Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC LRE LAT RR

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 22, 2014, by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to obtain orders to: suspend or set conditions on the Landlord's right to enter the rental unit; authorize the Tenant to change the locks to the rental unit; and allow the Tenant reduced rent for services or facilities agreed upon but not provided.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant 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. Has the Tenant proven entitlement to a Monetary Order?
2. Should the Landlord have conditions set on their right to enter the rental unit?
3. Is the Tenant entitled to reduced rent?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on January 5, 2014. The Tenant is required to pay rent of $850.00 on the first of each month and on January 5, 2014 the Tenant paid $425.00 as the security deposit.

The Tenant testified that when she first considered renting this unit the Landlord told her that the building would be torn down in one to two years. She was recently told that the building sold and she would have to move within six months. She is concerned to have to move again so quickly because she is on the wait list for subsidized housing and will not likely have another place to move into within that timeframe. She is seeking $1,000.00 as compensation for having to move again and endure the costs associated with a move, in such a short period of time.

The Landlord disputed that she told the Tenant she would have up to two years before she would have to move. She argued that there has been a huge sign on the front lawn since November 2013, two months before the Tenant moved in, that clearly states the site is the subject of a proposed development and lists the meeting dates. She said she tells all new tenants that the building may be torn down in six to twelve months not two years. The building sold February 28, 2014 and the public hearing date was pushed ahead so the proposed development is currently in limbo. Evictions have been postponed until all permits are approved. Once permits are received each tenant will be served with the proper 2 Month Notice and will receive the one month's compensation in accordance with the Act.

The Tenant stated that she is seeking reduced rent and permission to change the locks on her unit, as she outlined in her written submission provided in evidence. She said she wanted to restrict the Landlord's access after the Landlord served an illegal notice of entry, entered her unit, and used her personal possessions, without her permission. She argued that the Landlord served the notice of entry by sliding it under her door the evening of January 10, 2014 to enter the morning of January 11, 2014, to bring the plumber in to fix her bathroom. She indicated that she was concerned with people being in her unit during her absence because they might access certain items she keeps in her unit. The Tenant confirmed that she has already changed her locks and has not yet provided the Landlord with a key.

The Tenant testified that during the plumber's attendance he was there to fix her bathroom but he went through her personal possessions in her kitchen and used her cleaning materials.

The Landlord confirmed that she had provided short notice of entry in this situation but that was due to the plumber not showing up at the originally scheduled time because he was delayed at another job. She argued that plumbers are difficult to schedule, given the type of work they do. The Landlord stated that she had called the Tenant before she entered the unit with the plumber on January 11, 2014, to ensure the Tenant had seen the notice of entry and the Tenant gave them permission to enter. The Landlord admitted that the plumber arrived without any materials to clean up after his job so she took the Tenant's sponge from her kitchen sink and used some of the Tenant's toilet paper for the clean up. The Landlord admitted that was an error in judgement on her part and said she gave the Tenant a new high quality kitchen sponge and two rolls of toilet paper as compensation for using her possessions.

The Tenant submitted that she is seeking reduced rent for the time she waited to have repairs completed, having to put up with noise caused by the upstairs tenants, who are the Landlord's relatives; and for flooding that occurred in her bedroom. She argued that the upstairs tenants are engaged in activities, as described in her written submission, which prevent her from getting any sleep. This lack of sleep is affecting her ability to perform her duties at work.

The Tenant argued that she had to wait six weeks to have her fridge changed; is still dealing with the presence of spiders and silverfish in her unit even after her unit was treated by the pest control company; and is still dealing with a lack of hot water after having no hot water for a month and a half.

The Landlord testified that the building was approximately 38 years old, has 3 stories, 38 units, and is made of wood frame construction. She argued that given the building's age and construction, noise travels down from the upper units, as is the case in this situation.

The Landlord testified that all of the Tenant's repair requests have been attended to. She attempted to switch out the fridge sooner with one from an empty unit but the Tenant refused to accept that fridge because it opened the wrong way. They have since replaced the Tenant's fridge with one that is only six months old.

The Landlord submitted that all plumbing has been repaired and a new hot water tank has been installed in the building after about six or seven weeks. The Landlord stated that it does take a few minutes for the hot water to get to the tap but it is working fine. They had pest control treatment but they cannot eliminate every spider. There was a water leak that came from the Landlord's nephew's suite, directly above the Tenant's

unit but it only caused water to run down the wall, not onto the Tenant's bed, as she described in her written submission. The Landlord argued that the Tenant does not want anyone in her unit and when she attended to see the water leak she was told the Tenant would clean it up.

The Landlord stated that the Tenant had been experiencing problems with her lock and requested to put her own lock on her unit. The Landlord gave the Tenant permission to install her own lock as long as she gave the Landlord a key so they could enter in cases of emergency.

In closing the Landlord commented again on how noises travel through old wood frame buildings and that she cannot stop people from going about their normal business in the privacy of their home, when it is normal behaviour that takes place during reasonable hours.

The Tenant stated she changed her locks because she does not feel safe. She was not provided two rolls of toilet paper only one; and she is of the opinion that her complaints about noise are not acted upon because the upstairs tenant is a member of the Landlord's family. As a result she stated she is seeking peace and quiet and a severe reduction in rent.

Prior to the end of the hearing, I issued a verbal Order that the Tenant was required to provide the Landlord with a key to her rental unit, forthwith.

Analysis

After careful consideration of the foregoing, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case the burden of proof lies with the Tenant.

The Tenant has filed seeking $1,000.00 compensation for having to move once the building is torn down. She argued that she was told she would have one to two years before having to move and now she was told she has six months. The tenancy has been in effect since January 2014 and the evidence supports that no date has been set for the evictions at this time as building permits are pending.

The Landlord has indicated that once building permits are in place the Tenant will be issued a 2 Month Notice to end tenancy and will be compensated with an amount equal to one month's rent, as required under section 49 of the Act.

Based on the above, I find that at the time this claim was filed the Tenant had not suffered a loss for having to move and there is insufficient evidence that the Landlord breached the Act when advising the Tenant that the building would be torn down at a future date. Accordingly, I dismiss the claim for compensation for having to move at a future date, without leave to reapply.

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 repairs were required to the hot water supply, plumbing in the rental unit, pest control, or to the Tenants' fridge. The evidence supports that repairs were attended to and both parties confirmed the time frame in which it took to complete the repairs. As such, I make no findings on the matter of the necessity of the work.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service of facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenant had applied for a rent reduction based on Section 27, I find she has provided no evidence indicating that the Landlord had breached this section of the *Act*. Accordingly, I dismiss her claim for a rent reduction.

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 unit 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 and its utilities would deteriorate occupant comfort and the long term condition of the building.

Notwithstanding the Landlord's testimony that they took all reasonable steps to ensure repairs were completed in a reasonable amount of time, it is undeniable that the Tenant suffered a loss of quiet enjoyment for a period of approximately seven weeks while she awaited the repair of the hot water system. In addition, the Tenant suffered a loss of quiet enjoyment on January 11, 2014, when she returned home to find the Landlord had taken her sponge and used some of her toilet paper. I am satisfied that the sponge and toilet paper have since been replaced by the Landlord.

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."

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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".

Based on the above, I find the value of the tenancy was reduced as a result of the loss of quiet enjoyment during the absence of hot water and on January 11, 2014. Accordingly, the Tenant is entitled to compensation in the amount of **$280.00;** which is rounded up and based on a 20% rent reduction calculated at a daily rate of $27.98 for 7 weeks or 49 days plus 1 day for January 11, 2014 (20% x $27.98 x 50).

With respect to replacement of the fridge, bathroom repairs, and pest control, I find there to be insufficient evidence to support that the Landlord delayed in enacting those repairs, or that the Tenant took reasonable action to minimize her loss. I make this finding in part because the evidence supports the Landlord acted in a reasonable amount of time, offered a replacement fridge which the Tenant refused, and the repairs were completed in a reasonable amount of time. Furthermore, after consideration of the location and age of the building it is not unreasonable to have the presence of spiders or silverfish. The evidence supports that the Landlord continues to manage the presence of insects by having sticky traps placed out. Accordingly, I dismiss this portion of the Tenant's claim, without leave to reapply.

In consideration of the Tenant's testimony, there is evidence that the hot water system may not be working adequately which is causing a limit to the amount of hot water available. Accordingly, I hereby order the Landlord to inspect the Tenant's rental unit shower, no later than **June 30, 2014**, to assess the availability and quantity of hot water and to determine if further repairs are required.

Notwithstanding the Tenant's submission that the Landlord is not dealing with the upstairs tenants and her noise complaints because they are the Landlord's relatives, I accept the Landlord's submission that given the age and wood framing of this building that noises travel down from upper floors. The noises are being generated within reasonable times of day and are the result of people conducting normal day to day living activities. Accordingly, I find there to be insufficient evidence to prove there has been a breach of the Act, and the claim for compensation or action regarding noise is hereby dismissed, without leave to reapply. That being said, I must caution the Landlord that she is obligated under section 28 of the Act to ensure every tenant has access to quiet enjoyment. Therefore, I suggest that the Landlord speak with the tenants directly above the Tenant's unit and inform them that their activities are being heard by other tenants.

Section 29 of the Act stipulates how and when a landlord may access a rental unit. I have copied section 29 of the Act at the end of this decision and hereby Order the Landlord to comply with the Act.

Upon review of the evidence, I do not find the Landlord breached the Act when entering the unit on January 11, 2014. I make this finding in part because the evidence supports the Landlord called the Tenant to confirm she had received the notice of entry and obtained the Tenant's permission prior to entering the unit. That being said, I remind the Landlord that section 90 of the Act provides that if a notice is posted or placed in another conspicuous place at the rental unit address, such as on the floor or under the door, it is not deemed received for three days after it was posted or served.

After considering all of the evidence before me, I find there was insufficient evidence to support authorizing the Tenant to suspend or set conditions on the Landlord's right to enter. Accordingly, those requests are dismissed, without leave to reapply.

Conclusion

The Tenant has been awarded monetary compensation in the amount of **$280.00.** The Tenant may deduct this one time award from her next rent payment, as full compensation of the award.

As noted above, the Tenant is Ordered to provide the Landlord with a key to her rental unit, forthwith.

The Landlord is HEREBY ORDERED to inspect the Tenant's rental unit shower, no later than **June 30, 2014**, to assess the availability and quantity of hot water and to determine if further repairs are required.

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 13, 2014

Residential Tenancy Branch

Section 29 of the Act provides as follows:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).