Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation loss of value to the tenancy due to the landlord's action in restricting the tenant's use of a room that was previously seen as part of the tenancy. The tenant was also claiming compensation for increased costs of hydro that they attributed to the residents occupying the other suite in the building.

Both parties attended today's hearing and confirmed receipt of the evidence.

Issue(s) to be Decided

The issues 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 including a retroactive a rent abatement for loss of value of the tenancy and extra utility expenses.

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

Background and Evidence

The tenancy began in August 2011 with rent set at $1,400.00 and a security deposit of $700.00 was paid. In addition, a pet damage deposit of $200.00 was later paid.

The tenant testified that, before signing the agreement, they were shown the unit which was located primarily on the upper floor with one room on the main floor inside the ground-floor entry. The tenant testified that they utilized the main-floor room as a playroom for the children for several months, but were approached by the landlord in September and advised that the play room on the ground floor was going to be converted to become part of the lower rental suite. This would require that the door from the tenant's suite be blocked and that a new doorway constructed to open it to the lower rental suite.

The tenant testified that they did not dispute the actions of the landlord with respect to their loss of the room at the time it was confiscated. However, the tenant's position is that the removal of this room devalued the tenancy by $150.00 per month and the

tenant is seeking compensation from December 2011 until the end of August 2012, a period of 9 months, totaling $1,350.00.

The landlord testified that the room in question was not really part of the rental unit from the start and that the tenant's were only given access to it to use for their storage as a courtesy. The landlord testified that it was always intended that the room may be utilized for the lower rental suite, if needed. Although this is not mentioned in the written tenancy agreement, the landlord stated that the possibility of this transformation was verbally explained to the tenant at the time they rented the unit. The landlord did not agree with the tenant's claim for a retro-active rent abatement for losing the use of the room.

The tenant was also seeking reimbursement of $650.00 in compensation for hydro costs that suddenly occurred after new renters began to occupy the lower suite. The tenant acknowledged that, under the tenancy agreement, their hydro is not included in the rent and that it was a requirement that they must have the hydro service placed in the tenant's name. The tenant also conceded that there was a mutual agreement that the tenant would be responsible to pay 60% of each hydro bill and would collect the other 40% from the lower residents for their share of the hydro. The tenant's concern is that the elevated use of hydro due to the fact that both units are on the same service, has moved the electricity billing into the "second tier" which drastically increased the rates for usage. According to the tenant, the hydro costs suddenly made a huge jump and the tenant felt that this unexpected expense was not fair.

The landlord testified that the tenancy agreement confirms that the hydro is not included in rent and that the tenants are responsible to pay the hydro. The landlord acknowledged that the tenant was required to place the hydro account in their own name and that this account was for hydro used by both the tenant's unit and the other unit on the ground floor. The landlord testified that, when the tenant received the invoice for the combined usage, the tenant would be expected to collect partial payment from the occupants of the other suite for their 40% share. The landlord testified that, although this specific arrangement was not outlined within the written tenancy agreement, it was discussed and all parties agreed with this protocol. The landlord's position is that the tenant's increased hydro costs did not occur due to any violations of the Act or agreement by the landlord and the tenant's claim for hydro reimbursement is therefore not justified under the Act.

Analysis - Monetary Compensation

The tenant was requesting a rent abatement for the reduction of value of the tenancy for the period in question due to the loss of use of one room and compensation for increased hydro charges.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, or their 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 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.

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that (i) are required or prohibited under this Act, or(ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities. In short, a dispute resolution officer has the authority to enforce both the Act and terms in a tenancy contract.

Loss of a Room

In regard to the landlord’s action in taking away the use of the main floor “play room” that had previously been used by the tenant and considered by the tenant to be part of

the tenancy premises, I find that section 14(1) states that a tenancy agreement may not be amended to change or remove a standard term, but a tenancy agreement can be amended to add, remove or change a term other than a standard term only if both parties agree.

Because there is a written tenancy agreement, I find that any subsequent terms or changes , such as a reduction of the space, must be through a written agreement signed by both parties as part of the tenancy agreement, in order to be valid and enforceable.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility without compensating the tenant accordingly.

For the reasons above, I find that the landlord reduction of the rental premises by one room entitled the tenant to be compensated for the loss of use and the reduced value of the tenancy, in the amount of $1,350.00.

Hydro Costs

With respect to the tenant's claim for hydro reimbursement, I find that the tenancy agreement signed by the parties does contain a clear term that utilities are not included in the rent.

However, I do not find a term in the tenancy agreement specifically detailing the hydro cost-sharing arrangement. That being said, I accept the testimony given by both the landlord and the tenant confirming that they both agreed that the tenant would put the hydro account in the tenant's name and collect 40% of the costs from the other residents in the lower suite.

Although the parties agreed to this arrangement, I find that section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if

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

Section 5 of the Act also states that landlords and tenants may not avoid or contract out of the Act or the regulations and that any attempt to avoid or contract out of the Act or the regulations is of no effect.

I find that the term in the tenancy agreement requiring that the tenant place the hydro account for shared utilities in their name and then be forced to collect usage costs from the renters in another suite, would be considered as an unconscionable term under the Act and as such cannot be enforced.

I find that in situations where the utility is under one account but services shared by two or more units, the landlord must place the utility accounts in the landlord's name and either collect the proportionate share each month from the occupants of the different suites, or include utilities in the rents.

With respect to the tenant's monetary claim for reimbursement of utility costs, I accept the tenant's testimony that the hydro expenses did escalate, but I find that this was not due to a violation of the Act or agreement by the landlord. I find that that the tenant's claim for the extra utility costs has failed element 2 of the test for damages and must therefore be dismissed.

Conclusion

Based on the testimony and evidence I find that the tenant is entitled to total reimbursement of $1,400.00 comprised of $1,350.00 for nine months without the use of the extra room on the main floor and the $50.00 cost of the application. This compensation will be paid through a rent abatement of $1,400.00 otherwise owed for the month of August 2012.

The remainder of the tenant's application is dismissed without leave.

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: July 11, 2012.

Residential Tenancy Branch