



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, ERP, RPP

Introduction

The hearing was convened to deal with an application by the tenant for a monetary order for a rent abatement due to being unable to inhabit the rental unit on during March and April 2013, despite having paid rent to the landlord, and order for the return of the tenant's security deposit and pet damage deposit and an order that the landlord return the tenant's property.

The tenant's application had initially included a request for an order to force the landlord to complete emergency repairs and to cancel a One-Month Notice to End Tenancy for Cause. However, the tenant has since vacated the rental unit and these matters were found to be moot.

The applicant was present and participated in the hearing. It was verified that the respondent was properly served with the Notice of Hearing documents by registered mail sent on April 18, 2013. The Canada Post tracking number showed that the hearing package was successfully received and signed for by the landlord on April 19, 2013. However, the respondent landlord did not appear and the hearing was therefore conducted in the respondent's absence.

Issues to be Decided for the Tenant's Application

Is the tenant entitled to a retro-active rent abatement for rent paid for the months of March and April 2013 and the return of the security and pet damage deposit?

Should the landlord be ordered to return the tenant's personal property?

Background

The tenant testified that the tenancy started on February 1, 2013, with rent set at \$400.00, plus \$50.00 hydro per month, payable to another renter in the complex who

was responsible for the utility account. A security deposit of \$200.00 and pet damage deposit of \$100.00 had been paid at the start of the tenancy.

The tenant testified that her rent was paid directly by the Ministry to the landlord. The tenant testified that in March 2013, despite having paid rent in full, the tenant's hydro was suddenly turned off leaving the tenant without essential services. Apparently the hydro account had not been paid by the account holder living in the complex. The tenant stated that suddenly there was no hot water, refrigeration, lights or any other electrical services. The tenant testified that she was forced to immediately find and pay for another place to stay temporarily. The tenant added that she could not function without hydro services for any duration, due to her special needs. The tenant testified that the landlord took no action, and in fact, proceeded to cash her April \$400.00 rent cheque sent from the Ministry, despite the situation.

The tenant stated that she was unfairly deprived of her home and is seeking a rent abatement of \$400.00 for the month of March and \$400.00 for the month of April 2013.

The tenant stated that she is now in a position of having to relocate permanently and has requested an order for the return of her \$200.00 security deposit and \$100.00 pet damage deposit and an order to force the landlord to return her possessions that are still being stored in the deficient rental unit.

In addition, the tenant had requested to amend the application to add a claim for further damages including moving costs. The request to amend the application to add damages was denied because the landlord had not been notified. However, the tenant is at liberty to make a separate application with respect to this matter.

Analysis

I accept the tenant's undisputed testimony with respect to the loss of hydro services and its impact on her tenancy.

In regard to an applicant's right to claim damages from another party, section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants the Arbitrator authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant 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.

I find that section 32 of the Act imposes responsibilities on the 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, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

I find that the deprivation of hydro services functioned to render the tenant's rental unit completely unfit for habitation and the landlord has therefore failed to meet the landlord's responsibilities under section 32 of the Act. I further find that this violation caused the tenant a loss of value to her tenancy for the two-month period of March and April 2013, as a result and moreover, it unfairly forced the tenant to find different accommodation abandoning the rental unit that she had duly paid for.

Based on the evidence, I find that the tenant is entitled to a rent abatement of \$400.00 for the month of March and \$400.00 for the month of April 2013.

I further find that the hydro arrangement imposed on this tenant to be an unconscionable term of the tenancy under section 6 of the Act, because it requires that the different tenancies sharing hydro be compelled to pay another tenant in whose name the account was placed. I find it unconscionable that the tenant has been unfairly forced to rely on a third party, instead of the landlord, for their continued utility services.

Given the above, I find that the tenant bears no responsibility, nor liability, for ending her tenancy and I find that the dissolution of this tenancy agreement was caused primarily by the landlord's failure to follow the Act.

On this basis, I order that the tenancy agreement between this tenant and landlord was terminated effective May 1, 2013. Accordingly, the landlord must refund the tenant's \$200.00 security deposit and \$100.00 pet damage deposit without delay.

I further order that the landlord permit the tenant to retrieve her personal property at a mutually agreeable time and date. Should the landlord fail to surrender the tenant's possessions, the tenant is at liberty to seek compensation for the value of the belongings.

I hereby grant the tenant a Monetary Order in the amount of \$1,100.00, comprised of a retro-active rent abatement of \$800.00 and the return of the \$200 security deposit and \$100.00 pet damage deposit. This order must be served on the Respondent landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in the application and is granted a monetary order for a rent abatement and the immediate refund of the security and pet damage deposits. The landlord is also ordered to surrender the tenant's personal property.

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 15, 2013

Residential Tenancy Branch