



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENSINGTON PLACE MANOR
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 monetary compensation. The tenant was also seeking an order to force the landlord to comply with the Act, an order to force the landlord to complete emergency repairs.

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?

Is the tenant entitled to an order to force the landlord to complete emergency repairs?

Preliminary Matter: Application

At the outset of the hearing the tenant's agent stated that the tenant was seeking compensation of \$350.00 *per month* retro-active rent abatement for 7 months of the tenancy, totaling a claim of \$2,450.00, based on alleged deficiencies in the rental unit. However, the copy of the tenant's application submitted to Residential Tenancy Branch and received by the landlord, indicated the tenant was seeking \$350.00 in total..

I find that the application on file is an original application, with the amount of the claim hand written in blue ink with a claim of \$350.00. Requests to change the amount of the claim amount by amending the application to reflect the higher claim must be denied as increasing the amount of the monetary claim would unfairly prejudice the respondent.

Background and Evidence

The tenancy began in September 2012. Rent is \$700.00 and a deposit of \$350.00 paid.

The application indicated that the tenant was seeking orders for repairs to the bathtub, tub surround, kitchen sink and intercom.

Both parties testified that the bath tub and surround has been replaced and the kitchen sink leak was also repaired.

The tenant took issue with the fact that the tenant was forced to endure a nonfunctioning tub for 7 months while making verbal complaints to the landlord. However, it was confirmed that the tenant first requested repairs in writing on April 4, 2013. A copy of this communication was in evidence.

The tenant feels entitled to a rent abatement of 50% to compensate for the fact that the tub and shower were not usable for this period due to water infusion in the walls and peeling acrylic paint on the tub surround.

The tenant also alleged that the repair work was unreasonably delayed by the fact that the landlord used unqualified tradespersons and because the tenant was not able to enter her unit for several days due to a clean-up of asbestos in the walls.

The landlord and a witness of the landlord testified that the tub surround had never been painted nor was it ever found to be leaking. According to the landlord's witness, the tub was completely usable. The witness testified that, in fact, the tenant's associate had compromised the silicone by pulling the panels apart in his presence.

The landlord denied causing undue delay in the repairs of the bathroom tub and tub surround. The landlord pointed out that the tenant's associate had interfered with one handyman by insisting that he was not qualified and the tenant also had the locks changed to prohibit entry by the landlord's contractors. In regard to the allegations of asbestos, the landlord stated that this was addressed immediately upon report of the concern and was rectified within 2 days.

The tenant's agent testified that there was a chronic leak in the kitchen drain and the landlord's contractor took too long in finishing the job prolonging inconvenience for the tenant due to his incompetence and left the worksite in an unfinished state.

The landlord testified that the work was interrupted by the tenant who had insulted her staff by questioning his credentials and refusing to give him access to the unit.

The tenant's agent disputed the landlord's allegation that the tenant changed the lock. According to the agent, the lock was changed by someone who worked for the landlord.

In regard to the non-functioning intercom, both parties agreed that the intercom was not functioning and that this had been a problem for some time.

According to the landlord, the tenant was made aware from the outset of her tenancy that there was no working intercom connected to her 3rd floor unit and agreed to rent it under those conditions..

A witness for the landlord, who is also a tenant in the building without a working intercom, testified that she was informed at the start of her tenancy that the unit did not include a working intercom and she rented the unit with that knowledge.

The landlord testified that they have been working diligently to find the vintage parts for repairs.

The tenant's agent argued that the landlord has an obligation to ensure access to the unit for the tenant and her guests and the lack of an intercom imposes undue hardship on the tenant , who has health issues. The tenant's agent testified that, the absence of an intercom also poses a safety risk for the tenant and others.

Analysis

In regard to an Applicant's right to claim damages from another party, section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants the Arbitrator 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 monetary 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.

I find that section 32 of the Act imposes a responsibility 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.

With respect to the tenant's complaint about repairs to the bathtub, tub-surround and sink, I find that the landlord did complete the repairs to these items in a timely manner, after the tenant's written request. I find that any delays in completing the repairs was not perpetrated by the landlord in violation of the Act, but stemmed from unexpected circumstances that arose.

Accordingly, I find that the tenant has not met all elements in the test for damages that would warrant monetary compensation. Based on the above, I hereby dismiss the tenant's claim for monetary compensation for loss of use of the tub and the residence without leave.

The remainder of the tenant's application, including the request for an order for repairs was found to be moot and is therefore also dismissed without leave.

In regard to the intercom dispute, the parties engaged in a mediated discussion and the landlord made a commitment to find a solution to this problem, even if it entails finding an alternate intercom method. The rental rate will be reduced by \$30.00 per month to continue until the first day following the month in which the intercom service is restored.

Conclusion

The tenant is granted a rent abatement for loss of the intercom which will continue until it is repaired. The remainder of the tenant's claims are dismissed.

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: June 10, 2013

Residential Tenancy Branch