



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR MNDC O FF

Preliminary Issues

The parties agreed that the Tenant was never served a 1 Month Notice to end tenancy for cause. The Tenant confirmed that she had made an error when completing her application for dispute resolution when she selected the section to cancel a notice issued for cause. Therefore she was withdrawing this request from her application and wished to proceed with the remaining items.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for unpaid rent and to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order?
2. Is the 10 Day Notice to end tenancy still valid?

Background and Evidence

The parties agreed they entered into a written tenancy agreement that began on April 1, 2011 and switched to a month to month tenancy after March 31, 2012. Rent is payable on the first of each month in the amount of \$825.00 and on March 17, 2011 the Tenant paid \$397.50 as the security deposit.

The Tenant submitted into evidence, among other things, copies of: the Tenant's written statement; a July 12, 2012 letter to the Landlord; a July 13, 2012 letter from the Landlord; various e-mails between the parties; the tenancy agreement; 10 Day Notice to end tenancy; notice of entry; notice of renovations; and photos of the rental unit.

The Tenant affirmed that she is seeking compensation for the loss of quiet enjoyment of her rental unit during a period of renovations from February 21, 2012 to July 09, 2012. The Tenant stated that during this period her window curtains were removed from her living room window which left her without privacy in her home.

The Tenant submitted that the work crew neglected to finish the work in her unit, specifically they did not complete the drywall and painting on the interior around the window and did not hang up her curtains again which left her unit exposed and without privacy. She stated that she spoke with the work crew over several weeks and they kept telling her they would get to it. She confirmed she did not inform the Landlord of her concern in writing until May 9, 2012; however that did not resolve the issue and again she was told it would get finished and then nothing happened until June 6, 2012 when some of the drywall work was done.

The Tenant stated that she withheld her July 1, 2012 rent in attempts to have this matter resolved. She advised that she received the 10 Day Notice on July 12, 2012 and she had paid her rent the next day to void the Notice.

The Landlord confirmed receipt of the rent within the required time frames and noted that it was not deposited until Monday July 16, 2012.

The Tenant advised the work continued to be delayed and it was not completed until July 9, 2012 when she returned home to find someone had entered her unit, without proper notice and had hung up her curtains. She attempted to resolve this matter by seeking compensation from the Landlord and when that failed she filed her application for dispute resolution on July 11, 2012.

The Landlord confirmed the building was undergoing renovations and that the work began in the Tenant's unit in early February 2012. The Landlord stated that they had offered the Tenant compensation in the amount of \$200.00 which the Tenant refused.

The Landlord stated that they calculated the compensation at \$100.00 for May and June 2012 as the Tenant did not inform the Landlord of her concerns prior to her letter of May 09, 2012

The Landlord agreed the staff entered the Tenant's unit, without notice on July 09, 2012, as they knew the urgency in getting her curtain hung up.

The Tenant confirmed she is at work Monday through Friday from 9:00 – 6:00 p.m. and that she likes to enjoy the privacy of her rental unit every evening until 11:00 p.m. or 12:00 a.m. and all day on Saturday and Sunday. The Tenant argued that she could not move freely around her unit or do things like yoga in her own home without the option to close her curtains for privacy. Therefore she is seeking \$2,062.00 compensation for loss of her quiet enjoyment and to accommodate the entry without notice that occurred on July 9, 2012.

Analysis

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Neither party disputes that the renovations involving the windows throughout the residential property was required. As such, I make no findings on the matter of the necessity of the work.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

I accept the Tenant's evidence and testimony that the Landlord did not take all reasonable steps to ensure the project would minimize the impact of her enjoyment of her suite, especially after her verbal requests to have her curtain reinstalled went

unanswered. I also accept that the Tenant's quiet enjoyment and privacy was further compromised by the staff entering her unit on July 9, 2012, without proper notice.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

While I accept that the Landlord was not informed of the Tenant's concerns until May 09, 2012, I find it undeniable that the Tenant suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of the tenancy for that period. As a result, I find the Tenant is entitled to compensation for that loss.

The Tenant provided evidence of how she was specifically impacted each week day evening from 6:00 p.m. up to approximately 11:00 p.m. and all day on Saturday and Sunday for a total of approximately 35 hours per week. She also suffered complete loss of privacy on July 09, 2012 when a staff member entered her unit, without notice. I note that her claim of \$2,062.00 would be equivalent to 100% of her rent for the 35 hours each week during the renovation.

The Landlord had offered to settle these matters with compensation in the amount of \$200.00 for the two months of May and June 2012 (\$25.00 per week).

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

I find the weekly rate of \$25.00 that was offered by the Landlord to be a fair representation of the weekly loss incurred by the Tenant. That being said, I disagree with the number of weeks the Landlord had offered to pay the Tenant as she suffered a loss of quiet enjoyment for 22 weeks.

As per the foregoing I find the Tenant is entitled to monetary compensation in the amount of **\$600.00**. This amount is calculated at \$50.00 for the entry without notice on July 9, 2012 plus \$550.00 for loss of quiet enjoyment without curtains (22 weeks x \$25.00 per week).

The Tenant has been partially successful with her application; therefore I award her recovery of the **\$50.00** filing fee.

Conclusion

The Tenant withdrew her request to cancel a 1 Month Notice of cause, as no 1 Month Notice was issued.

The 10 Day Notice to end tenancy for caused issued July 11, 2012, is hereby VOID and of no force or effect.

The Tenant has been awarded Monetary Compensation in the amount of **\$650.00** (\$600.00 + \$50.00). This amount may be deducted from her next rent payment as full satisfaction of this one time award.

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: August 01, 2012.

Residential Tenancy Branch