

DECISION

Dispute Codes:

MNDC, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a retro-active and continuing rent abatement to compensate the tenant for loss of quiet enjoyment of the rental unit and devalued tenancy over a 7- month period. The tenant is also seeking monetary compensation for the landlord's violation of the Act and the lease in failing to fix and repaint the walls and for not complying with the lease which required the landlord to supply window coverings.

Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss through a rent abatement of past rent paid and future rent payable.
- Whether the landlord should be ordered to complete repairs and emergency repairs.

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 the one-year tenancy began on September 15, 2010 with rent of \$1,400.00 per month payable on the 15th day of each month. A security deposit of \$700.00 was paid at that time. The tenant testified that the landlord had agreed that the rental unit would be painted, that the landlord's belongings currently stored on the property and in the garage would be removed prior to occupancy and that the window coverings would be supplied pursuant to the tenancy agreement. The tenant testified that the original move-in date of September 1, 2010 was delayed as the unit was not yet

ready to move in and the landlord needed time to paint and get the unit in move-in condition. The tenant stated that after two weeks, they were became anxious and were desperate to get settled in so they took occupancy on September 15, 2010, even though the landlord's belongings were still stored on the premises and the painting was not complete upstairs. The tenant stated that they were willing to make sure that the walls and ceilings were repaired and painted themselves so that they could move in. The tenant testified that once the tenancy finally started, despite repeated written and verbal requests to the landlord over the intervening months requesting removal of the stored items, most of it still remains. The tenant stated that the furniture and debris are impeding areas in the garage and in the yard. The tenant testified that, not only is this unsightly, dangerous, inconvenient, but it has now become a significant hygiene concern due to a serious infestation of rats. The tenant testified that when he opens the garage door, the sound of rats scurrying around is upsetting. The tenant drew attention to one photo that showed rodent droppings on top of some of the items stored. The tenant was also concerned about the landlord's practice of freely accessing the premises, as well as permitting others to enter the yard or garage at will, without first providing adequate advance written notice required by the Act.

The tenant testified that their unit was also subjected to an influx of water coming from under the house that soaked the carpets during the rainy weather. The tenant testified that this was reported to the landlord who came to see the damage and agreed to take up the carpet and make repairs but this never occurred. According to the tenant, the wet carpet soon developed a mildew odour and without any assistance from the landlord, the tenant had no choice but to try and get the area dried out on his own. The tenant stated that the landlord never came back to remove the carpet nor patch the leaky area as promised.

The tenant testified that the above problems had significantly impacted his quality of life and reduced the value of his tenancy because of the loss of use of a portion of the garage and the yard. The tenant feels entitled to a retro-active rent abatement of \$300.00 for each of the months of September, October, November, December 2010, and January, February, March and April, 2011. The tenant has requested that the abatement continue until all of the above problems have been rectified and the landlord has fully complied with the Act and Agreement. The tenant also seeks a specific order to force the landlord to finally remove the material from the property within the next two weeks. The tenant stated that they are eager to have the property in a suitable condition for the family to entertain family and friends for summertime barbeques and leisure activities for the children in the yard.

In addition to the rent abatement, the tenant has requested reimbursement for the \$2,160.00 spent in painting the unit, \$250.00 for the cost of window coverings to be

supplied pursuant to the tenancy agreement and the \$50.00 cost of filing the application. In support of the claim, the tenant submitted into evidence photographs, a copy of the tenancy agreement, written testimony, copies of communications, and receipts.

The landlord testified that all of the interior painting had been completed as promised, and pointed out that, at no time when they were moving in did the tenants object to the quality of the upstairs painting work done by the landlord. The landlord's position was that despite the landlord's preparation of the unit, the tenant took it upon himself to remove mirrors that were permanently affixed to the walls, patch the holes and repaint. The landlord testified that the window treatments that were included in the tenancy agreement referred only to the existing blinds and draperies that were already installed when the tenant agreed to rent the unit. The landlord did not recall ever promising to supply additional draperies or blinds for any of the remaining windows. The landlord stated that he does not believe that the tenant is entitled to any reimbursement. For painting or the purchase of the window treatments.

With respect to the storage of the landlord's items on the premises, the landlord testified that, although it was not specifically mentioned in the written tenancy agreement, the tenant was well aware that one of the garages was reserved for the landlord's use. The landlord stated that, when the tenant complained, he and his family agreed to clear the area and did the best they could to remove the items. According to the landlord, the landlord's personal circumstances made this difficult and the removal unfortunately took much longer than expected. The landlord stated, however, that the items could be removed during the next three or four weeks and would be completely gone by the end of May 2011. The landlord also discounted the existence of rats in the garage and around the property, pointing out that there is an undeveloped creek area nearby where such animals are commonly found to be plentiful. The landlord does not believe that the tenant should be entitled to a rent abatement for the loss of use of the garage and part of the backyard, nor for an alleged vermin problem.

Analysis - Monetary Compensation

The tenant was requesting a rent abatement of \$300.00 for each of the seven months affected during the tenancy amounting to \$2,800.00 and a similar discount of rent going forward to compensate 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 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 and liveable and included a yard and garages for the tenant's use. However, I find that a portion of the premises being provided were compromised from the start due to the landlord's failure to remove personal possessions still stored on the property. I do not accept the landlord's allegation that there was a verbal agreement between the parties for the landlord to use part of the property that superseded terms documented within the written tenancy agreement. I find that the written agreement makes absolutely no mention of such a term.

I find that the tenant was also inconvenienced by water infusion that soaked the carpets and that the landlord failed to address this serious problem, that will likely recur when the wet weather returns.

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.

With respect to an obvious rodent problem, I find that this situation is unhealthy and likely contravenes local bylaws as well as section 32 of the Act. I find that the landlord's failure to clear up the debris and personal items on the property is also a violation of the contractual obligations under the tenancy agreement.

I find that for the period in question, the tenant continued to pay full rent in compliance with their responsibility under section 26 of the Act. However, at the same time the tenant clearly suffered a loss of value to the tenancy and his quality of life during this period and must be compensated.

Accordingly, although the tenant's application did not include a request to order that the landlord comply with the Act in this respect, I find it necessary under section 62(3) and section 32 of the Act to order that the landlord completely remove the stored or abandoned items remaining on the property by May 15, 2011 if possible.

Given the above, I also find that a rent abatement of \$2,800.00 is warranted for the past 7 months of this tenancy and the tenant is permitted to withhold rent owed until the ordered compensation has been fully satisfied. In addition I find that, should any of the landlord's property still remain on the premises past May 15th 2011, then a further \$300.00 abatement will be granted against rent owed to the landlord, to recognize the period from May 15, 2011 until June 15, 2011.

After the personal belongings of the landlord have been fully removed, the landlord is obligated under section 32 of the Act to then effectively eliminate any residual rodent problems that are evident and I find that this must be done through a qualified pest control expert. If the landlord does not comply with this responsibility, the tenant is at liberty to make another application seeking an order for monetary compensation and/or an order to allow the tenant to have the work done and be reimbursed for the cost afterwards.

With respect to the claim for the painting of the upstairs, I find that there may well have been a need to paint, or re-paint, the upstairs area, whether or not the landlord had done already some work there. However, in order to satisfy element 4 of the test for damages, I find that the tenant had an obligation to first make it clear to the landlord that he found the existing paint job to be deficient and wanted it done properly. I find that the tenant did not afford the landlord another opportunity to rectify the concerns, before going ahead and contracting out the project himself. I also find that the invoice submitted into evidence for the painting labour costs is not sufficiently detailed to determine exactly what was done, the hours spent and the rate being charged. Therefore I find that the invoice as proof would not satisfy element 3 of the test for damages. That being said, and despite the absence of receipts for the purchase of paint, I find that the tenant's entitlement to compensation is restricted to \$100.00 representing the estimated cost of paint and materials.

With respect to the controversy over the provision of window treatments, I find that the checkmark on the tenancy agreement indicating the inclusion of window treatments was interpreted differently by each of the parties.

On the subject of whether or not terms of a tenancy agreement can be enforced, Section 6(3) of the Act states:

(3) *A term of a tenancy agreement is not enforceable if*

- *the term is inconsistent with this Act or the regulations,*
- *the term is unconscionable, or*
- ***the term is not expressed in a manner that clearly communicates the rights and obligations under it.*** (my emphasis)

I find that the term could be interpreted either to mean *all* window treatments would be *supplied* as the tenant believes or that *all existing* window treatments were to be included which is the landlord's contention. Given the above, I decline to enforce the term and the tenant is therefore not entitled to reimbursement for the window treatments purchased which are owned by the tenant.

With respect to the damaged carpet and unaddressed source of water infusion, I find that there is an expectation and obligation pursuant to section 32 of the Act that the landlord must rectify the problem once the other issues are attended to. It is incumbent upon the landlord to take steps to ensure that there is no further water infusion problem going forward. If the tenant is not satisfied with the landlord's intervention, he can bring this matter forward to dispute resolution in future.

Accordingly, based on the evidence and testimony, I find that the tenant is entitled to a total rent abatement of \$2,950.00 comprised of \$2,800.00 retroactive rent abatement for loss of value, \$100.00 for paint purchased and the \$50.00 cost of this application.

I find that the tenant may be entitled to withhold a further \$300.00 for the period of May 15 to June 14th, 2011, and this will be permitted if any of the stored items or yard debris remain. .

I order that the landlord must remove all materials as soon as possible, preferably on or before May 15, 2011 and to address any remaining rodent issues through a qualified professional.

The landlord is cautioned that, should the landlord fail to *remove all materials from the property by May 15, 2011* or fail to adequately address any residual rodent issues, the tenant would be at liberty to make a further application seeking satisfaction, including an order granting the tenant authority to have this work done on the landlord's behalf and to be reimbursed for the proven costs

The landlord is also required under the Act to give 24-hours written notice to access the premises for any valid reason pursuant to section 29.

Conclusion

Based on the testimony and evidence discussed above, I hereby order that the tenant deduct \$1,400.00 from the next month's rent due on May 2011 and \$1,400.00 from the rent owed for the monthly rental period from June 15, 2011 until July 14, 2011. I order that the rent owed from July 15, 2011 until August 14, 2011, will be reduced to satisfy the remaining amount of \$150.00, and possibly an additional reduction of \$300.00 on top of that if the landlord had not succeeded in completely removing all of the items by May 15, 2011.

The landlord is ordered to comply with the Act with respect to removing stored items by May 15, 2011, addressing the vermin problem if it persists, addressing other repair issues such as leaks as required and providing 24 hours written notice to the tenant before accessing the premises.

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