



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LICAR MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MNDC, ERP, RP, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for loss of value of the rental suite due to various issues that impacted the tenancy. The tenant is also seeking an order to force the landlord to complete repairs.

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 is entitled to monetary compensation and a retro-active rent abatement?

Should the landlord be ordered to complete repairs?

Background and Evidence

The tenancy began on June 1, 2013 and the rent is \$895.00. The tenant testified that a fire in an adjacent unit occurred on June 27, 2013. The tenant testified that they lost the use of part of their backyard and the entire area was compromised due to hazards created by the fire and the remediation. The tenant testified that a smaller area of the yard was fenced off that comprised approximately 1/3 of the former area. The tenant felt that the area was not sufficiently secured to properly contain his pet. The tenant testified that the permanent fence was finally completed in November 2013. The tenant seeks a retro-active rent abatement of \$200.00 per month from June to November 2013 to compensate for the loss of use of the yard. The tenant pointed out that a securely

fenced yard is considered to be a material term of this tenancy and was a major consideration in the tenant's choice to rent.

The landlord disagrees with the claim and stated that the yard was reduced as a temporary measure in accordance with regulations to protect the tenant and his pets due to the damage from the fire. The landlord pointed out that the tenant was accommodated as much as possible.

The tenant is also claiming compensation for a chronic leaks in the basement and mould contamination. The tenant pointed out that this was reported to the landlord but continues to be an issue. The tenant seeks a rent abatement of \$300 per month from June 2013. The tenant is also requesting that the landlord remove a workbench left in the basement. The tenant stated that he has a concern about radon gas, which has been a problem in the area, and feels that the landlord should test for this.

The landlord acknowledged that there have been minor water issues below grade, but stated that he hired a qualified contractor to inspect the premises and no mould contamination was discovered. The landlord testified that efforts to address the problem have been ongoing and a downspout from the eaves trough has now been rerouted. According to the landlord, there is a plan to monitor the situation and look at it again in the spring.

The tenant stated that the landlord has failed to remove some materials that were left in the yard that are causing a problem and the landlord has not responded in a timely manner to requests for the cleanup.

Analysis - Monetary Compensation

The tenant was requesting a rent abatement due to the yard and basement restrictions, disruption and reduced quality of the tenancy for the period in question.

Section 7 of the Act states that if a party 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.
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 do not find that the landlord breached the Act, as they have been pursuing necessary repairs to the building and protecting the tenant's safety by limiting the yard.

However, with respect to the contractual obligations under the tenancy agreement, I find that this landlord and tenant had contracted for a tenancy that included a rental unit that was comfortable and liveable with a properly fenced yard. I find that, through an incident that was not caused by either party, the tenant's use of the back yard was temporarily compromised. I find that the process of restoration was onerous for the tenant, being that the area was affected for several months and this caused substantial inconvenience for the tenant.

I find that for the duration, the tenant was still required to pay the rent in compliance with their obligation under the Act. However, at the same time the tenant clearly suffered a loss of value to the tenancy and their quality of life for a time. I accept the tenant's testimony that the yard is considered to be a material term of the tenancy.

With respect to the leaking basement, I find that there was a minor infusion of water that, nonetheless functioned to limit the use of the area.

I find that the landlord is not in violation of the Act, because there have been ongoing efforts to investigate and deal with the problem in accordance with section 32 of the Act. I accept that the landlord complied with the Act by hiring a contractor to investigate the area for signs of mould and did their best to deal with repairs.

However, with respect to terms of the contract, the tenant's inability to make full use of portions of the rental premises impacts the value of the tenancy.

In this instance I find that there were some deficiencies in the condition of the unit and restricted use, if not under the Act, then under the implied terms of the tenancy agreement for the period in question. I find that, although mould is apparently not present, the presence of even minimal water infusion does limit usage of the space.

With respect to the loss of part of the yard and the fence issue, I find that a rent abatement of 20%, or \$179.00 per month, for 5 months, is justified and I grant an abatement of \$895.00.

In regard to the tenant's claim for compensation concerning the damp basement, I find that the landlord has addressed one possible source of the leaking that may have helped to rectify the situation and the landlord intends to monitor the problem and take further action in spring if it is still an issue.

On this basis, I find that the tenant entitled to a retro-active rent abatement for 7 months between June 2013 and December 2013 for \$626.50, representing a 10% temporary reduction in the rent. This is anticipating that the problem has now been fully resolved.

If the tenant and landlord find that the water infusion is still an issue, the tenant is at liberty to make another application seeking an order for a continued rent abatement.

Based on the testimony and evidence discussed above, I hereby order that the tenant is entitled to total compensation of \$1,571.50 comprised of \$895.00 for loss of a portion of the yard, \$626.50 the damp basement and the \$50.00 cost of the application. I order that the tenant deduct \$785.75 from the next month rent owed and \$785.75 from rent owed for the month after that, to satisfy this monetary claim.

I do not find it necessary to order the landlord to clean up the yard or complete other repairs, as the landlord agreed to comply with the Act in this respect.

Conclusion

The tenant is partly successful in the application and is granted a rent abatement for past deficiencies of the rental premises that devalued the tenancy.

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: February 14, 2014

Residential Tenancy Branch

