



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for loss of enjoyment of the rental unit and devalued tenancy.

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 affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

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 June 1, 2010 and the current rent is \$2,133.98. A security deposit of \$1,000.00 was paid.

The tenant testified that, from the very start of the tenancy, numerous issues came up that involved the landlord interfering with the tenant's right to quiet enjoyment. The tenant testified that a previous hearing was held in which the tenant was granted monetary compensation for loss of quiet enjoyment. A copy of the previous decision was submitted into evidence.

The tenant testified that, since that earlier hearing, the landlord continued to purposely destroy the tenant's right to quiet enjoyment and, according to the tenant, this devalued the tenancy in the amount of \$25,000.00.

The tenant testified that the incidents that affected their tenancy include the following:

Septic System.

- Landlord's neglect and slow responses to complaints and emergencies.
- Chronic problems with the septic system, culminating in a 3-day period without functioning plumbing.
- A complete loss of use of the lower floor for a period of 1 week due to sewage back-up and flooding, as well as restricted use for approximately 1 month pending clean-up.
- Forced to vacate for 2 days in February 2013, as septic system alarm went off.
- Inability to safely use the yard for 2 to 3 weeks, due to an open hole left for access to the septic tank. The tenant finally had to fill in the hole.
- Not being able to conduct business on the premises resulting in a loss of income.
- Medical symptoms related to the septic system back-up.

Interference and Harassment

- Repeated 10-Day Notices to End Tenancy for Unpaid Rent served by the landlord, who neglected to pick-up or cash the tenant's rent cheques.
- Stress and confusion caused by conflicting directions with respect to whom they should give the rent cheques.
- Inadequate information given with respect to what will be happening with the tenancy, due to foreclosure proceedings on the property.
- People showing up seeking access to inspect the unit, without proper written Notice as required under the Act.
- Being bothered by, and unwillingly drawn into, a legal dispute between the co-owners.

The tenant feels that they are entitled to be compensated in the amount of \$25,000.00 for the devaluation of their tenancy due to loss or restricted use of facilities and loss of quiet enjoyment.

The landlord disputed the tenant's testimony and claims. The landlord testified that they responded in a timely manner to the tenant's requests and dealt with each problem as it arose. The landlord acknowledged that problems arose with the septic system, and each time, according to the landlord, they employed contractors to rectify the problem as quickly as possible. The landlord stated that, as soon as they finished the clean-up, the premises were fully fit for use, with the exception of one piece of warped transition strip. The landlord pointed out that they did not receive any complaints from the tenant with respect to the condition of the lower portion once the cleanup was done.

In regard to the tenant's complaint that the repairs to the septic affected the tenant's ability to use the rental unit for business purposes, the landlord stated that the rental property is for residential use. The landlord pointed out that the tenant's claim for compensation, based on a business loss has no basis and is not a tenancy matter.

The landlord testified that there is no basis for the tenant to claim that they lost use of the space. According to the landlord, the tenant had arranged to have the flooring removed in the crawl space and the landlord reimbursed the tenant the \$600.00 that the renovation work cost.

The landlord also disputed that the tenant's claim for compensation due to health issues. The landlord stated that there is no evidence to connect the septic repair incidents with claimed medical problems allegedly affecting the tenants.

In regard to the tenant's allegation that when the septic alarm tripped it forced them to leave, the landlord testified that the matter was attended to immediately. The landlord pointed out that the alarm was functioning properly and alerted them to take action to clear the pump. The landlord testified that no further concerns were ever brought to their attention with regard to this matter, until the tenant made this monetary claim.

In regard to the tenant's allegation that they were unable to safely use the yard for 2 to 3 weeks, due to an open hole left for access to the septic tank, the landlord stated that this involved a minor opening that posed no danger to the tenant. The landlord testified that the tenant was asked if they could leave it open so that servicing the septic system would be more convenient. According to the landlord, the tenant merely asked them if they would mind if he covered over the hole himself and the landlord agreed. The landlord's position is that this does not warrant any compensation.

With respect to the tenant's allegations of harassment, the landlord disputed this testimony and denied that they engaged in this sort of conduct.

In regard to the tenant's accusation that the landlord was tardy in collecting the rent and cashing the cheques, the landlord pointed out that they had never consented to come to the rental unit to physically collect the rent as a regular practice. However, on a few occasions they accepted the tenant's request that they pick up the rent cheque, due to special circumstances.

The landlord testified that, as a condition of the tenancy, the tenant had originally been required to submit 12 post-dated cheques. The landlord testified that the tenants did not fulfill their responsibility to ensure that their rent was paid to the landlord on time, and this resulted in the landlord being compelled to issue numerous 10-Day Notices to End Tenancy for Unpaid Rent. The landlord testified that the tenant's cheques also failed to

clear on numerous occasions. The landlord pointed out that the fact they issued notices for unpaid rent would not be considered as a form of harassment.

In regard to the tenant's allegation that agents of the landlord repeatedly showed up on the premises on three occasions, the landlord stated that they had no knowledge that this was occurring and that the tenant was concerned about it. The landlord testified that, in fact, some of these individuals were not acting on the landlord's behalf.

The landlord stated that many of the tenant's complaints have been raised after-the-fact and the landlord has been disadvantaged by the fact that they were not apprised of the some of the alleged problems in time to address them. While the landlord acknowledged that the owners are involved in legal proceedings with regard to the rental property, the landlord stated that they have consistently tried to minimize any impact this would have on the tenancy.

The landlord stated that they do not agree with the tenant's monetary claim in any respect.

Analysis

Section 7 of the Act states that if a party fails to comply with the Act, or 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 authority to determine the amount and to order payment under such 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.

Septic Tank Issue

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 this would include taking reasonable steps to promptly attend to repairs as they arise.

In this regard, I find that numerous repair issues arose, that were disruptive and inconvenient to the tenant, particularly the back-up of the sewage. However, I also find that the landlord did not impose undue delays in addressing the problems as they arose and did respond within a reasonable time to the tenant's complaints. For this reason, I do not find that the landlord violated section 32 of the Act and therefore the tenant's claim for a rent abatement based on the landlord's alleged failure to address repairs under section 32 of the Act, does not satisfy the test for damages..

That being said, section 58 of the Act provides that 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.

(My emphasis)

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. *(My emphasis)*

Given the above, I find that, an arbitrator is authorized to make determinations with respect to the tenancy agreement the dispute before me on this application relates to the contractual expectations between the parties.

I find that the tenant entered into an agreement in good faith that permitted exclusive possession and quiet enjoyment of a home that was presented as safe and fit to live in. I find that there were some specific periods of time during which portions of this property were compromised and the incidents functioned to devalue the tenancy.

I accept the tenant's testimony that they were deprived of plumbing for 3 days, deprived of use of the lower portion of the rental unit for 7 days, felt it necessary to vacate the unit for 2 days due to a septic alarm and did not have full use of the yard for 3 weeks.

Whether it was within the control of the landlord or not, I find that some disruption did occur and the tenant deserves to be compensated. Accordingly I find that the tenant is entitled to the following compensation:

- \$210.48 representing 100% rent abatement for 3 days, during which the tenant was deprived of plumbing.
- \$ 245.56 representing a rent abatement of 50% for loss of use and enjoyment of the lower portion of the rental unit for 7 days.
- \$140.32 representing 100% abatement for two days disruption due to the septic alarm
- \$294.67 representing a rent abatement of 20% for 21 days for loss of use and enjoyment of a portion of the yard.

In regard to the requested compensation for medical symptoms claimed to be associated with the septic failures, I find that this portion of the claim fails to satisfy elements 2 and 3 of the test for damages. I find that the tenant has not submitted sufficient proof of the monetary loss, nor proof of the causal connection to the septic issue. Therefore I find that no compensation is warranted.

In regard to the portion of the tenant's monetary claim relating to a loss of business or income, I find that this is not a matter associated with a residential tenancy under the Act and this portion of the tenant's claim must be dismissed.

Interference and Harassment

In regard to the tenant's claim for compensation for interference and harassment by the landlord, I find that section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable, lawful purposes, free from interference.

I do not accept that the landlord's issuing of repeated 10-Day Notices to End Tenancy for Unpaid Rent constitute violations of section 28 of the Act. I find that, if the tenant has failed to ensure that the rent has been received by the landlord on or before the first day of each month, the landlord has the right to issue a Notice under the Act. I find that, if the landlord received the cheque on or before the first day of the month and then chooses not to cash it until after the first day of the month, a 10-Day Notice to End Tenancy for Unpaid Rent would not be warranted and should not be issued by the landlord. In such a circumstance, I find that the tenant has the option of disputing the Notice and recouping the cost of the application, if so deemed by the arbitrator.

In regard to the tenant's request for compensation for the stress and confusion caused by the landlord's conflicting directions with respect to whom they should give the rent cheques, I find that the landlord is required to give the tenant clear directions about how and where the rent is to be paid. I find that the tenant is obligated to follow the landlord's written instructions.

With respect to the tenant's allegation that inadequate information is being provided to them by the landlord, about the future of the tenancy, in light of the foreclosure proceedings, I find that there is no provision in the Act that requires that a landlord must disclose this information. However, I find that it is in the best interest of all parties to keep the tenant informed as early as possible about anything that may affect their tenancy.

In regard to the tenant's allegation that people have been showing up seeking access to inspect the unit without proper written Notice, as required under the Act, I find that the tenant is at liberty to deny access and that the tenant should

also send a written notification to the landlord to make them aware of these incidents. This portion of the tenant's claim is dismissed with leave to reapply, should the problem get out of hand in future.

With respect to the tenant's complaint that they have been bothered by, and unwillingly drawn into, a legal dispute between the co-owners, I find that this could be resolved by the landlord providing a letter to the tenant specifying that they may restrict communication to a single contact person. The landlord should also ensure that any third parties refrain from communicating directly with the tenants. The tenants would be required to refer any communications from third parties to their contact person, provided by the landlord.

Given the above, I find that the tenant is not entitled to compensation for interference and harassment by the landlord.

Based on the evidence before me, I find that the tenant is entitled to total compensation of \$941.03, comprised of \$210.48 for the 3 days without use of the plumbing, \$ 245.56 for the 7 days loss of use of the lower portion of the rental unit, \$140.32 for two days disruption due to the septic alarm, \$294.67 for 21 days loss of use of a portion of the yard and the \$50.00 cost of the application.

I hereby order that the tenant reduce the next rental payment owed to the landlord by \$941.03 as a one-time abatement to satisfy the monetary compensation to which they are entitled.

Conclusion

The tenants are partially successful with their claim and are granted a one-time rent abatement in the amount of \$941.03.

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: August 6, 2013

Residential Tenancy Branch