



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DELANEY PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a retro-active rent abatement and damages for loss of enjoyment of the rental unit and devalued tenancy.

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 monetary compensation under section 67 of the Act for damages or loss and a rent abatement?

Background and Evidence

The tenancy began September 15, 2013 and the current rent is set at \$2,200.00. A security deposit of \$1,100.00 and a pet damage deposit of \$250.00 had been paid.

The tenant testified that during the tenancy repairs and renovations were required and the landlord made a commitment to deal with these issues without delay. However, according to the tenant, their tenancy was repeatedly disrupted by repair issues that affected the use of the premises. The tenant stated that there was a continuous procession of contractors coming in to complete repairs that should have already been done when the tenants moved in. The tenants apparently encountered problems with the paint, stove, sewer, flooding, and water damage, the garage door, the pool, the bathroom shower, and the fireplace.

The tenant testified that they were forced by the landlord to liaise directly with the landlord's various contractors and were required to arrange and oversee the repairs.

The tenant stated that the landlord had improperly delegated the scheduling of the work to the tenants and had instructed their contractors to contact the tenants, instead of dealing with the landlord. The tenant testified that contractors were apparently told to contact the tenants directly and some workers showed up trying to gain access to do repairs without advance written Notice. The tenant pointed out that they dealt with 11 visits from various tradespersons over a period of time and endured ongoing work that took much longer than the tenants expected.

The tenant pointed out that in addition to tradespersons arriving to do the repairs without the landlord first providing written notice, the tenants were also deprived of the use of certain areas of the house while repair work was in process and this devalued their tenancy.

The tenants feel entitled to be compensated for loss of use and quiet enjoyment in the amount of \$3,735.16.

The landlord testified that they promptly addressed all repair issues that the tenant brought forth without delay, but the work was delayed by the fact that the tenants were not always cooperative and could not be contacted because they did not have a cell phone.

The landlord acknowledged that the tenants were not served 24 hour written notices by the landlord seeking access to the unit. The landlord stated that they felt the tenants could schedule the repair work directly with the contractors because this would help the avoid disruption by allowing them flexibility. The landlord pointed out that the intent was to benefit the tenants. The landlord stated the tenants had seemed willing to take on this role.

The landlord testified that, although the tenant's use of certain portions of the home had been temporarily impacted, the inconvenience was relatively minimal. The landlord pointed out that the home had 5 bedrooms and 3 bathrooms so the tenants were not drastically impeded by the repair work.

The landlord pointed out that the tenant's claim in calculating the loss of use by percentage failed to take into account all of the living areas including the garage, pool and decks. The landlord does not agree with the amount of the tenant's claim and believes that any amount exceeding \$1,000.00 would be excessive.

Analysis

Section 7 of the Act states that if a party fails to comply with the Act, or 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 authority to determine the amount and to order payment under such 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.

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.

I find that, although the repairs were apparently delayed, the landlord did comply with the Act and did address the deficiencies.

However, I do not accept the landlord's position that the tenant is responsible for delaying or prolonging the repairs. The basis for this conclusion is related to the fact that the landlord cannot delegate any of their responsibilities under section 32 of the Act to a tenant. In addition, I find that section 29 of the Act is also relevant..

Section 29 of the Act states that a landlord, including agents of the 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.

In this regard, I find that the landlord duly engaged contractors to do the repairs, but then directed the contractors to deal directly with the tenants, likely with an honest but mistaken belief that this would be less disruptive for the tenant. I find that some of these tradespersons did not comply with the provisions of section 29 of the Act and neither did the landlord.

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, lawful purposes, free from interference.

I find that the landlord's manner of managing the repairs ultimately had the effect of unreasonably disturbing the tenant. I find that this constitutes a violation of the Act that devalued the tenancy.

With respect to the temporary loss of services and facilities, I find that section 27 of the Act states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement. However a service or facility, other than an essential or material one may be restricted or terminated provided that the landlord:

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces 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.

In this case, I find that the repair work did function to restrict the tenant's use of some areas, perhaps longer than anticipated. However, I do not find the landlord violated the sections of Act excerpted above. I find that there must be an expectation by both parties that repairs have an unavoidable impact on the use and access to portions of the unit.

Although I find that the landlord did not violate the *Act*, I find that the landlord did fail to fulfill the terms of the tenancy agreement, given the number and duration of the repairs.

I find that these parties contracted in good faith for the provision of a rental unit to the tenant that was fully inhabitable and in which all facilities and amenities were functional, or would be rendered so within a short period of time after the tenancy started. I find that the tenant fulfilled their responsibilities by paying rent in full, while having to endure deficiencies affecting the value of the rental unit and their quality of life.

I find that the tenant has genuinely suffered a loss of value to the tenancy over the duration of the renovation work, and I accept that this affected the tenant's right to quiet enjoyment of their home. I find that the tenant deserves to be compensated.

Based on the testimony and evidence discussed above, I find that the tenant is entitled to total compensation of \$2,050.00, representing a rent abatement of \$2,000.00 and the \$50.00 cost of the application.

I hereby order that the tenant may reduce the next rental payment owed to the landlord by \$2,050.00 as a one-time abatement to satisfy the monetary compensation to which they are entitled.

Conclusion

The tenants are partially successful with their claim and are granted a one-time retro-active rent abatement in the amount of \$2,050.00.

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 21, 2014

Residential Tenancy Branch