



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, OLC, RP, PSF, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking the following:

- .A Monetary Order for money owed or compensation for damage or loss under section 67 of the Act, Regulation or tenancy agreement;
- An order to force the landlord to comply with the Act or Agreement.
- An order to force the landlord to make repairs to the unit.
- An order to force the landlord to provide services and facilities required by law.
- A rent abatement for repairs, services and facilities agreed upon but not provided.

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.

Preliminary Matter

At the outset of the hearing it was established that the tenant had vacated the unit and effective yesterday, April 30, 2014.

Accordingly the portion of the tenant's application relating to the request for an order to force the landlord to comply with the Act or Agreement, an order to force the landlord to make repairs to the unit and an order to force the landlord to provide services and facilities required by law are no longer at issue.

Therefore, this hearing will deal solely with the tenant's claim for compensation under section 67 of the Act for loss of quiet enjoyment, failure to complete repairs and other damages.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation under section 7 and 67 of the Act?.

Background and Evidence

The tenancy began in July 2013 with current rent of \$775.00. The original tenancy was for a three-month fixed term that would revert to a month-to-month tenancy or further fixed term. The parties signed a subsequent fixed term tenancy of three months that required the tenant to vacate the unit at the end of the fixed tenancy term.

The tenant testified that, when the tenancy began, the landlord verbally promised to clear the area around the tenant's building and complete certain repairs, which the tenant is alleging were never done.

The tenant testified that the landlord had piled items against the exterior of his home, blocked his access to the entry and used the space immediately outside of his window as a workshop.

The landlord acknowledged that the area referred to by the tenant was used as a workshop and stated that this arrangement pre-existed the tenancy and the equipment in question was in plain view when the tenant agreed to rent the unit. The landlord testified that the tenant was angry about the landlord's equipment being situated in the area and one day the tenant began throwing the landlord's tools and materials around.

The tenant denied that this occurred and stated that he merely removed the items that were blocking his way because they were not safe and were unsightly. The tenant testified that he did not throw anything around.

The landlord testified that all repairs requested by the tenant were attended to and acknowledged that this took longer than the tenant apparently expected. The landlord pointed out that the tenant refused to cooperate and even denied the landlord access on some occasions, which made repairs more difficult and caused delays.

The tenant stated that he did cooperate, but did not accept the landlord's practice of trespassing whenever he felt like it. The tenant testified that he had requested that the landlord not attend, but merely send qualified professionals to deal with the repair issues. The tenant stated that he wanted no contact with the landlord.

The tenant testified that on one occasion, after he reported an urgent drainage problem with the waste pump station located in the backyard, the landlord suddenly showed up with another person late at night and began to look at the pump, at which time the tenant objected to the trespass and questioned the credentials of the tradesperson to find out if he was “qualified” as a plumber.

The tenant testified that he felt it necessary to video tape the landlord and the other person during this incident. The tenant pointed out that he had been advised by a municipal employee that a pump failure does not qualify as an bona-fide emergency and therefore, according to the tenant, the landlord should not have merely barged into the yard, but instead should have provided the required 24-hours written notice before accessing the yard and pump.

According to the landlord , the tenant’s request for “*urgent*” repairs to the pump station were taken to be an emergency situation. The landlord pointed out that the tenant complained that the area around the pump was flooding and not taking away the sewage. The landlord testified that the landlord promptly arranged to have the problem investigated after hours by a person he had worked with before who specialized in this type of work.

The landlord stated that, when they arrived the tenant acted in a confrontational manner, videotaping the landlord and his contractor and demanding that the tradesperson justify his credentials to the tenant. The landlord testified that the tenant was disrespectful and abusive to both the landlord and the tradesperson he hired. The landlord testified that the tenant’s aggressive interference caused the tradesperson to abandon the repair work leaving the landlord with charges for a wasted service call.

The tradesperson involved in the above incident appeared as a witness for the landlord. This witness supported the landlord’s testimony stating that he came to assess whether there was a serious pump failure and hazardous sewage backing up in the yard as reported. The witness testified that they did not immediately find an urgent pump failure, but before the matter could be investigated further, the tenant showed up putting a camera in the contractor’s face and making disturbing comments and demands. The witness stated that the tenant’s menacing demeanor made him feel threatened, so he felt it necessary to leave for his own personal safety.

The tenant testified that on another occasion, the landlord committed a serious trespass by actually entering the tenant’s unit without prior written notice when the tenant was not home. The tenant testified that he suspected that the landlord was going into his home without permission while he was out. The tenant testified that to confirm whether or not this was occurring, he went out and purposely had left his shower faucet running, to see if the landlord would illegally enter his unit. The tenant testified that his suspicions

were confirmed because this did occur. The tenant pointed out that this proves that the landlord is not trustworthy.

The landlord testified that, on the day in question, he noticed that there was flooding around the pump station in the backyard and he immediately contacted his contractor to investigate. They discovered that the pump was being overloaded and was indeed flooding waste water into the yard due to the fact that water tap was left on inside the rental unit and the water was running into the waste-water system at a rate that was beyond the pump's capacity to efficiently handle. The landlord testified that they knocked on the door and found the tenant was not home. The landlord pointed out that they considered this to be a possible emergency situation. The landlord stated that, when they entered the tenant's unit, they discovered that it was evident the tenant had purposely attempted to sabotage the function of the pump by leaving the faucet in his shower running unattended while he was not at home.

The tradesperson who appeared as the landlord's witness testified that a flooding sewer pump is considered to be a potential emergency. The witness stated that he has been in the business dealing with sewer pumps for 22 years and is aware that any sewage back-up situation poses serious health hazards that need to be taken care of without delay. The witness stated that, after examining the equipment, they found that the pump was not malfunctioning, but was being overloaded by the fact that water was left running continuously for an extended period of time, thereby undermining the function of the pump. The witness pointed out that the pump resumed functionality once they entered the home and turned off the continuously running faucet.

The tenant testified that when he and the landlord renewed their tenancy for a further term, the landlord had tricked him into signing a fixed term tenancy agreement that required the tenant to move out at the end of the tenancy. The tenant testified that the agreement also contained additional different terms that restricted smoking in the suite and did not allow parking. The tenant stated that the landlord used the threat of not continuing the tenancy beyond the fixed term deadline as a means of extortion and harassment of the tenant.

The tenant testified that, after he filed for Dispute Resolution, the landlord engaged in a course of harassing behaviour that included trying to remove a small propane tank containing fuel paid-for by the tenant and posting repeated caution notices on the tenant's door, for example 8 notices in one day. The tenant provided copies of the Notices. The tenant testified that the landlord also called the fire department and police on the tenant and lodged frivolous accusations against him. The tenant pointed out that all of these tactics were obvious reprisals against the tenant for filing for Dispute

Resolution, and this is a violation of the Act. The tenant pointed out that fines and penalties under the Act should be imposed on the landlord.

The landlord did not deny that there was a dispute over the propane tank and did not deny that caution notices were posted on the tenant's door. The landlord denied that any actions he took were done as a reprisal against the tenant.

The landlord testified that, in fact, the tenant was engaged in harassment of the landlord. The landlord testified that the tenant made derogatory comments to the landlord and continually videotaped the landlord even when the landlord was on his own property. According to the landlord, there was one disturbing incident in which the tenant was observed with his face blackened, staring at the landlord and his girlfriend while filming them.

A witness for the landlord stated that she was present at that time and found the black make-up and conduct of the tenant to be unnerving and scary.

The tenant acknowledged that he had filmed the landlord, but stated that it was merely done to gather evidence. The tenant stated that he had never blackened his face or acted in any way threatening.

The tenant stated that the landlord had no right to deny him parking on site, despite the term in the tenancy agreement that specifically states, "*parking on roadside only*".

The tenant's position is that the landlord is required by municipal bylaw to provide one parking spot on site for a suite. Therefore, according to the tenant's interpretation of the law, this bylaw automatically entitled the tenant to park on site. The tenant further submitted that the bylaw, and therefore the right to park onsite, must be inferred as a mandatory term in the tenancy agreement between these parties, regardless of what other specific terms are contained in the tenancy agreement restricting the parking. The tenant pointed out that, by denying the tenant a parking spot on the property, the landlord violated the tenancy agreement, which, according to the tenant, must comply with other laws including the tenant's legal right to park on-site.

The tenant further alleged that, because of the landlord's alleged "violation" of the municipal bylaw, the tenant would therefore be entitled to compensation for loss of parking. The tenant did not provide a copy of any law that specifically requires the landlord to permit this tenant to park on site, but stated that this information is easily accessed. The tenant stated that the arbitrator should be aware of all laws that impact a tenant's rights and should be prepared to enforce them.

The tenant also testified that the landlord's violations of laws respecting secondary suites and the landlord's apparent failure to obtain an "*occupancy permit*" from the

municipality before renting the premises to the tenant, constitutes a violation of the Residential Tenancy Act, because the Act states that a tenancy agreement must comply with other applicable laws.

The tenant's position is that the landlord's contravention of housing laws supports his monetary claim and justifies compensation being awarded to the tenant.

The tenant pointed out that the landlord defrauded the tenant by purporting to offer a supposedly liveable unit for rent, when in fact it is an illegal suite that is not authorized under the law to be occupied. The tenant did not submit any evidence, such as copies of the laws in question nor proof of noncompliance by the landlord, to support this position. The tenant testified that this information is readily available and again pointed out that the arbitrator is obligated to enforce all the associated laws that govern or affect tenancies.

Based on the above, the tenant feels that he should be granted a retro-active rent abatement of 100% for the past 9 months of the tenancy.

Analysis

Only the evidence and testimony relevant and material to the issues under dispute and the findings in this matter are described in this decision.

In regard to the monetary claim for a rental abatement for loss of quiet enjoyment and failure to adequately maintain the rental unit, I find that an applicant's right to claim damages from the other party is dealt with under sections section 7 and 67 of the Act. Section 7 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 any damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss 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, agreement or an order

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 claimant; that being the tenant; to prove the existence of the damage/loss and that it stemmed directly from a contravention of the Act, on the part of the respondent.

Repairs

I find that section 32 of the Act requires that 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.

In regard to the tenant's allegation that the landlord refused to complete repairs, I accept the landlord's testimony that they did attend to repairs but were impeded by lack of cooperation by the tenant. I find that the tenant had informed the landlord that the tenant did not want the landlord on site and would only permit access to "*qualified*" professionals. I find that restricting the landlord's access in this manner likely functioned to create a barrier to the completion of repairs. Moreover, I find that the tenant's treatment of the landlord's contractor, whether intended or not, also had the effect of interfering with the repairs.

Illegal Suite

In regard to the tenant's position that the tenant is entitled to compensation based specifically on the legality of the suite with respect to housing bylaws, I find that the landlord's obligation to comply with municipal zoning or housing laws, is a matter strictly between a landlord and those who enforce such laws or regulations on behalf of the municipality. I find that the status of the rental unit with respect to municipal bylaws is not relevant to the tenancy contract between the landlord and the tenant. In addition to the above, the tenant did not offer sufficient proof that the landlord was in violation of any laws.

In any case, I find that the tenant has not suffered a quantifiable pecuniary loss directly attributable to the legal status of the suite. Even if I accepted the tenant's contention that the landlord's rental of an unauthorized suite was in violation of the Residential Tenancy Act, I must still find that the tenant did not satisfy element 3 of the test for damages.

Interfere with Tenant's Right to Quiet Enjoyment

In regard to the tenant's claim that the landlord interfered with the tenant's right to quiet enjoyment, I find that Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited 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 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that under the Act, a landlord is expected to take reasonable measures to ensure that the quiet enjoyment of a tenant is not violated.

In case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant would have to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions or inaction. The level of disturbance must be sufficient to render the premises unfit for occupancy for the purposes for which they were leased. I find that the term "*unreasonable disturbance*" is a subjective determination that may widely vary from one individual to another.

While I find that the landlord did issue an exorbitant number of caution notices to the tenant in April 2014, I do not find that this had significantly interfered with the tenant to the extent that monetary compensation is warranted.

The tenant stated that the landlord interfered by coming onto the premises at will.

Section 29 (1) of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of the entry or not more than 30 days before the entry or unless the landlord gives the tenant written notice at least 24 hours and not more than 30 days before the entry.

The Notice that the landlord will be accessing the unit must include 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;

A landlord may gain entrance if an emergency exists and the entry is necessary to protect life or property. The Act permits a landlord to inspect a rental unit monthly.

(My emphasis)

In regard to the allegation that the landlord trespassed by appearing without proper notice, I find that the first incident described by the tenant, where the landlord and tradesperson came onto the property after-hours to investigate the tenant's complaint about an urgent sewage back-up problem, was relatively minor and of short duration and as such would not give rise to compensation.

I find that the second incident where the landlord was responding to flooding caused by the tenant purposely leaving the water running, would qualify as an emergency situation covered by section 33 of the Act. Under the circumstances, I find that the landlord was not in violation of the Act by neglecting to provide 24 hours written Notice to enter the premises.

Section 33(1) of the Act defines "*emergency repairs*" as repairs that are urgent and necessary for the health or safety of anyone or for the preservation or use of residential property. The Act specifically includes "*damaged or blocked water or sewer pipes or plumbing fixtures*" as an example of an emergency justifying access without the 24-hour written notice.

Landlord's Materials Left Outside Premises

In regard to the tenant's position that the landlord had wrongfully left equipment and materials on the tenant's premises, I find that the landlord's workshop located outside the tenant's entry, including tools, equipment and materials did pre-exist this tenancy and were in plain sight when the tenant viewed the premises. I find that the parties entered into a tenancy agreement under these conditions and there is nothing in the contract to indicate otherwise.

Tenant's Right to Park on Property

In regard to the tenant's allegation that a right to park on site is an implied term of the tenancy agreement based on a municipal housing bylaw, I find that the Residential Tenancy Act says nothing about a right to be provided with parking on site, or otherwise, and a term in this tenancy agreement specifically provides that on-site parking is not included as part of the agreement. In any case, I find that the tenant did not prove that the alleged parking bylaw is in effect and applicable to all tenants entering into tenancy agreements, nor this tenant in particular. Moreover, the tenant testified that he had been parking on site anyway.

With respect to the tenant's position that the tenancy was devalued and that he was forced to move due to the landlord's harassment, I find that the landlord and the tenant were involved in repeated disputes over many issues but neither one is completely blameless for this increasingly contentious relationship.

I find that the tenant's conduct could also be seen as harassment of the landlord, particularly his practice of videotaping the landlord and others, the tenant's actions in purposely flooding the sewage pump by leaving water running in the suite and the tenant's interference with the landlord's contractor while he was on site to do a job to benefit the tenant.

Based on the evidence, I find that no portion of the tenant's claim for monetary compensation was sufficiently proven to meet all elements of the test for damages. Accordingly, I hereby dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant is not successful in the application seeking monetary compensation and the claim is therefore dismissed. The remainder of the tenant's application was found to be moot as the tenancy has already ended.

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: May 01, 2014

Residential Tenancy Branch

