under the Act. That being said, I find that, over time as the complaints continued, the landlord could have become more insistent that the noisy tenants tone things down and should likely have enforced this by issuing increasingly assertive warning letters. Eventually, the landlord would have the option of ultimately issuing a One-Month Notice to End Tenancy for Cause if the problem persisted.

However, under the Act there is not a quick method of resolution in controlling or evicting offending tenants and I find that this process would require a high degree of due diligence and perseverance on the part of the landlord.

With respect to the parking disruptions, I find that much of this particular issue was not within the landlord's control to prevent because, it did not involve the same perpetrators each time. However, it is clear that the quality of life of the tenant was affected by this ongoing problem and I find on a balance of probabilities that the value of the tenancy was impacted due to inconvenience. At the same time, because these were intermittent incidents, it would be difficult to justify a significant abatement in the rent.

I find that the tenant dutifully paid his monthly rent in compliance with his obligations under the tenancy agreement but felt that he was not getting the value promised. Whether within the control of the landlord or not, I find that the disturbances constituted a deficiency under the contract and the Act for the period in question. Therefore I find that the tenant clearly suffered a loss of value to the tenancy of 5% due to the weekend noise and intermittent parking issues.

In order to meet element 4 of the test for damages, however, the affected party must prove that he or she took reasonable steps to minimize the loss or damages. I find that by waiting until the tenancy finally ended before making an application for dispute resolution and forcing the issues of discontent, the tenant delayed too long to effect a possible resolution during the tenancy.

Given the above, I find that the abatement would apply to rent paid over the seven-month period from May 2010 until November 2010 in the amount of $280.00.

With respect to showing the unit to prospective renters, I find that no violation of the Act or agreement was perpetrated by the landlord in permitting interested parties to view the premises. There certainly is an expectation that a landlord entering a unit would give proper notice and ensure that the tenant's belongings are not tampered with nor disturbed but I find insufficient proof to indicate otherwise in this case.

Conclusion

Based on the testimony and evidence discussed above, I hereby grant a monetary order to the tenant for $330.00 comprised of a rent abatement of $280.00 for loss of value and the $50.00 paid by for the application. 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: April 2011.

Residential Tenancy Branch