

DECISION

Dispute Codes: MNDC, ERP, RP, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for loss of quiet enjoyment of the suite and devalued tenancy due to serious mould contamination. The tenant was seeking the return of her security deposit and an order to compel the landlord to make repairs and emergency repairs on the unit.

Despite being served with the Notice of Hearing by registered mail sent on March 30, 2011, the respondent landlord did not appear.

With regard to the return of the security deposit, the tenant's request is premature as the landlord has 15 days from the date the tenancy ends and the written forwarding address has been served to either return the deposit or to make application to keep it for damages. As this tenancy has not ended, this portion of the tenant's application can not proceed.

At the outset of the hearing, the tenant advised that she will be vacating the unit at the end of April 2011. Therefore the request for an order to force the landlord to repair the unit is no longer at issue.

Issue(s) to be Decided

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 through a retro-active rent abatement.

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

Background and Evidence

The tenant testified that she moved into the unit in August 2010 and the rent was \$1,250.00. The tenant testified that the unit had been freshly painted and no mould was evident. However, according to the tenant, by November 2010 there were serious signs of mould in the bedroom and a musty odour was evident. The tenant testified that she contacted the landlord and was informed that nothing could be done. The landlord's position was that it was not within the landlord's ability to rectify problems with the

building. The tenant stated that she also spoke to a contractor who told her that the infrastructure of the condominium complex was compromised and it was a “leaky condo” situation. The tenant testified that the problem worsened until she could no longer stay in the bedroom at all and had to sleep in the living room. Mould had contaminated everything in the bedroom. The tenant submitted photographs showing mould-blackened walls, ceilings, sills and her personal property. The tenant’s witness testified that the bedroom was rife with mould and that the smell was intolerable.

The tenant testified that she believes the landlord had knowingly entered into the tenancy agreement aware that there was a significant mould issue, and had merely painted over the problem. The tenant is seeking a rent abatement for the duration of the tenancy, reducing the rent from \$1,250.00 to \$100.00 per month for seven months to compensate for the unhealthy living conditions and loss of enjoyment of the suite. The total claim at \$1,150.00 per month is for \$8,050.00.

Analysis - Monetary Compensation

The tenant was requesting a rent abatement of approximately 92% per month for the reduction of value of the tenancy, based on the disruption and reduced quality of the tenancy for the entire period in question.

Section 7 of the Act states that, if a landlord or tenant does not comply with the Act, or tenancy agreement, the non-complying landlord or tenant must compensate the other party 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 functional rental unit that was comfortable, safe, healthy and liveable. I find that, regardless of the landlord's circumstances, the premises being provided were negatively impacted by an evident infrastructure problem that resulted in the escalating growth of mould in one or more rooms in the rental unit. I find that, for the period in question, the tenant continued to pay full rent in compliance with the tenant's obligation under the Act. However, at the same time the tenant clearly suffered a loss of value to the tenancy and quality of life and was exposed to possible health risks as well.

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.

I find that, as the mould proliferated out-of control, the landlord fell into a violation of section 32 of the Act. I find that the landlord's failure to address the problem in a timely manner to bring the situation under control contravened both the Act and the landlord's responsibility under the contract. Given the above, I find that the tenant's request for a rent abatement is warranted for the seven-month period from the time the mould was reported until the end of the tenancy on April 30, 2011.

Accordingly I find that the tenant is entitled to a rent abatement of \$8,150.00 comprised of the \$8,050.00 rent abatement and the \$100.00 cost of this application.

Conclusion

Based on the testimony and evidence discussed above, I hereby grant a monetary order in favour of the tenant in the amount of \$8,150.00. This order must be served on the landlord and may be enforced through Small Claims Court if necessary.

The tenant's application for the security deposit is dismissed with leave to reapply.

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