



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, DRI, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for devalued tenancy over a one-month period due to flood remediation activities. The tenant is also seeking compensation for loss of quiet enjoyment of the suite for a 3 to 4 month period during repairs for a fire in the adjacent unit. In addition to the above, the tenant is disputing an additional rent increase and refund of over-paid rent, based on a noncompliant Notice issued by the landlord.

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.

Preliminary Matter

The tenant testified that they did not receive the landlord's evidence package which was submitted to the Residential Tenancy Branch on December 24, 2013. The landlord testified that the package was served on the tenant by registered mail.

Rule 4 of the *Residential Tenancy Rules of Procedure* states that, any evidence upon which the respondent intends to rely in disputing an Application for Dispute Resolution, must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure.

The landlord was able to provide a registered mail tracking number from Canada Post that confirmed the mailing of the landlord's evidence package to the tenant on December 19, 2013. Apparently the package was not retrieved by the tenants as of the

date of this hearing. Accordingly, it was determined that the landlord's evidence was served in accordance with the Act and therefore will be considered.

Issue(s) to be Decided

- Is the tenant entitled to monetary compensation under section 67 of the Act for damages or loss and possibly a rent abatement.
- Should the landlord's Notice of Rent Increase be cancelled as requested by the tenant?.

Background and Evidence

The tenancy began in 2008 with rent of \$800.00.

Submitted into evidence were copies of part of the tenancy agreement, copies of communications, copies of receipts and invoices and photos.

The tenant testified that, during August 2013, a pipe burst in the unit flooding the crawl space and damaging the tenant's property that had been stored below. The tenant testified that the remediation process for the flood spanned a period of one month, during which the tenant was deprived of the use of the crawl space as well as the main floor bathroom and the living room. The tenant testified that loud equipment was put in place in the crawl space and in the living room to dry the areas. The tenant pointed out that they paid for the hydro that was being used by the contractors to run these machines for 24 hours per day for the 30 day period and they were also forced to endure constant noise from the drying units. The tenant testified that all of their property stored in the crawl space was damaged and resulted in an insurance claim that only paid for a portion of the loss. The tenant also participated in some of the clean-up. The tenant feels that they were greatly inconvenienced by this incident and should be entitled to compensation of 100% rent abatement for the month of August in the amount of \$800.00.

The landlord acknowledged that there was a leak and an intensive remediation process lasting one month. However, the landlord does not agree that the tenant should be entitled to any compensation. The landlord pointed out that the tenants still had use of most of the home, including the upstairs bathroom and the tenants were at work for most of each day.

The landlord stated that, prior to the pipe bursting, the tenants had been asked to see if there were any water leaks and they reported to the landlord there was no leak. The landlord testified that this was merely a week before the pipes burst. The landlord also

pointed out that the landlord incurred a significant amount of expense in repairing the unit.

The tenant testified that, in June 2013, due to a fire which broke out in an adjacent unit, the tenants were subjected to various disturbances for a duration spanning 3 to 4 months while repairs were underway. The tenant pointed out that the unit had already undergone a renovation process even prior to the fire, which temporarily inconvenienced the tenants. However, after the fire incident, new renovations resumed with even more disruption than before. The tenant feels that the use and quiet enjoyment of their home was negatively impacted for an unreasonably lengthy period of time because of this prolonged renovation work. The tenant testified that the incident necessitated them leaving their suite for 48 hours and they missed work during the chaos. The tenant testified that, although their unit was not directly damaged by the fire itself, they found it necessary to do a substantial amount of the clean-up that contractors failed to complete. The tenant stated that there were items placed in their driveway, and elsewhere on the property. The tenant testified that contractors were constantly accessing their property during the renovation process and they put up with putrid smells coming from the broken windows of the burned out unit.

The tenant claims that the losses to their tenancy over this time warrant compensation of \$430.00.

The landlord does not agree with the tenant's claim for a rent abatement due to the fire remediation. While the landlord did acknowledge that it took some time to complete all of the renovations on the adjacent suite, the landlord's position is that the tenants were not unduly inconvenienced by this process. The landlord pointed out that some of the debris on the property actually belonged to the tenant.

In regard to the portion of the tenant's application disputing an additional rent increase, the tenant testified that the landlord issued a Notice of Rent Increase form dated August 10, 2013 purporting to increase their rent from \$800.00 to \$950.00 effective December 1, 2013. The tenant testified that the amount of the rent increase exceeds that permitted under the Residential Tenancy Regulations, which restrict the increase to 3.5% for 2013. The tenant testified that they had nonetheless paid the extra \$150.00 for the higher amount of rent in December 2013 and January 2014.

The landlord acknowledged that the Notice of Rent Increase was served on the tenants and confirmed that the amount of the rental increase being imposed on the tenants was set at \$150.00. The landlord pointed out that the tenant's rent had never been increased since 2008 and he believes that the amount of the increase should be permitted, given the circumstances.

Analysis - Monetary Compensation

The tenant was requesting a rent abatement of 100% for the reduction of value of the tenancy during August, based on the disruption and reduced quality of the tenancy for the entire period that the flood remediation continued.

Section 7 of the Act states that, if a landlord or tenant does not comply with the Act, or tenancy agreement, the non-complying landlord or tenant must compensate the other party for 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 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.
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 and a corresponding loss.

I find that this landlord and tenant had contracted for a tenancy that included a functional rental unit that was comfortable and liveable. I find that, through an incident that was not caused by the landlord nor by the tenant, the premises being provided were temporarily compromised for a month because of noise and disruption caused by machinery drying out the flooded areas.

I find that the process of restoration was onerous for the tenant because of the duration which spanned an entire month. I find that, for the period in question, the tenant continued to pay full rent in compliance with their obligation under the Act. However, at the same time the tenant clearly suffered a loss of value to the tenancy and their quality of life for a time.

Section 32 of the Act requires a 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. I find that the landlord did not violate section 32 of the Act as the landlord did attempt to address the emergency situation in a timely manner. I find that the situation was brought under control as efficiently as could be managed, given the circumstances.

That being said, I still find that there were deficiencies in the liveability of the unit during the repairs that rendered the landlord unable to completely fulfill the contractual obligations of the tenancy agreement for the period in question.

I also find that the tenant contributed by paying the extra costs for hydro used to complete the remediation. Given the above, I find that a rent abatement of 50% is warranted for the one-month period during August 2013. Accordingly I find that the tenant is entitled to a retro-active rent abatement of \$400.00 for August 2013.

With regard to the three-to-four month fire damage remediation being performed on the adjacent unit, I accept that the ongoing activities did impact the tenancy to some degree. I note that the tenant was required to temporarily vacate the unit for 48 hours at one point and that there was ongoing disruptive activities over a relatively extended period of time. I also accept the tenant's evidence that materials were removed from the damaged unit and were left in common areas, including their driveway.

Given the above, I find that some compensation is warranted and I set this amount at 5% of the rent paid for a four-month period, totaling \$160.00.

With respect to the tenant's allegation that the landlord issued an illegal rent increase through a Notice issued on August 10, 2013, I find that section 43 of the Act states that a landlord may only impose a rent increase up to the amount calculated in accordance with the regulations, ordered on an application, for an additional rent increase or agreed to by the tenant in writing. The Regulations require that the Notice of Rent Increase must also be on the prescribed form.

The landlord must also still follow the notification procedure required under the Act, even if the tenant has agreed in writing to pay a higher rent increase than the amount calculated in accordance with the regulations. In this case, I find that the tenant had never agreed in writing to an additional rent increase.

The Act states that, if a landlord collects a rent increase that does not comply with the Act and Regulations, the tenant may deduct the increase from rent or otherwise recover the increase.

In the case before me, I find that the landlord did utilize the correct form for a Notice of Rent Increase and followed the rules, except that the amount of the rent increase exceeded the statutory limit of 4.3%. For this reason, I find that the Notice of Rent Increase dated August 10, 2013, is not valid and must be cancelled.

I find that the tenant is entitled to recoup the \$150.00 increase charged as an over payment of rent for the months of December 2013 and January 2014 totaling \$300.00.

With respect to the landlord's argument that the Notice of Rent Increase he had issued should be accepted as a valid attempt to increase the rent beyond the normal percentage allowed, I find that the landlord has not correctly followed the procedure under the Act and Regulations to obtain an additional rent increase above the limit allowed.

Section 43(3) of the Act does permit a landlord to request an order approving a rent increase greater than the amount calculated under the regulations referred to in subsection 43 (1) (a) by making an application for dispute resolution. Section 23 of the *Residential Tenancy Regulations* provides detailed information about the circumstances that could warrant an additional rent increase and specific application forms for this process are available through Residential Tenancy Branch. I find that this would be a separate application to be filed by the landlord successfully obtaining an order *before* the additional rent increase can be instituted.

Based on the testimony and evidence discussed above, I find that the tenant is entitled to monetary compensation in the amount of \$910.00, comprised of \$400.00 rent abatement for devalued tenancy and loss of quiet enjoyment for the flood remediation during August 2013, \$160.00 rent abatement for a four-month period from June 2013 to September 2013 for the fire remediation, \$300.00 rent refund for a noncompliant rent increase and the \$50.00 cost of this application.

I hereby order that the tenant deduct \$455.00 from the next month's \$800.00 rent owed to the landlord and \$455.00 from the \$800.00 rent owed for the month following that, to satisfy the tenant's entitlement to compensation of \$910.00.

I hereby order that the Notice of Rent Increase dated August 10, 2013, is cancelled and of no force nor effect and the rental rate will remain at \$800.00, unless and until a valid Notice of Rent Increase takes effect.

The remainder of the tenant's application is dismissed without leave to reapply.

Conclusion

The tenant is partly successful in the application and is granted a rent abatement and an order cancelling the Notice of Rent Increase dated August 10, 2013.

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: January 07, 2014

Residential Tenancy Branch

