



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, LRE, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking a Monetary Order in compensation for damage or loss under the Act or agreement, and an Order for a retro-active rent abatement for 24 months of 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.

At the outset of the hearing the parties advised that the tenant vacated the rental unit since the application was filed, terminating the tenancy on August 12, 2013. The tenant is still pursuing monetary compensation and a rent abatement.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and a rent abatement for the landlord's failure to follow the Act or agreement?

Background and Evidence

The tenancy began on June 1, 2011 as a fixed term, but reverted to a month-to-month tenancy. The rent is \$1,350.00 per month, including utilities, and a security deposit of \$675.00 was paid.

The tenant testified that they had encountered moisture problems and mould early in the tenancy and, despite reporting this to the landlord, nothing was done. The tenant testified that they had to spend a significant amount of time cleaning up the mould and some of their possessions became contaminated over time. The tenant is requesting a rent abatement of \$50.00 per month as compensation for the landlord's failure to address the mould problem.

The landlord disputed the allegation that the unit was affected by mould and pointed out that the dampness in the rental unit was caused by the tenant not properly ventilating the unit. The landlord testified that the condominium has a warranty against mould and no remediation has been found to be necessary. The landlord disputes the tenant's claim for an abatement.

The tenant testified that they were forced to end their tenancy due to the landlord's repeated intrusions in showing the home to prospective purchasers. According to the tenant, they had repeated confrontations with the landlord and the realtor who made demands for access on short notice and pressured them to make the rental unit available at any time for the agent to show the suite.

The tenant testified that they finally reached a mutual agreement with the landlord to move out of the unit and, in exchange for their voluntary departure, the landlord had willingly agreed to give the tenants compensation of \$1,300.00. The tenant testified that on August 12, 2013, they fulfilled the promise to vacate and received a cheque from the landlord. The tenant testified that, to their shock, the cheque failed to clear as the landlord had put a stop payment on the cheque after issuing it to them.

The tenants are claiming compensation for the \$1,300.00 promised to them by the landlord. The tenants are also seeking a refund of their \$675.00 security deposit still being held in trust by the landlord.

The landlord disputed the tenant's version of what transpired with respect to the move-out arrangements. The landlord testified that he felt threatened by the tenants who refused to surrender the keys to the unit unless the landlord gave them the \$1,300.00 cheque. The landlord testified that the funds were issued in error, because the tenant actually still owed the landlord rent for a portion of August 2013. The landlord stated that this was the reason he had placed a stop-pay on the cheque.

According to the landlord, the tenant had originally given notice to move out of the unit effective July 31, 2013, and this notice was accepted by the landlord. However, the tenant did not vacate on July 31, 2013, but remained in the unit without paying until mid August 2013. The landlord testified that they did not refund the tenant's security deposit as they were never given a written forwarding address by the tenant.

Analysis

In regard to the monetary claim for a rental abatement, I find that section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the non-complying landlord or tenant must compensate the other for any damage or loss that results.

Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under such circumstances.

It is important to note that, in a claim for damage or loss under the Act, the party claiming the damage or loss 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, agreement or an order*
3. Verification of the amount to compensate for the loss or to rectify the damage.
4. Proof that the claimant took reasonable steps to minimize the loss or damage

In this instance, the burden of proof is on the tenant; to prove the existence of the damage/loss stemming directly from a contravention of the Act or agreement.

I find that a violation of the *Act* could certainly result from a landlord's repeated failure to address a tenant's complaint about the need for repairs. However, the tenant would need to prove that the disruption was of a significant level that violated the tenant's rights. Beyond that, the tenant would also have to prove, through evidence, that they made the landlord aware of the tenant's specific complaint and that the landlord was then afforded a reasonable opportunity to try and correct the situation in a manner that complies with the legislation.

While I accept that the tenant may have lodged some complaints with the landlord, about mould concerns, I find that the tenant did not pursue this matter to arbitration in a timely way during the two-year tenancy. I find that the tenant did not act to escalate the issue until close to the end of the tenancy.

For this reason, I find that the tenant's claim for a retro-active rent abatement has failed to sufficiently meet element 4 of the test for damages, because the tenant did not reasonably mitigate the loss by lodging their claim in a timely manner.

In regard to the tenant's allegation that the landlord had agreed to compensate them in the amount of \$1,300.00 to end the tenancy, I accept the tenant's testimony that this did influence them to agree to voluntarily terminate the tenancy.

However, I also accept the landlord's testimony that the original effective date that was agreed upon to end the tenancy was July 31, 2013. I accept that the tenant remained living in the rental unit beyond that date, without paying rent, from August 1 until August

12, 2013. Therefore, I find that the tenant would owe rent to the landlord in the amount of \$532.60 for that period and this compensation must be dealt with.

I find that the tenant is entitled to be compensated the \$1,300.00 that was agreed-upon by the landlord, minus the pro-rated rent of \$532.60 for over-holding and occupying the unit from August 1 to August 12, 2013. The remainder is \$767.40 still owed to the tenant.

I also find that the landlord is still holding the tenant's \$675.00 security deposit in trust.

With respect to the return of the security deposit, I find that section 38 of the Act requires that, within 15 days after the tenancy ends and the landlord receives the tenant's forwarding address in writing, the landlord must either: a) repay the security deposit or pet damage deposit to the tenant with interest or; b) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act provides that the landlord can only retain a deposit if, at the end of the tenancy, the tenant agrees in writing the landlord can keep it to satisfy a liability or obligation of the tenant, or if, the landlord has obtained an order through dispute resolution permitting the landlord to retain the deposit to satisfy a monetary claim against the tenant.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit under the Act

Therefore, I find that the tenant is entitled to a refund of the security deposit in the amount of \$675.00.

Based on the evidence, I find that the tenant is entitled to total compensation of \$1,492.40 comprised of \$767.40 left from the landlord's payment after deducting rent, \$675.00 security deposit and the \$50.00 cost of this application.

I hereby grant the tenant a monetary order in the amount of \$1,492.40. This order must be served on the landlord and may be enforced through Small claims Court if necessary. The remainder of the tenant's application is dismissed.

Conclusion

The tenant is partially successful in the application and is granted a monetary order.

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: September 03, 2013

Residential Tenancy Branch

