

Dispute Resolution Services

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

Decision

Dispute Codes: OPR, MNR, CNR, MNDC, PSF, LRE, LAT, RR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order and a cross-application by the tenant for an order setting aside a notice to end tenancy, a monetary order, an order that the landlord provide facilities, an order suspending the landlord's right to enter the unit, an order authorizing the tenant to change the locks on the rental unit and an order allowing the tenant to reduce her rent. Both parties participated in the conference call hearing and had opportunity to be heard.

At the hearing the parties agreed to the following:

- The tenancy will end on October 15, 2009.
- The landlord will repair the security light outside the entrance to the rental unit.
- The landlord will program the security alarm to permit the tenant to select a new alarm code. The tenant will not be required to give the landlord the code to the security alarm until the tenancy ends.

As the parties agreed on a number of the claims, this decision addresses only those claims which are still outstanding, namely the landlord's claim for \$3.50 in rent and the tenant's claim for compensation and a reduction in rent.

I dismiss the tenant's claims for orders suspending the landlord's right to enter the unit and authorizing the tenant to change the locks as the landlord's access to the unit will be restricted when the tenant is able to select an alarm code which is not given to the landlord.

Issue(s) to be Decided

Is the tenant entitled to compensation as claimed?

Should the tenant be permitted to reduce her rent for services not provided?

Is the landlord entitled to a monetary order for rent not received?

Background and Evidence

The tenancy began in the summer of 2007. The rental unit is one of two rental units located on the ground floor of a home in which the landlord occupies the upper floor. The parties agreed that the tenant was \$103.24 in arrears for the month of April and further agreed that \$100.00 of that arrears was paid on or about June 8. The tenant testified that she left \$3.25 in coin in an envelope and taped it to the landlord's front door. The landlord denied having received the payment.

The tenant testified that she lost \$193.93 in employment income as a result of having to attend the hearing and seeks to recover that lost income.

The tenant testified that from the beginning of the tenancy, she had always been permitted to use the laundry facilities in the home. The tenant testified that in early February the landlord advised her that she was no longer permitted to use the laundry facilities. The tenant began using a public laundromat and kept track of the amounts spent on laundry. As of the date of the hearing, the tenant had spent \$123.25 on laundry and seeks to recover that cost. The landlord's agent testified that the use of laundry facilities was not part of the tenancy agreement, but was a gesture of kindness on the landlord's part which she chose not to continue when the relationship between the parties broke down. The tenant further seeks to reduce her rent for the remainder of the tenancy as she will need to continue taking her laundry to a laundromat.

The tenant testified that she has been unreasonably disturbed by the landlord and has lost quiet enjoyment of the rental unit on almost 50 occasions since early March. The tenant testified that the landlord, whose kitchen is above the tenant's bedroom, will create noise in the early hours of the morning. The tenant described the noises as the sound of dragging furniture or dropping things. The tenant testified that she has spoken to the landlord on a number of occasions about the noises but to no avail. The tenant further testified that at times she would bang on the wall to communicate her displeasure, in response to which the landlord would stomp on the floor. The landlord's agent testified that the landlord has not been making excessive noise and emphasized

that the upper floor of the home is occupied only by the landlord and her husband, who are retirees and not inclined to create excessive noise. The agent emphasized that no noise bylaws had been broken and stated that no complaints had been received from a second rental unit which was beside the unit in question. The tenant seeks \$20.00 in compensation for each of the 49 times she claims to have been disturbed for a total of \$980.00.

The tenant testified that the security light outside the entrance to the rental unit has not been operational since the tenancy began and seeks \$10.00 per day in compensation for each day since October 2007 that the light has not been working. The tenant claimed to have written three letters to the landlord requesting repairs, which the landlord claimed not to have received. The tenant claims a total of \$669.00 for the security light not having worked.

The tenant seeks the cost of counseling for her son which she claims is necessitated by the attempt of the landlord's agent to break into the rental unit. The tenant testified that her son was traumatized by the agent's attempt to enter. The tenant provided a psychologist's business card and stated that a registered psychologist had recommended that her son receive 30 sessions of intensive counseling at a total cost of \$4,950.00. The landlord's agent denied having attempted to break into the unit.

Analysis

Turning first to the landlord's claim for \$3.24 in unpaid rent, I find that the tenant has not proven that she paid the outstanding monies and accordingly I find that the landlord is entitled to receive that amount. **I award the landlord \$3.24 in rental arrears.**

Under the Act, the only litigation-related expense I am empowered to award is the filing fee paid to bring the application. I find that the claim for loss of income resulting from attendance at the hearing is a litigation-related expense and accordingly I dismiss the claim.

The Act places the burden upon a landlord to reduce a tenancy agreement to writing. A written tenancy agreement was not submitted by either party, so I assume a written agreement does not exist. Because the tenant has been using the laundry facilities

since the beginning of the tenancy, I find on the balance of probabilities that laundry facilities were to be included in the rent. I find that the landlord has wrongfully withheld laundry facilities from the tenant. I accept the tenant's written record of the amount she has spent on laundry since the facility was taken away and **I award the tenant \$123.25 in compensation for loss of laundry facilities.** The tenant's records show that she has been spending between \$17.50 and \$26.50 per month on laundry, an average of \$22.00 per month. **I order that the tenant reduce her rent by \$22.00 each month in full compensation for laundry expenses.**

In order to establish a claim for unreasonable disturbance and loss of quiet enjoyment, the tenant must prove that the noise made by the landlord is beyond that which one might reasonably expect in this rental unit. The tenant chose to rent a unit in which another party lives immediately above her. There is no evidence before me as to whether the home was designed to accommodate multiple units and has appropriate soundproofing in place, but I find that in any event, the tenant must be prepared to accept that some noise transference from the upper floor of the home will occur. I find that the tenant has not established on the balance of probabilities that the noises she hears are beyond what should reasonably be expected in this type of living situation and accordingly I dismiss her claim for loss of quiet enjoyment.

I accept that the landlord was made aware that the security light was not functioning properly. The landlord's agent testified that he installed the security light, which has a motion detector, in order to ensure that anyone coming close to the home would be illuminated. I find it difficult to believe that a homeowner would not have noticed over the course of two years that the light was not functioning properly. I am satisfied that the tenant has not been able to use the security light throughout the tenancy, but I find her claim for compensation at a rate of \$10.00 per day to be exorbitant. I find that \$5.00 per month over the 22 months since the tenant first made the landlord aware of the problem will adequately compensate the tenant and **I award the tenant \$110.00 for lack of the security light.**

I am satisfied that I have jurisdiction over the tenant's claim for emotional injury resulting from the agent's alleged attempt to force his way into the rental unit, but I find that the tenant has not proven that counseling was required. The tenant must prove not only

that the event alleged occurred, and I make no finding on that issue, but that it resulted in some injury or loss. I do not find the psychologist's business card to be compelling evidence that the tenant's son requires intensive counseling. The tenant's claim for the cost of counseling is dismissed.

I find that the parties should each bear the cost of their own filing fees.

The landlord has been awarded \$3.24. The tenant has been awarded \$233.25. I find it appropriate to set off the awards as against each other, which leaves a balance of \$230.01 in favour of the tenant. The tenant may deduct this sum from future rent owed to the landlord.

Conclusion

The tenant may deduct \$230.01 from future rent owed to the landlord.

The tenant may reduce her rent by \$22.00 for each full month of the tenancy and by \$11.00 for each half month or portion thereof.

The landlord is granted an order of possession effective October 15, 2009 pursuant to the agreement of the parties that the tenancy will end on that date.

Dated July 27, 2009.