



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WIDSTEN PROEPTY MANAGEMENT
and [tenant name suppressed to protect privacy]

Decision

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

Introduction

This hearing was convened to hear the tenant's application for monetary compensation and an order to force the landlord to comply with the Act and 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 compensation for loss of quiet enjoyment?

Should the landlord be ordered to comply with the Act?

Background and Evidence Notice to End Tenancy

The tenancy began on November 1, 2013 with rent of \$600.00.

The tenant testified that they are claiming compensation for loss of quiet enjoyment because the tenant had been subjected to unreasonable disturbance and significant interference by a leak that occurred in the ceiling over the tenant's shower on December 24, 2013 and was reported to the landlord on the same date.

The tenant testified that the landlord responded on December 26, 2013 but the contractor cut a hole in the ceiling on January 3 that was left open exposing the tenant to dust, mould and falling particles until January 16, 2014, when the landlord finally placed an access panel over the hole.

The tenant is claiming compensation of \$300.00 for the two-week period that they were forced to endure this situation.

The landlord testified that the landlord acted in compliance with their responsibilities under the Act to address a minor repair issue and the landlord feels that this was done effectively and in a timely manner. The landlord pointed out that the nature of the repair required them to leave the area open to observe whether there was any additional leaking and to allow the infrastructure to fully dry out. The landlord's position is that the disruption to the tenant was minimal and no compensation is warranted.

Analysis

An Applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the claim 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 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, I find that the tenant is required to prove the existence and value of the damage or loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

Section 28 of the Act protects a tenant's right to: (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; and (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Based on the Act, I find that a tenant is entitled to expect, at the very least, to be permitted to engage in normal living activities without being unduly restricted.

In addition to the above, I find that section 32 of the Act imposes responsibilities on a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law to make it suitable for occupation by a tenant.

I find that section 32 obligates a landlord to repair the unit when necessary and there is an expectation that this will be done in a manner that causes the least amount of disturbance or restriction imposed on the tenant. There is also an expectation under the Act that the tenant will permit the landlord to repair and maintain the rental unit and to cooperate with the landlord's efforts in this regard.

That being said, I find that there is no doubt that the tenant was inconvenienced by the repair work to a degree.

However, in determining the question of damages awarded in favour of an applicant and against the other party, I find that a claim for compensation under section 7 must be based on a violation of the Act by the other party.

In the case before me, I find that the landlord was not in violation of the Act and in fact was in the process of complying with the Act. Therefore, I find that the tenant has not met the burden of proof to justify compensation, because the claim has not sufficiently met all elements of the test for damages.

Accordingly, the tenant's application seeking monetary compensation for loss of quiet enjoyment is dismissed in its entirety without leave.

Conclusion

The tenant is unsuccessful in the application and the tenant's monetary claim is dismissed without leave.

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 17, 2014

Residential Tenancy Branch

