Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, ERP, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for devalued tenancy over a 10-month period day period due to the landlord's failure to comply with a previous order for repairs. The tenant is also seeking compensation for excess rent, an order that the landlord and the tenancy agreement be required to comply with the Act, an order to force the landlord to complete repairs and an order to force the landlord to make emergency repairs.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on February 9, 2013, as verified by the Canada Post Tracking number, the respondent did not appear. The hearing was therefore conducted in the respondent's absence.

Issue(s) to be Decided

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

- Is the tenant entitled to monetary compensation under section 67 of the Act for damages or loss?
- Is the tenant entitled to an order for a rent abatement?
- Should the landlord 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 tenancy began on April 27, 2012 with rent set at $4,000.00. A security deposit of $2,000.00 was paid.

The tenant testified that the fixed term tenancy agreement contained a term that provided for an escalating rental rate, with increases of $1,000.00 after 6 months increasing the rent to $5,000.00, and an additional $1,000.00 per month, increasing the rent to $6,000.00 per month for the final 12 months of the two-year term.

In support of the tenant's testimony, a copy of the tenancy agreement was in evidence and verified that, under the heading "*RENT*" the agreement indicated the following:

> *"The tenant will pay rent of* *4000/6 mnths*
>
> *5000/6 mnths*
>
> *6000/12 mnths"*
>
> *(Reproduced as written)*

The written tenancy agreement indicated that rent is due on the first day of each month and there were no additional details within the agreement with respect to the rental rates being charged. The tenant acknowledged that they had willingly signed the tenancy agreement, but testified that they were confused about the rent terms. The landlord's signature was not on the written agreement.

The tenant testified that, from the outset of the tenancy, there were serious condition deficiencies affecting the rental unit that impacted the tenant's safety and general livability in certain areas of the rental unit. According to the tenant, they could only utilize approximately 3,000 square feet of the 6,000 square-foot residence. The tenant testified that entire portions of the home were compromised by malfunctioning pumps and a damaged heating system in the pool house, shattered and dangerous skylights in the dining room, inadequate heating in the main residence and electrical issues that placed their safety at risk. The tenant testified that, more recently, a leak in the roof has begun to compromise the third floor.

The tenant testified that, after their repeated efforts to convince the landlord to address the needed repairs failed, the tenant took the matter to dispute resolution in 2012 and obtained orders against the landlord. Copies of the orders, dated November 26, 2012, were submitted into evidence. The arbitrator presiding over the previous hearing ordered that the landlord complete the following:

> *"The main heating system in the rental unit is to be assessed to determine if any repairs are required to ensure that the heating system functions reasonably, and is able to heat the rental unit to a reasonable temperature. If any repairs to the heating system in the rental unit are required, the landlord is to ensure that those repairs are completed in a timely manner and at no cost to the tenants.*

The large skylight in the rental unit is to be assessed for any needed repairs, and if the required cost of repairs exceeds $500.00, the landlord is to ensure that the repairs are done in a timely manner, and at no cost to the tenants.

The wiring of the rental unit is to be assessed for any needed repairs, and if the required cost of repairs exceeds $500.00, the landlord is to ensure that the repairs are done in a timely manner, and at no cost to the tenants.

The swimming pool heater in the rental unit is to be assessed for any needed repairs, and if the required cost of repairs exceeds $500.00, the landlord is to ensure that the repairs are done in a timely manner, and at no cost to the tenants.

The swimming pool room furnace in the rental unit is to be assessed for any needed repairs, and if the required cost of repairs exceeds $500.00, the landlord is to ensure that the repairs are done in a timely manner, and at no cost to the tenants."

The tenant testified that the landlord did not comply with a single item contained in the above orders.

The tenant testified that they contacted experts in the relevant disciplines on their own and obtained inspection reports and estimates for repairs to the substandard services and facilities of the rental unit. These documents were submitted into evidence and confirmed that there were serious safety concerns and inadequacies that affected the living conditions in the rental unit.

The tenants are seeking a rent reduction of 50% to reflect the loss of value for the first 10 months of their tenancy, and are asking that the abatement continue until the residence is brought up to minimal safety and building code standards by qualified contractors.

The tenant is also seeking an order for emergency repairs to the roof, which has now started leaking into an area on the third floor of the residence.

The tenant stated that this landlord should be fined under the penalty provisions of the Act for ignoring the orders issued by the arbitrator on November 26, 2013.

Analysis – Tenancy Agreement

Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

(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 the use of common areas or services or facilities.

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement.

However, section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if: the term is not consistent with the Act or Regulations or is not expressed in a manner that clearly communicates the rights and obligations under it. (my emphasis)

Section 5 of the Act also provides that landlords or tenants may not avoid or contract out of the Act or Regulation and that any attempt to avoid or contract out of the Act or Regulations is of no force or effect. (my emphasis)

In this instance, the tenant had signed a written tenancy agreement, which was in evidence. However, I find that the landlord had not signed the agreement. Moreover, I find that the term purporting to impose incremental rent increases as part of the agreement is outside the Act and therefore this term could not be enforced whether it was in writing or merely a verbal term.

I find that the term changing the rent every 6 months constitutes an attempt to avoid section 43 of the Act, which states that rent increases must be imposed in accordance with the Act and regulations. The Act provides that, if a landlord collects a rent increase that does not comply with the Act, the tenant may deduct the increase from rent or otherwise recover the increase.

In this case I find that the written tenancy agreement is not compliant with the Act with respect to the automatically increasing rental rate. Due to the missing signature of the landlord on the document, I also find that the tenancy terms, including the alleged two-year fixed term provision, cannot be enforced. Accordingly, I find that, in the absence of a compliant written fixed-term contract, signed by both parties, this tenancy agreement is considered to be a month-to-month tenancy with standard terms under the Act.

In addition to the above, I find that, if these parties had entered into any ancillary agreements relating to the provision of labour by the tenant for value or rent credits funded by the landlord, this would be a negotiated contract between the parties that falls

outside the Residential Tenancy Act. I find that I lack statutory authority to hear, interpret, consider or enforce any terms of a work-for-rent labour or employment contract with respect to this these parties.

Based on the evidence before me, I find as a fact that the tenancy was established with a rental rate of $4,000.00 per month, and the tenant paid a security deposit that was equivalent to one-half a month rent, in the amount of $2,000.00, now held in trust by the landlord.

With respect to the tenant's claim for over-paid rent for the month of November 2012, I find that this matter was already dealt with in the previous decision of November 26, 2012, and therefore cannot be revisited in this hearing because the matter is Rez Judicata, meaning that it has already been determined.

However, with respect to the tenant's claims for over-paid rent of $1,000.00 for each of the months of, December 2012, January 2013 and February 2013, I find that the tenant is entitled to be reimbursed in the amount of $3,000.00.

Monetary Compensation

The tenant was requesting a rent abatement of 50% for the reduction of value of the tenancy, based on the reduced area and diminished 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.

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 by the landlord, and a corresponding loss to the tenant.

Regardless of any agreements or representations made by the parties in negotiating their tenancy, I find that section 32 of the Act requires that a landlord 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 accept the tenant's testimony and supporting evidence that proves the landlord did not comply with section 32 of the Act from the start of the tenancy, as this was confirmed by previous orders, as well as estimates and inspection reports submitted into evidence by the tenant.

I find that, despite being ordered by an adjudicator to investigate and rectify the existing problems, the landlord has continued to violate the Act, and the previously issued orders, by failing to take action toward complying with either.

I find that the tenant has clearly suffered a loss of value to the tenancy and their quality of life, in addition to restrictions of use and space. Accordingly, I hereby grant the tenant's request for a retro-active rent abatement in the amount of 50%, or $2,000.00 per month for the past 10 months of the tenancy, for a total rent abatement of $20,000.00.

I further find that the tenant is entitled to a continuing rent abatement of 50% going forward, until all of the conditions below are satisfied:

- the landlord finally investigates the deficiencies using qualified experts in the various fields;
- the landlord employs qualified trades people to rectify the stated deficiencies and any other repairs found to be required by municipal building codes;
- the landlord makes an application for dispute resolution and successfully proving, to the satisfaction of the Adjudicator of that hearing, that the above two steps were completed, and;
- obtains an order reinstating the rental rate back to the original $4,000.00 per month.

Emergency Repairs

With respect to the leaking roof, including the damaged skylights, I find that this may possibly be considered as an emergency repair under section 33(1) of the Act, which defines **"emergency repairs"** to mean repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof, (my emphasis)

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

I order that, within 3 weeks of receiving this decision, the landlord engage a contractor to assess the roof to determine whether or not there is a *major* leak that meets the above criteria as an emergency repair, failing which the tenant is at liberty to engage a qualified contractor to assess the damage.

If it is determined by a qualified professional that the roof damage requires attention as an emergency repair, the parties are expected to comply with provisions outlined in sections 33(2) through 33 (7) of the Act. The tenant is also at liberty to make an application for dispute resolution seeking further orders with respect to this matter if it is not satisfactorily resolved within 2 months of the date of this decision.

Based on the evidence before me, I find that this tenancy agreement is a month-to-month agreement comprised of verbal terms that include rent of $4,000.00 per month, a security deposit of $2,000.00 held in trust for the tenant and containing all of the required standard terms specified under the Act.

Based on the evidence before me, I find that the tenant is entitled to monetary compensation in the amount of $23,100.00 comprised of $3,000.00 in excess rent paid with respect to December 2012, January 2013 and February 2013, $20,000.00 retro-active rent abatement for 10 months and the $100.00 cost of this application.

I hereby grant the tenant a monetary order in the amount of $23,100.00. This order must be served on the landlord and may be enforced through an application to Small Claims Court if unpaid.

I order that a rent abatement of $2,000.00 per month will continue until the landlord successfully rectifies the deficiencies identified, including the leaking roof, and also obtains an order to restore the rental rate to $4,000.00 per month.

This would require the landlord to prove to the satisfaction of the arbitrator conducting the hearing, that the landlord has fully complied with the previous orders issued on November 26, 2012 and satisfied the statutory standards imposed by section 32 of the Act.

Conclusion

The tenant is successful in the application and is granted a monetary order for a retro-active rent abatement, as well as, an order for a continuing rent abatement to continue until the landlord complies with previous orders and the Act.

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 04, 2013

Residential Tenancy Branch