



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent, and monetary compensation for devalued tenancy due to loss of use of one room because of mould and a nonfunctioning dishwasher.

The co-tenants attended the hearing and the landlord was represented by an agent. 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 affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Should the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled?

Is the tenant entitled to monetary compensation under section 67 of the Act for damages or loss and a rent abatement?

Background and Evidence

The tenancy began in October 2012 with rent set at \$1,300.00. A security deposit of \$650.00 was paid.

The landlord testified that the tenant fell into arrears with rent and by April 3, 2013 had accrued a debt of \$510.00. The landlord acknowledged that the landlord did not keep a tenant ledger and only relied on his own copies of receipts, issued to the tenant, to calculate the status of the rental account.

The landlord testified that the landlord had claimed delinquent utilities in the amount of \$1,835.14 on the 10-Day Notice to End Tenancy for Unpaid Rent. The landlord stated that this was because the tenant had fallen behind in their utility payments owed to the utility company.

The landlord acknowledged that the utility account was in the tenant's name. However, the landlord had a concern that the arrears in utilities for the rental unit, if left unpaid by the tenant, would be transferred to the landlord's municipal tax account. Apparently the debt has not yet been allocated to the landlord's taxes.

The tenant testified that the landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent and utilities that had no basis. According to the tenant, their rent was paid in full in April 2013 in two installments, but the landlord neglected to issue a receipt for the second portion paid.

The tenant disputed the utility claim on the basis that the account was not in the landlord's name and therefore did not constitute rental arrears under the Act. The tenant also testified that they were paying their own bill to the company on a payment plan, which had nothing to do with their rental contract.

With respect to the tenant's monetary claim for compensation, the tenant testified that, although the dishwasher is included as an appliance for their use under the rental contract, it never functioned. The tenant testified that they brought their concerns to the landlord, but nothing was done. The tenant is seeking a rent abatement equivalent to \$5.00 per day for the loss of this amenity.

The landlord argued that the parties discussed the non-functioning dishwasher at the start of the tenancy and the tenant was aware that use of a dishwasher was not included in the rent. The landlord testified that, although the tenancy agreement shows that the unit has a dishwasher, this appliance was included in the rental contract in error. The landlord also felt that the claimed loss of \$5.00 per day was excessive and estimated the loss at \$50.00 per month.

The tenant testified that they discovered a serious problem with mould in the unit on April 4, 2013 and lost the use of one room due to possible contamination. The tenant is claiming a rent abatement of \$300.00 per month based on devalued tenancy.

The landlord stated that a contractor was called to look at the problem with mould but this has not yet been inspected. The Landlord stated that they are willing to assess the problem and take measures if necessary.

Analysis

Ten Day Notice

In regard to the 10-Day Notice to End Tenancy for Unpaid Rent, I find that the landlord has incorrectly included a claim for utility arrears as part of the arrears, despite the fact that the utility account is in the tenant's name. I also find that the landlord did not supply sufficient evidence, in the form of a tenant ledger or other records, to verify that the tenant's rental account was delinquent.

Given the above, I find that the 10-Day Notice to End Tenancy for Unpaid Rent dated April 3, 2013 was not sufficiently supported and must therefore be cancelled.

Rent Abatement

The tenant has claimed a retro-active rent abatement for loss of value to the tenancy due to a non-working dishwasher and mould contamination affecting one room. 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, and
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 or agreement and a corresponding loss.

Based on the written tenancy agreement and the presence of a dishwasher located in the kitchen, I find that the landlord and tenant had contracted for a tenancy that included the use of a dishwasher and the expectation under section 32 of the Act as well as the contract, is that this be provided in working order. I find that the tenant did incur a loss of value due to the landlord's noncompliance with the written terms of the tenancy agreement. I set this amount at approximately \$2.50 per day and order a rent abatement of \$75.00 per month retro-active from October 1, 2012 to May 31, 2013, totalling \$600.00. I further order that the abatement will continue unless, and until, the landlord provides a working dishwasher properly connected to the water and power. On the first day of the month following the installation of the dishwasher, I order that the \$75.00 abatement in the tenant's rent will cease.

With respect to the tenant's claim for a rent abatement for the loss of one room due to mould, 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 regard to the issue of mould, I find that the landlord has an obligation under section 32 of the Act to ensure that the premises are safe and fit for human habitation. I find that, when an issue, such as mould contamination, is reported, the tenant is justified, in the interest of health and hygiene to not use the potentially afflicted room until the landlord responds by having the matter looked into by a person specializing in mould concerns. The specialist must determine whether there is a genuine risk and what is recommended to be done to rectify any hazard, if any risk exists.

Although it is an expectation that the landlord should be permitted reasonable time to respond to and rectify a problem, I find that the landlord has not taken sufficient action to date, in response to this serious complaint. In the interim, the tenant has been deprived of the use of an area of the rental unit, for which the tenant is currently paying rent under the contract.

I accept the landlord's testimony that they are willing to assess the mould issue and, through a professional, will determine whether there is a health risk, and what action is warranted under the circumstances.

That being said, I find that a temporary rent abatement is justified based on the loss of area in the unit and I grant the tenant a further abatement in the amount of \$250.00 per month retroactive to April 2013, totalling \$500.00. I order that this abatement continue until the landlord engages a qualified specialist to inspect the problem and then issue a written report, a copy of which must be provided to the tenant. The landlord must ensure, through documentation, that the use of the room in question is safe. I find that

the rent abatement will cease on the first month following the mould eradication and safety clearance report.

In this instance, whether within the control of the landlord or not, I find that there were deficiencies under the contractual obligations of the tenancy agreement for the period under dispute and contraventions of the Act that have affected this tenancy.

I find that the tenant is entitled to compensation in a lump-sum abatement of \$1,100.00 comprised of \$600.00 for the loss of use of the dishwasher from October 1, 2012 to May 31, 2013 and \$500.00 for the loss of use of one room for April and May 2013. I order that the tenant may deduct the amount of \$1,100.00 from rent payments owed in future.

I order that the tenant's continuing abated rent will be \$1,300 minus \$325.00 representing \$75.00 each month that the tenant is without a dishwasher and \$250.00 for each month that the room with the reported mould is not cleared for safe. Accordingly the tenant's rent is now set at \$975.00 per month as of June 1, 2013 and will continue at the reduced rate until each of the above matters are resolved.

The 10-Day Notice to End Tenancy for Unpaid Rent dated April 3, 2013, is hereby cancelled and of no force nor effect.

Conclusion

The tenant is successful in the application and the 10-Day Notice to End Tenancy for Unpaid Rent is cancelled and the tenant is also granted a retroactive rent abatement and a continuing abatement reflecting the devalued tenancy until the condition issues under dispute are resolved.

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: May 06, 2013

Residential Tenancy Branch

