Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC RP RR 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 the Act, Regulation or tenancy agreement;
- An Order compelling the Landlord to make repairs to the unit, site, property;
- An Order allowing a Tenant to reduce rent for repairs, services or facilities agreed upon but not provided;
- Reimbursement by the Landlord for the cost of the filing fee paid by the Tenant for this application.

Both parties attended and gave affirmed testimony in turn. The first issue was the tenant's claim that the landlord failed to comply with the order dated July 26, 2007 and that the tenancy has been devalued as a result of non-repairs and health and safety issues. The tenant is claiming compensation in the form of a rental abatement of $500.00 per month for the past six months and continuing until the work is completed. The second matter is the tenant's application for an order against the landlord for the completion of "extensive repairs" to the rental unit. The tenant had included a separate list with 38 items that the tenant contended needed to be addressed.

Issue(s) to be Decided

At this hearing, the monetary issues to be determined, based on the testimony and the evidence were:

- Whether or not the landlord has complied with the order issued by Dispute Resolution Officer Larry Gilbert on July 26, 2008
    - If not, whether the tenant is entitled to be compensated a retroactive abatement in rent for six months in the amount of $500.00 to continue until the landlord complies with the order.

At this hearing, the non-monetary issues to be determined, based on the testimony and the evidence are:

- Whether or not the landlord is in compliance with the Act in regards to maintaining and repairing the rental unit as required under the Act.
    - If not, whether or not the landlord should be ordered to repair any or all of the items listed by the tenant on the "Repair List dated November 7, 2008.

Background and Evidence

Monetary Claim

The Tenant submitted into evidence a copy of the order issued on June 21, 2007, excerpted as follows:

- Respondent to pay the Applicant $600.00 for damages based on a failure to comply with the repair Order of a Dispute Resolution Officer dated December 12, 2006 for a period of six months;

- A rent reduction of $100.00 per month until the Respondent has complied with the repair Order dated December 12, 2006 regarding the locks on the windows;

- Respondent had 45 days to :

    - conduct an investigation on whether or not the safety railings installed by the Respondent were governed by the British Columbia Building Code

    - if so, whether those safety railings complied with the Code

    - prepare a written report concerning the above-noted investigation;

    - deliver a copy of the report to the Applicant;

The tenant testified that, while the landlord did comply with the payment of $600.00 to the tenant and also satisfied the order regarding the window locks, the landlord failed to comply with the order that the landlord conduct an investigation, determine whether the railings were within the code, prepare a report and deliver the report to the tenant. The tenant testified that the landlord merely sent a copy of the building code to the tenant and took no other action. In regards to the monetary compensation that was being claimed based by the tenant because of the landlord's alleged failure to comply, the tenant was not able to specify the basis upon which the amount of damages and losses were calculated, but stated that the deficient railings had caused substantial risk and several falls.

The landlord disputed the tenant's testimony and the allegation that the landlord had not complied with the order issued on June 21, 2007. The landlord testified that a report was issued and that discussions ensued with the parties being in concurrance that the railings did *not* meet the code and that they must accordingly be re-installed to code. The landlord testified that the tenant had expressed an interest in doing the necessary work and the landlord therefore asked the tenant to submit a bid. The landlord testified

that the quotes by the tenant raised some questions and that the parties met several times to go over the proposed plans, materials and pricing. However, after a lengthy period of negotiating, the landlord determined that none of the proposals submitted by the tenant met the requirements of the project and the landlord therefore engaged another contractor to perform the job. This is apparently now in process. The landlord's position was that the landlord did not fail to comply with the order, nor was any compensation to the tenant for damage or losses warranted.

Order for Repairs

The tenant testified that a large number of deficiencies in the unit exist that require immediate repairs and maintenance by the landlord. The tenant testified that some of the issues have been long-standing and have been previously brought to the landlord's attention without result. The tenant submitted a document dated November 7, 2008 and titled, "Repair List …", which contained 38 briefly-described issues. The tenant testified that all of these are maintenance or repairs rather than renovations or aesthetic improvements.

The landlord testified that the list presented by the tenant in the hearing package was not the same one that was presented to the landlord on November 7, 2008. The landlord testified that the landlord has not yet had an opportunity to inspect nor assess the tenant's complaints because the list of repairs was given to the landlord only three weeks prior to the hearing and this was the first time that the landlord was apprised of some of these alleged problems. The landlord expressed a willingness to look into the problems being put forward by the tenant to determine what action, if any, needs to be taken.

Analysis

Monetary Claim – Rent Reduction

In regards to the monetary claim and the Applicant's right to claim damages from the other party, Section 7 of the Act states that if a landlord or tenant does not comply with

this 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 the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

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 violation of the agreement, a contravention of the Act or non-compliance with an order, on the part of the respondent. Once that has been established, the claimant must then provide evidence verifying the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Although the tenant held an opinion that the report from the landlord was not issued within the 45 days specified and that the content was not sufficient to qualify as a valid report, I do not find the landlord to be in contravention of the order issued on June 21, 2008. I note that the order required that the landlord investigate and report on the issue of whether or not the construction of the railings met the building code. I note that, according to both parties, it was established that the railings did not meet the code and that both parties had engaged in several discussions around this very issue and had, in fact, entered into negotiations to rectify the situation by replacing the railings with a structure that met the code. Moreover, even if I found that the landlord had not strictly complied with the order, the tenant has still not proven significant damage or loss stemming from the alleged violation by the landlord sufficient to warrant a rent abatement. I find no merit in the tenant's monetary claim and I find that, based on the testimony and evidence, this portion of the tenant's application must be dismissed.

Non-Monetary Claim – Order for Repairs

In regards to the portion of the tenant's application dealing with the request for an order against the landlord for repairs, I find that merely making a request does not constitute proof of the necessity of the repair, nor does it serve to establish the validity or merit of the complaint.

Section 32 of the Act imposes a certain amount of responsibility on both the landlord and tenant in terms of caring for the property. The Act states that a landlord must provide and maintain residential property in a state of decoration and repair that would comply with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, making it suitable for occupation by a tenant.

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and, while a tenant is not responsible for wear and tear, the tenant must repair damage to the rental unit or common areas that is caused by the

actions or neglect of the tenant or a person permitted on the residential property by the tenant.

It is not unusual to find that the parties may occasionally differ in opinion as to what constitutes a “necessary” repair. Some deficiencies in a unit may be superficial and would not be considered to significantly affect the function or usefulness of a feature or facility, particularly if the deficiency was present at the time that the tenant agreed to rent the unit. The parties may also be in conflict as to the source. For example whether the problem would be considered as damage caused by the occupants or whether it could be categorized merely as wear and tear resulting from natural usage.

Generally speaking, if there is a health or safety issue, the matter should be addressed without delay by the party who is responsible and an application by the other party to obtain an order towards that end, is likely to be successful. On the other hand, where the party is seeking an improvement or aesthetic enhancement, that does not clearly qualify as “damage” for which the other party is clearly accountable, then it is likely that an application for an order would not succeed.

I must point out that a landlord would probably not be in violation of the Act or agreement for failing to address a problem or repair situation that the tenant had neglected to bring forward to the landlord and in situations where the tenant had wilfully declined to afford the landlord a fair opportunity to act on the concern prior to seeking dispute resolution.

I find that the list submitted by the tenant was composed relatively recently and I find that that the landlord had not been given adequate time and opportunity to look into the tenant’s long list of complaints. I also find that the list of repairs was lacking in sufficient detail about the extent of each problem and the history of what has been said and done regarding the problem. In short, I do not have a reasonable amount of data upon which to base an order and I cannot make a determination on each of the issues as presented by the tenant.

I note that the landlord has expressed a willingness to conduct a complete inspection with the tenant's input regarding every item on the list in order to make a decision on what should be done. I find that this is a critical step that should be completed prior to embarking upon the formal dispute resolution process. I am not prepared to make generic orders for anyone to follow relating to vaguely defined repairs on undeveloped issues.

For a matter to be determined, the applicant must first establish exactly what the issue is and what the each party's respective position is on the particular complaint. I find that this has not yet transpired and therefore I find that this matter has been brought before me prematurely. As there is a need for more comprehensive data and because the applicant and respondent will be following up on this process in the near future, I hereby make no findings on the complaints and dismiss the portion of the tenant's application relating to the request for an order for repairs.

I note that the landlord has made a firm and formal commitment to:

- conduct a complete examination of the tenant's complaints during the week of December 15, 2008 with 24 hours written notice to the tenant
- formulate a position on each of the tenant's requests and provide the landlord's answer in writing as applicable to each individual item
- provide a status report as to what timeline and process being planned to address the items that the landlord feels should be addressed
- complete all repairs that are deemed by the landlord to be warranted by the end of January 2009

I note that the tenant has agreed to:

- fully cooperate and participate in the inspection process.

- allow the landlord to determine what repairs will be addressed and to permit the landlord to address these.
- make application for dispute resolution only after the landlord's final position on a particular matter is evident and with which the tenant disagrees.

Conclusion

Accordingly, I hereby dismiss the tenant's application in total. The tenant is not entitled to be reimbursed for the cost of the application.

Dated: December, 2008