



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORP
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent, and monetary compensation for devalued tenancy due to loss of quiet enjoyment for one month of the tenancy and loss of the use of rental unit for the entire second month.

The co-tenants attended the hearing and the landlord was represented by an agent. 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.

Preliminary Matters

Amend Application

The tenant made the application for Dispute Resolution seeking monetary compensation on January 29, 2014.

However, the tenant amended the application to include a request for an order to cancel a Ten Day Notice to End Tenancy for Unpaid Rent that was served on the tenant on February 7, 2014.

Cancel Ten Day Notice to End Tenancy for Unpaid Rent

No copy of the 10-Day Notice to End Tenancy for Unpaid Rent was placed in evidence by either party. Section 59(2) of the Act states that an application for

dispute resolution must be in the applicable approved form and include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

Section 59(5) states that the application for dispute resolution may be declined if, in the dispute resolution officer's opinion the application does not disclose a dispute that may be determined or the application does not comply with section 59(2). Section 62(4)(b) of the Act states that a dispute resolution officer may dismiss all or part of an application for dispute resolution if the application does not disclose a dispute that may be determined under this Part.

I find that, in the absence of a copy of the 10-Day Notice to End Tenancy for Unpaid Rent, I am not able to determine the validity of this Notice. Accordingly, the matter of whether or not the Notice should be cancelled cannot be determined during these proceedings.

However, I find that the other matters brought before me in the tenant's application will be heard and determined.

Issue(s) to be Decided

Is the tenant entitled to a rent abatement or compensation under section 67 of the Act for damages or loss?

Background and Evidence

The fixed term tenancy began on January 1, 2014 with rent set at \$1,275.00. A security deposit of \$637.50 and pet damage deposit of \$200.00 were paid and are being held in trust by the landlord for the tenant.

The tenant testified that shortly after moving in, it became evident that the rental unit was infested with mice. According to the tenant, this problem was reported to the landlord and repeated attempts were made by the landlord's agent and by professional pest control contractors to eradicate the problem.

The tenant testified that the infestation made his life unbearable as he was kept awake nights by mouse activity, the snapping of traps and his dog's efforts to get at the mice. The tenant testified that his soft furnishings were overrun and the entire unit was contaminated with droppings and mouse urine.

The tenant stated that he attempted to negotiate an end to the tenancy with the landlord, but was not successful as the tenant felt he was entitled to a rent abatement of 100% of his rent paid for January plus moving costs and permission to terminate the fixed term, while the landlord would only agree to end the tenancy, but not on the terms

the tenant felt were just. The tenant testified that he still feels that he is entitled to a rent refund for the month of January 2014 and should not have to pay for February 2014 rent either as he is not able to remain in the unit under these circumstances and has been forced to stay with friends.

The landlord testified that they have acted with due diligence in responding to the tenant's reports of mice. According to the landlord, they have been very active in addressing the problem and the building undergoes monthly pest control maintenance by qualified professional exterminators. The landlord testified that it has been confirmed that, from February 8, 2014 to date, there is no evidence of mice activity.

The landlord pointed out that they were willing to end the tenancy with a mutual agreement to end, but the tenant did not agree with the terms.

Submitted into evidence were copies of the tenancy agreement, copies of communications, a timeline, invoices, photos and reports.

Analysis

Rent Abatement

The tenant has claimed a retro-active rent abatement for loss of quiet enjoyment, loss of use and devalued tenancy due to a pernicious infestation of mice.

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 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.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must 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.

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear.

In this instance, I find no evidence that either the tenant or the landlord had violated section 32 of the Act. I accept that the landlord did address the problem in a timely manner as best they could and, despite the lack of success, this is what is required of a landlord under the Act.

However, I also find that the landlord's efforts were not successful until the tenant had already found it necessary to stay elsewhere. I accept the tenant's evidence that the mice contamination was intolerable and that this tenancy was devalued to the extent that the tenant lost quiet enjoyment of his suite for the month of January and did not feel comfortable to even remain in the unit during February 2014.

I find that the tenant contracted for a residential unit that was clean, comfortable and safe, where the tenant is entitled to the quiet enjoyment of their suite. I find that it was the landlord's honest intent to provide this for the tenant.

I find that, although the landlord did attempt to eradicate the problem and therefore complied with their responsibilities under the Act, the landlord's contractual obligations under the tenancy agreement were compromised by the existence of an infestation of mice.

I find that the contractual obligation was not met and a devaluation of the tenancy occurred, despite the best efforts of the landlord, due to the length of time that the rental unit was rendered unliveable. At the same time, the tenant was held to his obligation to pay full rent, despite a significant deficiency in the quality of the premises.

Given the above, I find that the tenant is entitled to a rent abatement of \$1,275.00 for the month of January 2014. I find that the tenant is also entitled not to pay rent for the month of February as the tenant was not able to reside in the unit for most of the month. I acknowledge that the tenant's possessions will be left in the unit until the tenant can remove them and I find that this must occur on or before February 28, 2014. I find that, under the circumstances this tenancy will permanently end on February 28, 2014.

I find that the tenant is entitled to compensation in the amount of \$1,350.00 comprised of a rent abatement for January 2014 in the amount of \$1,275.00 and the \$50.00 cost of the application.

I order that the tenant is entitled to a further rent abatement applicable to rent owed for February 2014 and the tenant is therefore not required to pay the \$1,275.00 due on February 1, 2014.

I further order that this tenancy ends on February 28, 2014, or earlier if both parties are willing.

I order that the tenant's security deposit and pet damage deposit must be administered in accordance with section 38 of the Act.

Conclusion

The tenant is successful in the application and is granted a monetary order for rent already paid and a rent abatement for rent owed reflecting the devalued tenancy. The tenant is also granted an order ending the tenancy as of February 28, 2014.

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 17, 2014

Residential Tenancy Branch

