



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TPM MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MNDC , RP, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking an order to force the landlord to make repairs, and a monetary order for damages and arent abatement due to long-term water infusion into the suite.

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 entitled to compensation for devalued tenancy and loss of quiet enjoyment?
- Should the landlord be ordered to complete repairs to the unit?

Background and Evidence

The tenancy began in 2009 and the current rent is now \$646.00. A security deposit of \$248.71 was paid.

The tenant testified that, due to serious deficiencies in the rental unit, that frequently compromised her quality of life, she feels entitled to compensation in the amount of \$2,464.00 based on a monthly reduction of \$50.00 for the duration of the tenancy and the cost of moving.

According to the tenant, the tenancy was plagued by repeated bouts of water infusion, and this has cost the tenant time and money, but also created a great deal of stress due to the unpredictability of the flooding and the various remedial efforts employed by the landlord.

The landlord acknowledged that there was a pernicious water infusion issue that they could not eliminate despite repeated repairs. The landlord testified that they have diligently addressed this problem time after time. The landlord submitted documentation to prove that the landlord did not ignore the problems, including invoices verifying numerous costly repair projects. The landlord testified that, although they have done everything possible, some problems still remain and the landlord has decided that the only course of action is to “decommission” the suite because they are not able to rectify the infrastructure problems that are apparently causing the flooding.

The landlord acknowledged that they did not choose to issue a Two Month Notice to End Tenancy to convert the rental unit to non-residential use. Instead the landlord initiated discussions with the tenant to relocate her to another unit. However, this has not been successful. The landlord also pointed out that, due to the condition of the rental unit, the tenant was charged lower rent than the suite would otherwise demand.

The tenant acknowledged that the landlord had made repeated efforts to rectify the water infusion issue. However, according to the tenant, these efforts have merely imposed even more disruption and inconvenience for the tenant and only resulted in disappointment each time the problems recurred.

The tenant also acknowledged that in 2013 she was encouraged by the landlord to move into another suite. The tenant testified that she had declined the relocation due to the higher rent charged for smaller units. The tenant testified that she hopes to remain in this suite and seeks both compensation and an order to force the landlord to complete the repairs.

The tenant testified that there were periods of time during the tenancy when the rental unit, or some areas of the rental unit, could not be inhabited at all.

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 landlord 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.

I find that section 32 of the Act imposes responsibilities 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.

In this regard, I find that the landlord did not violate the Act. I find that the landlord complied with their responsibilities under the Act by attempting to repair and restore the rental unit each time there was a flood.

However, with respect to the tenant's allegation that they were deprived of their right to quiet enjoyment, I find that 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;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Because the tenancy was disrupted by persistent repairs that inconvenienced the tenant, I find that the landlord failed to comply with 28 of the Act. Moreover, in addition to the landlord's inability to fully comply with the above section of the Act, I find that the terms of the contract were compromised, because the deficiencies in the rental unit functioned to devalue the tenancy. While I accept the landlord's testimony that they

had already given the tenant a lower rental rate based on the condition of the rental unit, I find that the landlord was required under the contract to at least supply a unit fit for habitation. In this regard, although the flooding was intermittent, I find that there were periods of time where the unit fell below minimal standards expected under contract.

Given the above, I find that the tenant is entitled to a past rent abatement of \$50.00 per month for a period of 36 months totaling \$1,800.00. I grant the tenant a retro-active abatement of \$1,800.00 and issue a monetary order in this amount to the tenant. This order must be served on the landlord and may be filed in the Supreme Court and enforced as an order of that Court.

I further order that the rental rate for the unit will now be reduced to \$596.00 per month.

In regard to the tenant's request that the landlord be ordered to repair the unit to restore it to a condition that prevents future water infusion, I find that the landlord has already attempted to do just that without success and I accept the landlord's evidence that the unit cannot be fully remediated while the tenant is living in the unit, if at all.

For this reason, I find that the portion of the tenant's application requesting that the unit be completely remediated to prevent any future flooding, must be dismissed.

Conclusion

The tenant is partially successful in the application and is granted a retro-active rent abatement and a continuing rent reduction.

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: August 14, 2014

Residential Tenancy Branch

