



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OPC, RP, OLC, , CNC, LAT, RR, FF

Introduction

This hearing dealt with cross applications submitted by the landlord and the tenant.

The tenant's application for Dispute Resolution seeks to cancel a One-Month Notice to End Tenancy for Cause. The tenants are also seeking monetary compensation in the form of a retro-active rent abatement as damages for loss of value to the tenancy due to the loss of the stove for approximately 3 weeks and reimbursement for the cost of repairs. The tenant is also requesting an order to force the landlord to follow the Act.

The landlord had made a cross application seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause and monetary compensation.

Only the tenants 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 in attendance 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 landlord's application was dismissed without leave as the landlord failed to attend. Therefore the One-Month Notice to End Tenancy for Cause is cancelled as requested by the tenant. Only the tenant's application was heard.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation under section 67 of the Act for damages or loss. The burden of proof is on the applicant.

Background and Evidence

The tenancy began on October 1, 2013. The current rent was \$1,900.00. A security deposit of \$950.00 was paid.

The tenant testified that they had problems with several appliances including their microwave, stove, washing machine and a leaking refrigerator with a foul odour. The tenant testified that they also reported that the blinds need to be replaced or repaired.

The tenant testified that the landlord exhibited reluctance to respond to their complaints and insinuated that the tenants had caused the breakdowns. The tenant testified that the landlord repeatedly reminded the tenants that they agreed to rent the unit knowing that the fixtures, blinds and appliances were older.

The tenant testified that that they were finally successful in having the stove repaired, but were deprived of the use of the appliance for 20 days. The tenant is seeking a rent abatement of \$10.00 per day for the loss of use of the stove, in the total amount of \$200.00.

The tenant testified that, because the landlord ignored their requests to repair the washer, they fixed it on their own. The tenants seeking reimbursement for the cost of the parts in the amount of \$30.00.

In addition, according to the tenants, the refrigerator, while functional, is leaking a foul smelling substance in certain spots and needs to be looked at to ensure it not contaminated and safe for use.

In regard to the blinds, the tenant pointed out that the window coverings are not functional and likely need to be replaced. However, the landlord has refused this request.

The tenants have a concern that the landlord has not been providing the tenants with 24 hours written notice as required under the Act before accessing the unit. The landlord frequently goes to a storage locker on the property, reserved for the landlord's use.

The tenants are seeking an order to force the landlord to comply with the Act and compel the landlord to complete repairs and maintenance on the unit, including

- repairing or replacing the blinds,
- engaging a qualified professional to check the refrigerator and rectify any problems.

The tenants hope to obtain an order forcing the landlord to comply with the Act.

Analysis

In regard to the monetary claim, 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 or agreement and a corresponding loss.

I find that section 32 of the Act imposes a responsibility 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.

With respect to maintaining major appliances, I find that, the Residential Tenancy Guidelines hold the landlord is responsible for repairs to appliances provided under the tenancy agreement, unless the damage was caused by the deliberate actions or neglect of the tenant. I find that the landlord, in this instance, is responsible to repair and maintain any appliances that are provided as part of the tenancy. I find that a working stove and refrigerator are essential.

Section 27 of the Act states landlords must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit, or if providing the service or facility is a material term of the tenancy agreement.

In the case before me, I find that the tenant was deprived of the use of the stove and is therefore entitled to be compensated for the loss. I accept that the value of \$10.00 per day is fair and grant the tenant a retroactive rent abatement of \$200.00 total for the twenty days they were awaiting repairs on the stove.

Section 27 of the Act does permit a landlord to terminate or restrict a service or facility, as long as it is not essential to the tenant's use of the rental unit as living accommodation and as long as the service or facility was not considered to be a material term of the tenancy.

However, the landlord is required to give 30 days' written notice, in the approved form, of the termination or restriction, and must also reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. (my emphasis)

I find that, although the landlord did not intentionally restrict the washing machine, there was still a contractual obligation to provide a functioning washer based on the fact that the tenant had rented a unit featuring this as part of the tenancy. For this reason, I find that the landlord was in violation of the tenant is entitled to be reimbursed \$30.00 for the cost of parts

With respect to the blinds, given that they were provided as part of the tenancy, I find that there is a reasonable expectation that they be functional. Therefore, I order the landlord to repair or replace the blinds

In regard to the tenant's complaint about the landlord accessing the rental unit without proper Notice under the Act, I am not prepared to restrict the landlord any further than the Act does.

Section 29 of the Act states that a landlord must not enter a rental unit for any purpose unless the tenant gives permission at the time of the entry or at least 24 before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- or an emergency exists and the entry is necessary to protect life or property.

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 and lawful purposes, free from significant interference.

With respect to landlord's access of the unit, I find that the landlord was not in violation of the Act. The landlord is aware that they must provide 24 hour written notice to enter the unit and has not substantially violated this section. I find that the landlord has not committed any transgression of the Act by accessing the landlord's locker located in a common area, and no order is therefore necessary.

Based on the evidence, I hereby grant the tenant monetary compensation in the amount of \$280.00 comprised of a retro-active rent abatement of \$200.00 for loss of use of the stove, \$30.00 for the washer parts and the \$50.00 cost of the application. I order that the tenant may reduce their next month rent due on April 1, 2014 by deducting \$280.00 from the rent as a one-time lump-sum abatement.

Based on the evidence, I hereby order that the landlord engage a qualified refrigerator repair technician to examine the refrigerator. I further order that the landlord follow the recommendations that result. In addition, I order that the landlord repair or replace the window coverings in the unit that are non-functional at the landlord's own cost.

The One-Month Notice to End Tenancy for Cause is hereby cancelled and of no force nor effect. The landlord's application is dismissed in its entirety without leave to reapply.

Conclusion

The tenant is successful in the application and is granted a retroactive rent abatement and orders against the landlord forcing the landlord to investigate the problems with the refrigerator and repair or replace the blinds. The landlord's cross application is dismissed without leave as the landlord failed to attend the hearing.

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: March 03, 2014

Residential Tenancy Branch

