



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rokform Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to an application by the Tenant for a monetary order for compensation pursuant to section 67 of the *Residential Tenancy Act* (the “Act”).

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started November 1, 2016 and ended June 30, 2017. The rental unit was provided as part of the Tenant’s employment with the Landlord. Rent of \$500.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$250.00 as a security deposit that was returned after the end of the tenancy. The Tenant shared a portion of the unit including the bathroom with another company of the Landlord, who used its portion as office space.

The Tenant states that its employment ended near the end of April or beginning of May 2017 and that the Tenant was told that he could continue to rent the unit or could move

out. The Tenant states that it was agreed that the tenancy would end on June 30, 2017. The Tenant states that the Landlord also agreed to waive a month's rent in the unit. The Tenant states that the agreement to move out was made while the Tenant was preoccupied with other matters and that the Landlord forced the Tenant to move by telling the Tenant that they wanted him out of the unit. The Tenant states that the Landlord should have ended the tenancy with a one month notice. The Landlord confirms that the Tenant was given possession of the unit to the end of June 2017 and that the Tenant was given a month's free rent. The Tenant claims \$2,500.00 for an illegal end to the tenancy. The Tenant argues that Act does not allow the Landlord to end the tenancy without serving a notice as to do so would have the effect of contracting out of or avoiding the provisions of the Act.

There is no dispute that the unit was provided with heat and that the Tenant did not pay for the heat utility. The Tenant states that the unit was not provided with sufficient heat for winter weather below minus 10 degrees Celsius. The Tenant states that in December the Tenant informed the Landlord about insufficient heat and that the Landlord inspected and adjusted the baseboard heaters and showed the Tenant how to adjust the settings to obtain heat. The Tenant states that this did not work as the heaters were simply insufficient. The Tenant states that he stayed at another residence off and on during December 2017 and January 2018 to avoid the cold unit. The Tenant states that he raised the heat problem with the Landlord again in January 2018 but the Landlord still did nothing. The Tenant claims \$200.00 for the loss of enjoyment of the unit. The Landlord states that they believed that the heat problem was resolved in December 2017 when they adjusted the heaters and that they hearing nothing further from the Tenant. The Landlord states that there is no problem with the level of the heat as the Landlord is currently in the office portion of the unit, it is currently minus 10 and there is no issue with cold. The Tenant states that the heat did not reach the back portion of the unit that the Tenant occupied.

There is no dispute that mice were in the unit for the duration of the tenancy. The Tenant states that although the Landlord was informed of the mice the Landlord only supplied the Tenant with traps and refused to use poison outside the unit. The Tenant states that the Landlord did nothing to eradicate the mice. The Tenant states that the mice ate into foods and chewed holes in minor household items. The Tenant states that mice were heard throughout the nights and as a result the Tenant also lost sleep. The Tenant states that the Tenant did some work to close holes in the unit and billed the Landlord for this work. The Tenant states that the Landlord told the Tenant that he would have to wait until spring before anything could be done. The Tenant claims \$3,300.00 for the presence of the mice.

The Landlord agrees that the Tenant was provided with mouse traps and also poison. The Landlord states that the Tenant was responsible for cleaning up after the traps. The Landlord states that the Tenant was instructed not to put poison anywhere the Landlord's dogs would be. The Landlord states that the trailer is in a forested area and that mice are a recurring problem. The Landlord states that the Tenant would make jokes about the mice and that had the Tenant told the Landlord that it could not live in the unit because of the mice the Landlord would have acted immediately. The Landlord states that they did not feel that the mice in the unit were a serious problem.

Analysis

Section 5(1) of the Act provides that landlords and tenants may not avoid or contract out of this Act or the regulations. Relevant portions of Section 48 of the Act provides that

(2) An employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving notice to end the tenancy if the employment is ended.

(3) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the tenant receives the notice,

(b) not earlier than the last day the tenant is employed by the landlord, and

(c) the day before the day in the month, or in the other period on which the tenancy is based, that rent, if any, is payable under the tenancy agreement.

There is no provision under the Act for compensation to a tenant where a landlord ended a tenancy pursuant to the above section. I do not consider the Tenant's evidence of being preoccupied at the time the Tenant agreed to move out of the unit as evidence that the Tenant was forced to agree to end the tenancy. As the agreement to end the tenancy allowed occupation of the unit for at least a month after the employment was terminated and as the agreement also provided compensation to the Tenant, I find that the agreement did not stop the Tenant from receiving any entitlement that it would have received had the Landlord served the Tenant with a one month notice to end tenancy for cause as set out above. As a result I find that the agreement for the end of the tenancy was not an agreement to avoid or contract out of the provisions of the Act. I therefore dismiss the claim for compensation for the end of the tenancy.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party. Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Given the lack of any supporting documentation from the Tenant about continuing problems with the heat and considering the Landlord's evidence that the Tenant never complained after December 2017 I find that the Tenant has not shown on a balance of

probabilities that the Landlord was negligent in providing heat to the unit. I therefore dismiss this claim.

Based on the undisputed evidence that mice were in the unit at the onset of the tenancy and that this was reported to the Landlord I find that the Tenant has substantiated that the Landlord failed to provide a unit suitable for occupation. Based on the undisputed evidence that the Landlord was aware that mice were present to the end of the tenancy and only provided some traps and poison, I find that the Tenant has substantiated that the Landlord was negligent in its response and failed to maintain the unit as suitable for occupation. The Landlord's evidence of the prevalence of mice does not lessen the Landlord's obligation to provide a rodent free rental unit and I consider the evidence of the rodent infestation to create an uninhabitable unit. Despite the uninhabitable nature of the unit the Landlord continued to collect rental monies for the unit. For these reasons I find that the Tenant is entitled to the reasonable compensation sought of **\$3,300.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$3,300.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 22, 2018

Residential Tenancy Branch