



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking monetary compensation for devalued tenancy due to the loss of use of portions of the rental unit and some facilities that were offered under the terms of the tenancy agreement.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on October 20, 2013, the respondent did not appear. The tenant testified that the mail was sent to the address supplied by the landlord in the landlord's application for the previous hearing, and this was confirmed by copies of the returned envelope with a notation from Canada Post that a card was left, but the recipient failed to pick up the mail.

I accept that the landlord was properly served and the hearing is to be conducted in the respondent's absence.

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?

Background and Evidence

Submitted into evidence was:

- A copy of an inspection report from a property inspection firm,
- Copies of communications,
- A copy of an invoice,
- Photographs, and
- A list of deficiencies in the suite that allegedly devalued the tenancy

The tenancy began in 2002 and rent was \$1,750.00. There is no written tenancy agreement. The tenant testified that that, at the time the tenancy began in 2002, the rental unit had included a working hot tub, working appliances including washer, dryer and dishwasher, and the home was in relatively good repair. According to the tenant, for the first 6 years of the tenancy any problems reported to the landlord were dealt with.

The tenant said that this gradually changed as the tenancy continued, and the landlord began to ignore the tenant's complaints. The tenant testified that over time the hot tub ceased to work, the dishwasher was leaking and not functional and the washer was no longer working. The tenant testified that the infrastructure of the building was also in a serious stage of deterioration affecting the front and rear access stairs, the deck and the plumbing. The tenant testified that a mildew smell developed in the lower level, with visible mould, rendering this area unusable.

The tenant testified that during the tenancy they were never given a physical address nor a mailing address to contact the landlord with their complaints in writing. However, according to the tenant, they made repeated verbal complaints about needed repairs to the landlord over the past few years without success. The tenant testified that, finally during the final 6 months of the tenancy, the landlord sent several contractors to examine the premises. The tenant testified that, despite the fact that these tradespersons were assessing the building, no repairs were done. The tenant testified that the tenant finally engaged a building inspection firm to determine whether the home in its current state was safe, at a cost of \$708.75. A copy of the report is in evidence. The tenant testified that, after reading the report and finding out that the home was rife with safety and health hazards rendering it no longer fit for habitation, the tenants felt it necessary to vacate the unit and moved out in August 2013.

The tenant's security deposit, paid at the start of the tenancy, has already been allocated towards credit for a monetary claim by the landlord granted during a previous hearing held on September 9, 2013 on the landlord's application.

The tenant feels that the landlord did not comply with their responsibility under the Act to maintain the rental unit. The tenant's position is that the tenancy was devalued by lack of repairs, services and facilities. The tenant is seeking a rent abatement of 50% for the past 6 months, during which the tenant alleges the home was virtually uninhabitable and 20% of the rent for the prior 18 months before that.

Analysis - Monetary Compensation

The tenant was requesting a retro-active rent abatement for the reduction of value of the tenancy. This is based on alleged reduction in the quality of life due to the loss of

several amenities and the loss of use of a portion of the premises for an extended period of time.

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. 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 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, forming part of the tenancy, is not essential and not considered a material term of the agreement, a landlord may restrict or remove the service or facility. The landlord must first give the tenant 30 days written notice and also reduce the rent an amount equivalent to the value of the service or facility that is being restricted or removed. (my emphasis)

In this instance, I find that the use of the hot tub was eliminated, as was a portion of the deck and the use of the back stairs to the deck. I further find that the tenant was deprived of the use of the washer, dishwasher and the lower portion of the home for an extended period of time due to the landlord's failure to comply with section 32 of the Act.

Section 7(1) of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. However, under section 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, I find that the tenant did not properly pursue their complaints about some of the problems for several years and therefore, I find that the tenant did not reasonably mitigate their losses by delaying making the application for dispute resolution until now. I find that the tenant's losses should be limited to only a two-year period prior to the end of the tenancy.

That being said, I accept that the tenancy lost 20% of the value for the past 2 years, and the rent should be abated in that amount, totaling \$8,400.00. I also find that the tenant is entitled to be reimbursed for the cost of the building inspection report in the amount of \$708.75 and the \$100.00 cost of this application for total entitlement of \$9,208.75.

I hereby grant the tenant a monetary order in the amount of \$9,208.75 for the devalued tenancy and costs. 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: January 20, 2014

Residential Tenancy Branch

