



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, an Order for the landlord to comply with the Act and a Monetary Order to recover the filing fee. At the outset of the hearing the tenant stated that she has moved from the rental suite. Therefore, her application to cancel the Notice to End Tenancy has been withdrawn.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent to the landlord by registered mail on September 04, 2009. The landlord has requested an adjournment of the hearing as she is overseas. However, the applicant has objected to this and the hearing will commence in the landlords absence but with her representatives acting on her behalf.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has there been a breach of the *Residential Tenancy Act* by the landlord?
- Is the tenancy agreement signed on July 31 a valid document?
- Is the tenant entitled to compensation for damage or loss and if so how much?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?



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Background and Evidence

This tenancy started on August 01, 2005. Rent was \$900.00 and has risen since that time to \$1,007.00. The tenant paid a security deposit of \$450.00 which was returned to her at the end of her tenancy on October 09, 2009.

The tenant is claiming for damage or loss under the act, for having no working light in her bedroom for 10 days. The tenant claims the light came off the ceiling on August 06, 2009 and was hanging by its wires. Her roommate removed this for safety and she contacted the resident manager to make the repair. The Resident manager was not available that night and the tenant called again the next morning. Eventually the resident manager returned her call and the tenant told him he could go to her suite as her roommate was home to look at the light.

The tenant claims the resident manager attempted to repair the light but as he was not a qualified electrician they were not happy with him doing the work and requested an electrician be contacted to make the repair for safety reasons. The tenant gave the landlord a deadline to make the repair by August 12, 2009 or she would contact an electrician and organise the repair herself deducting the cost of this from the rent. The tenant claims she did not receive a reply concerning her request for the light to be repaired by an electrician and made an appointment herself for an electrician to make the repair on August 17, 2009. She again contacted the landlord and the resident manager to inform them of this. The resident manager again arrived to attempt to make the repair and found that the screw holding the light fixture to the ceiling was too short. The tenant testifies that they were not comfortable with the resident manager making these repairs and expressed that they would rather a qualified electrician carry out the work.

The tenant testifies that she then received a letter from the landlord stating that she had an illegal occupant living in the suite and he must complete an application form to be approved by the landlord. If his application is approved then the tenant and her roommate can sign a new tenancy agreement. The tenant testifies that the resident manager gave her and her roommate a tenancy agreement dated July 31, 2009 and requested that she put her roommates name on it and sign it. This agreement was also signed by the resident manager. The tenant testifies that



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her roommate had moved into the suite on the 2nd or 3rd of August, 2009. The tenants' roommate also filed in the tenancy application form and returned it to the resident manager on August 11, 2009. On August 16, 2009 the tenant arrived home to find a 24 hour Notice to enter the suite dated August 30, 2009 for entry on August 31, 2009. The tenant testifies that she was not willing to wait another two weeks for the repair if the landlords were not able to do this until August 31, 2009. The tenant testifies she went ahead with the electrician she had found and scheduled to make the repair for the next day. When the tenant arrived home on August 17 to meet with her electrician she found that the light fixture had already been repaired by the landlord. The tenant states she was irate at the illegal entry into her home. Later that day the tenant found a Notice under her door stating that her roommate was an illegal occupant and he was to leave the suite as soon as possible.

The tenant contacted a lawyer who wrote to the landlord expressing the tenants concerns. The landlord replied to the lawyers' letter and enclosed a copy of another 24 hour notice to enter the tenants' suite dated August 16 for entry on August 17 to make the repairs to the light fixture and sockets in the kitchen. The tenant claims this new notice was never given to her and she suggests the landlord or her representative have produced this in response to her lawyers' letter. The tenant testifies that on August 26 she received a One Month Notice to end the tenancy for cause. The tenant disputes the reasons given on the notice but decided to move from the suite because she could not afford the rent now she could no longer have a roommate and because she felt unsafe now she was alone in the suite. The tenant testifies she gave notice to end the tenancy on August 31, 2009 and left the rental suite on September 30, 2009.

The tenant seeks a monetary order for compensation to the amount of \$1,007.00 for rent for August for the loss of the light in her bedroom, \$500.00 for the loss of income for evicting her roommate and \$500.00 in compensation for costs incurred for moving and for days taken off work.

The landlords' property manager testifies that he went to the tenants' suite to fix the light but was asked not to do the work as he was not a qualified electrician. He states that when he went to the suite the light fixture was still on the ceiling, the wires had been disconnected and



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connectors had been fitted to the wires. He states he took off the light fixture. He suggests the tenants had not removed the light fixture as they stated. On August 07 the resident manager testifies he decided to get an electrician to fix the light. The tenant telephoned him and became irate. He telephoned the landlord who told him she would deal with it and they arranged for an electrician to come out on August 17, 2009.

The resident manager states that he did make a mistake with the first 24 hour notice to enter the suite. He realised he had put the wrong dates on this and then wrote another one with the correct dates and slipped this under the tenants door with a witness on August 16. The resident manager testifies that he told the tenant they would get an electrician to make the repair and she told him she had got her own electrician. The landlords' electrician carried out the repair on August 17, 2009.

The resident manager testifies that he made a mistake when he gave the tenants a new tenancy agreement as this was supposed to be just for the original tenant as the original roommate mentioned on the first agreement had moved out. The tenants' roommate was supposed to fill in an application form and not the tenancy agreement.

The property manager states that they did receive an application for tenancy for the tenants' roommate but he did not meet the expected criteria to become a tenant and was asked to move out. The tenant states that the landlord should have asked for additional information for the tenants' roommate when he did not meet the criteria as they could have supplied more information that would have satisfied the landlords' criteria instead of taken steps to evict both the roommate and the tenant.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Based on the inconsistency between the tenants' evidence and the evidence of the landlords' agents I find the landlords' resident property manager has by his own admission made the mistake of not issuing a correctly dated notice enter the tenant unit and the mistake of



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giving a tenancy agreement to the tenants' roommate instead of an application form. Therefore, I place little weight on the evidence presented that another Notice to enter was provided to the tenant.

I find I prefer the evidence of the tenant and her roommate about the light fixture and therefore I uphold a portion of her application for compensation for being without a bedroom light for 10 days. The tenant has applied to recover her rent for August of \$1,007.00 in compensation for this loss. However I find this amount excessive and therefore award the tenant an amount comparable to the loss of \$100.00.

I find the tenant did not comply with the Act when she first allowed her roommate to move into the suite without first seeking written permission from the landlord for her to do this pursuant to s. 34(1). However, I find that the landlords did provide the tenant with a new agreement. By including her roommate on this agreement they gave a false impression to the tenant that her roommate was acceptable. The resident property manager is the acting agent for the landlord and therefore it was reasonable for the tenant to presume her roommate was able to live in the suite. I also find the tenancy agreement was a valid document as it had been signed by the resident manager. Later the landlord withdrew this agreement due to the information gained from the tenants' application for tenancy. The tenant has applied for compensation to an amount of \$500.00 in this matter. As the tenant did not attempt to provide additional information concerning her roommates' tenancy application I found she did not do everything to mitigate her loss. I do however, find the tenant is entitled to some compensation for her roommate having to leave the suite and therefore I reduce her claim to \$250.00.

As to the tenants claim for \$500.00 for moving expenses and time off work. I find it was the tenants' choice to move from the rental suite after she received the one month notice. She did apply to have this notice cancelled but decided to move instead. Therefore, I find the tenant is not entitled to recover her moving costs of \$388.80. I find the tenant did have to take a half day from work to meet the electrician she had organized to repair the light. I find the landlord had taken an unreasonable amount of time to repair this light fixture using a qualified person and as I found earlier that the tenant was unaware that the landlord was entering her suite on August



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17, 2009 with the purpose of making the repair I therefore uphold the tenants application to recover her lost earnings for this half day. The tenant states she earns \$17.00 an hour and took four hours from work. Therefore, I find she is entitled to recover \$68.00 from the landlord.

As the tenant has moved from the rental suite no orders will be issued for the landlord to comply with the *Act* and this portion of the tenants' application is dismissed without leave to reapply.

As the tenant has been partially successful in this matter, I find she is entitled to recover the cost of filing her application. A Monetary Order has been issued for the following amount:

Compensation for loss of bedroom light	\$100.00
Compensation for loss of earnings	\$68.00
Filing fee	\$50.00
Total amount due to the tenant	\$468.00

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim pursuant to s.67 and 72 (1) of the *Act*. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$468.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: October 23, 2009.

Dispute Resolution Officer