



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, ERP

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for reduced value to the tenancy for the loss of use of one bedroom and loss of use of the dryer for over 7 months. 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 evidence and testimony provided.

At the outset of the hearing, the tenant advised that the landlord had already made all of the requested repairs on February 14, 2013. The tenant testified that the only outstanding issue to be dealt with, relating to the request for repairs, is the replacement of the contaminated carpet in the living room.

The tenant is still seeking retro-active compensation for loss of value to the tenancy for seven and a half months, due to the loss of use of one bedroom and restriction of a facility.

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 remove and replace the living room carpet?

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

Background and Evidence

Submitted into evidence was:

- A copy of the tenancy agreement
- Copies of communications
- A copy of a move-in condition inspection report
- Copies of Notices for Unpaid Rent
- Copies of invoices
- Photographs
- A list of deficiencies in the suite needing repair

The tenancy began in July 2012 with rent set at \$500.00.

The tenant testified that, in mid July 2012, shortly after they moved in, they reported a strong odour of cat urine in the carpeting in the master suite bedroom to the landlord and other problems with the suite, including the lack of a dryer vent, which prevented use of the dryer.

The tenant testified that they received permission to tear out the carpet in the master bedroom and were reimbursed for the cost by the landlord. However, according to the tenant, the flooring underneath the carpet was still in a deteriorated state and the offensive odour remained, overpowering them to the extent that they could not use the room, even after repeatedly spraying the floor with deodorizer. The tenant referenced some of the photos in evidence showing the deficient condition of the bedroom floor.

The tenant stated that, they were forced to sleep in the second bedroom. The tenant testified that, although the landlord did finally address this problem, it wasn't fully rectified until February 14, 2013. The tenant is therefore claiming a retro-active rent reduction of \$150.00 per month from July 1, 2012, until February 14, 2013 for loss of use of the master bedroom. The total claim for the 7.5 months is \$1,125.00.

The landlord testified that, shortly after the tenant moved in, they received a complaint from the tenant about the carpeting and a list of other problems that the tenant wanted the landlord to address.

The landlord testified that, although the landlord could not detect any odour in the carpet, they still acted on the tenant's complaint by approving and paying for the removal of the damaged carpet. The landlord testified that she referred the matter to their handyman and presumed that all of the repair issues that the tenant had brought to their attention were completely dealt with by September 2012. The landlord stated that the tenant should have let them know, at that time, that he was not satisfied with the existing under-flooring after the carpet was removed.

The landlord testified that they disagreed with the tenant's allegation that the room was totally unusable and pointed out that the tenant was utilizing the room in question for other purposes. The landlord made reference to the photos showing that there were some items and furniture being stored in the room. The landlord also disputed the amount of the rent abatement being claimed by the tenant. The landlord felt that the value for the loss of one of the two bedrooms was likely only worth \$50.00 per month, a reduction which would total \$375.00 over the affected period.

In regard to the deficiencies in the laundry room, the tenant testified that they bought the existing washing machine and dryer from the previous occupants. The tenant testified that they were shocked to find that there was no existing vent for the dryer and also that the 220 amp outlet had been disabled, both located in the laundry room. The tenant referred to the photograph confirming that there was no vent in the wall of the laundry room behind the clothes dryer.

The tenant testified that this was reported to the landlord, but was not addressed until recently and the tenant was therefore forced to incur the costs and inconvenience of a weekly trip to the Laundromat for 7 ½ months, which the tenant valued at \$50.00 per month, including costs for drying and cab fare, for total compensation of \$375.00.

The tenant is also requesting an additional abatement of \$100.00 per month for *"inconvenience"*.

The landlord testified that the tenant had reported the vent problem but neglected to follow-up to let the landlord know that it had not been fixed by the landlord's handyman. The landlord testified that the handyman was assigned to fix the list of deficiencies identified by the tenant and the landlord testified that they believed that this had been completed in September 2012. According to the landlord, they were not aware that the tenant was still not satisfied with the repairs until this application for dispute resolution was served.

Analysis - Monetary Compensation

The tenant was requesting a rent abatement for the reduction of value of the tenancy, given the reduced quality of life due to the loss of one of the bedrooms and the fact they could not use the dryer for the period in question.

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.

I find that section 27 of the Act states that if a service or facility that is part of the tenancy, is not essential or not considered a material term of the agreement, a landlord may restrict or remove the service or facility, provided that the landlord first gives the tenant 30 days written notice and provided that the landlord also reduces the rent equivalent to the value of the service or facility.

In this instance, I find that the use of the second bedroom was restricted because of the landlord's failure to comply with section 32 of the Act. I further find that the landlord's failure to provide a vent for the dryer also served to deny the tenant use of a facility that was part of the tenancy.

Based on the evidence, I find that the tenant's loss of the use of one bedroom would justify an abatement of 20% of the rent, or \$100.00 per month for total compensation to the tenant of \$750.00.

Based on the evidence, I find that the value of the dryer facility was \$40.00 per month, for total compensation of \$300.00 to the tenant for the period in question.

With respect to the tenant's claim of \$100.00 per month for "inconvenience", I find insufficient evidence to support this as a valid tangible loss and I also find that that a situation of this nature does not justify awarding aggravated damages for intangible losses. Therefore, this portion of the tenant's application is dismissed.

Given the above, I find that the tenant is entitled to total compensation in the amount of \$1,050.00 comprised of \$750.00 for loss of the use of one bedroom and \$300.00 for loss of the dryer.

I hereby grant a monetary order in favour of the tenant for \$1,050.00. 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 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.

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: February 20, 2013

Residential Tenancy Branch

