



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, ERP, O, PSF, RP, RR, ERP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for an order to cancel a Ten Day Notice to End Tenancy for Unpaid Rent, monetary compensation for reduced value to the tenancy, an order to force the landlord to make repairs and provide services and facilities required by law. The tenant was also requesting an order to force the landlord to do emergency repairs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence, that was properly served, and the testimony provided.

At the outset of the hearing, the landlord advised that the respondent named should be changed to exclude the name of the agent and only feature the company name. Therefore the style of cause has been amended to show only the company name as respondent.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation under section 67 of the Act and a retroactive a rent abatement for lack of facilities and services?

Is the tenant entitled to an order to force the landlord to make repairs?

Should the One Month Notice to End Tenancy for Cause and 10-Day Notice to End Tenancy for Unpaid Rent be cancelled?

Background and Evidence

Submitted into evidence were the following:

- Written testimony
- Copies of communications
- A copy of the 10-Day Notice to End Tenancy for Unpaid Rent
- A copy of the One Month Notice to End Tenancy for Cause
- Copies of invoices
- Photographs

The tenancy began in April 2012 with rent set at \$1,500.00, plus utilities of \$170.00 per month.

The tenant testified that, since moving into the unit, they have endured serious deficiencies including chronic leaking of the roof, water infusion into wiring pouring from light fixtures, sewer smells due to an improperly trapped sink drain, and problems with the heating. The tenant stated that the landlord failed to respond to their complaints for the most part, and when the landlord did send repairmen, no prior notice was given to the tenants and the leaking roof was not properly fixed.

The tenant testified that, although they have been contributing to the cost of the heating, they did not receive their share of the heat because the thermostat was in another unit. The tenant testified that, after not response from the landlord, they finally felt it necessary to rectify this problem on their own, without any assistance from the landlord.

The tenant testified that the value of their rental unit was affected by the above deficiencies and is seeking a retro-active rent abatement of \$400.00 per month for the leaking roof and \$70.00 less for utility costs.

The tenant acknowledged that they did withhold rent to get the landlord's attention.

The landlord testified that they attempted to address all of the tenant's complaints and submitted undated copies of invoices for roof repairs.

The landlord testified that, in addition to withholding portions of their rent, the tenant was also repeatedly late in paying the rent. The landlord submitted proof in the form of copies of communications with the tenant over the course of the tenancy.

Analysis 10-Day Notice to End Tenancy for Unpaid Rent

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Given the testimony of the tenant, I find that the tenant did not pay the rent when rent was due, nor did the tenant pay the arrears within 5 days of receiving the Notice to End Tenancy for Unpaid Rent.

I find that, under the Act, the tenant did not have a right to withhold the rent. I make no findings with respect to the amount of the arrears owed. Accordingly, I must dismiss the tenant's application requesting an order to cancel the Ten-Day Notice.

As the tenancy is ending, the tenant's request for repairs is moot.

Analysis - Monetary Compensation

The tenant was requesting a retroactive rent abatement for the reduction of value of the tenancy, given the reduced quality of life due to chronic problems with the rental unit.

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.

I find that 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.

In this instance, I accept the tenant's evidence that the roof leak was chronic and find that the use of the kitchen was restricted because of the landlord's failure to comply with section 32 of the Act. I find that the tenant was subjected to discomfort because of safety concerns about the leaks of water coming from the light fixtures. I further find that the landlord's failure to ensure that the rental unit was properly heated, also served to lower the value of the tenancy for four months.

Based on the evidence, I find that the roof leaks described by the tenant would justify a retro-active rent abatement of 20% of the rent, or \$300.00 per month for total compensation to the tenant, over the entire tenancy of \$3,000.00.

Based on the evidence, I find that the value of the heating issue was \$40.00 per month, for four months totaling \$160.00 compensation to the tenant for the period in question.

Given the above, I find that the tenant is entitled to total compensation in the amount of \$3,210.00 comprised of \$3,000.00 for the leaking roof, \$160.00 for the heating problems and the \$50.00 cost of the application.

I hereby grant a monetary order in favour of the tenant for \$3,210.00. This order must be served on the landlord in person or by registered mail and can be enforced through Small Claims Court if necessary.

The remainder of the tenant's application, including the request to cancel the Ten Day Notice to End Tenancy for Unpaid Rent and the One-Month Notice to End Tenancy for Cause, is dismissed without leave.

Conclusion

The tenant is partially successful in the application and is awarded a monetary order reflecting a retro-active rent abatement. The tenant's request for the Notices to End Tenancy is dismissed and the request for repairs is determined to be moot.

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 6, 2013, 2013