# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR LTD.
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNDC LAT AS RR FF

Preliminary Issues

Upon review of the Tenant's application for Dispute Resolution she indicated that she was not requesting to assign or sublet her rental unit, in terms of the actual meaning of assign or sublet; rather, she was arguing to keep her tenancy and requesting to have the Landlords comply with the Act. Also, she was increasing her claims to $1,500.00. The Tenant could not provide testimony as to if she had paid a filing fee to bring this application forward.

The Landlords argued that the amended application was not served upon them in the required amount of time. The Tenant noted that the Landlord stated three different things when arguing that her application was not submitted in time. First, she said it was received yesterday, which would have been Wednesday; then she said she got it on Monday, and then said she got it on September 8, 2014. The Tenant argued that the Landlord was faxed her amended application on September 8, 2014, the same day the RTB was faxed.

Upon review of the foregoing and the amended application submitted by the Tenant, I find the Tenant is unable to seek to assign or sublet her tenancy, as it is a month to month tenancy. Her option would be to provide notice to end her tenancy in accordance with the Act, if she chooses to end the tenancy and vacate the unit.

The Tenant's amended application did not indicate a change in the monetary amount and it was not submitted within the required timeframe set out in the rules of procedure, as it was submitted September 8, 2014, two days prior to the date of the hearing.

Upon review of the *Residential Tenancy Branch* (RTB) case management system and the receipt on file, the Tenant did not pay a filing fee to bring this application forward.

Accordingly, I decline to hear matters pertaining to assignment or subleasing and I dismiss the Tenant's request to amend and increase her monetary claim, and to recover the cost of the filing fee, pursuant to section 62 of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 08, 2014, and amended September 6, 2104, by the Tenant to obtain a Monetary Order for: for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to authorize the Tenant to change the locks to the rental unit, and to authorize the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The hearing was conducted via teleconference and was attended by the Tenant and two of the Landlord's Agents. The Landlord was represented by two Agents; therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa.

The parties gave affirmed testimony and confirmed receipt of evidence served by the Tenant. 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 Tenant be allowed to change the locks to her rental unit?
3. Should the Tenant be granted an order to reduce her rent?

Background and Evidence

It was undisputed that the Tenant entered into a written tenancy agreement with the previous owner that began in December 2010. The Tenant is required to pay rent of $565.00 and in December 2010 the Tenant paid $282.50 as the security deposit. The new owners took over the building in approximately September 2012.

The Tenant was given the opportunity to present the merits of her application during which the Tenant pointed to her evidence which included her written statement and copies of several notices of entry issued by the Landlord. The Tenant submitted evidence speaking in generalized terms such as: (1) the landlord asked for the Tenant's personal information five times; (2) the landlord continued to enter the Tenant's unit without notice; (3) the landlord continues to issue notices of entry and then does not

show up; (4) the Tenant has lost her job and several other jobs having to stay home in anticipation of the Landlord's entry; (5) the Tenant spoken at length with her MLA and the executive at the RTB; and recently (6) the Landlord has been giving other tenants notices of entry but not the Tenant and is then entering the unit or not showing up at all.

Each time I requested the Tenant provide specific dates and times of the examples she was referring to the Tenant would shuffle papers around and would either change the direction of her testimony or would refer to notices of entry that were served back in 2012.

The Tenant spoke about previous dispute resolution hearings she had attended with this Landlord, and indicated that she had upcoming hearings about separate issues. I advised that in order to gain a clear understanding of the Tenant's submissions I would review the RTB case management system, and previous decisions.

I explained to the parties the legal principle of res judicata which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decisions to ensure that I did not make a finding on a matter that had already been heard and decided upon.

After review of the RTB case management system, I confirmed that the Tenant had applications scheduled to be heard on October 3, 2014, November 10, 2104, and December 16, 2014, all of which included claims for monetary compensation. The Landlord had a cross application scheduled to be heard on October 3, 2014, for a request for an Order of Possession for unpaid rent.

After a brief discussion of the foregoing, I gave the Tenant the opportunity to settle all of the aforementioned matters today, in order to provide her a sense of resolve and control on how things would proceed. The Tenant became very frustrated with this opportunity and stated she did not want to consider any of the other matters.

I then explained what an abuse of process was and what could be deemed as a frivolous and/or vexatious application. Instead of considering her options to discuss all of the matters, the Tenant turned and began using the terms "abuse of process" and "frivolous" inappropriately as a defense against the Landlord's alleged behaviour.

The Tenant's testimony continued where she spoke in generalizations and was now more focused on how the Tenant had lost her job, and several jobs, due to the Landlord's continued action of entering her rental unit. She argued that she is frequently out of town so she has neighbours watching her door, who let her know if there are any notices being posted.

Upon further clarification the Tenant stated that during 2014, her unit had been entered twice by the Landlord. The Tenant argued that she was never served a notice of entry

but her neighbours were for the time when the Landlord came to record appliance serial numbers. The Tenant could not provide the time or date of these alleged entries.

The Landlords submitted that all of the Tenant's claims were discussed in the previous hearing and were dismissed. They pointed out how several of the notices of entry provided in evidence had the unit number blacked out and were therefore nothing to do with the Tenant's rental unit.

The Landlords reviewed their file for this Tenant's and argued that they had a copy of the notice of entry that had been posted on the Tenant's door for the purpose of recording appliance serial numbers. The Landlords submitted that the Tenant has denied them access to the unit so they now have to set up appointments with her to gain access, which is usually done via email or telephone. The Landlords noted that they have not received any repair requests from this Tenant in 2014.

The Landlords testified that all of their staff has been informed of dealings with this Tenant and all staff has been advised the importance of proper notices of entry and that they must have two (2) people attend when going into this Tenant's unit so that the Landlord has witnesses for any events that may occur inside this unit. They noted that the Tenant submitted no evidence of illegal entry and the Tenant has failed to pay her August and September 2014 rent.

The parties were given a second opportunity to attempt to settle their disputes. The Tenant began to run with generalized testimony again at which time I insisted she speak in specifics. She replied stating "I need the Landlord to respect my home". She stated the Landlord refuses to respond to her and they simply ignore her. She argued that she had sent her rent payments from a different city and that she has a witness who saw her sent the envelopes with her rent cheques regular mail.

In closing, the parties discussed how they communicated by telephone, email and fax. The Tenant confirmed her personal fax number and stated her fax is always turned on and ready to receive faxes. The email address was the same email address she has always used with the Landlord. Both parties confirmed that their fax machines should be able to print tracking records of faxes sent and received. The fax number provided by the Tenant is recorded on the front page of this decision.

After consideration of the contentious nature of this relationship, I ordered the Landlord to communicate with the Tenant, via fax. I clarified that all notices of entry must be sent via fax and are not deemed received until three days after they are faxed. The Landlord confirmed that they would post a back up copy of any notice of entry to the Tenant's door.

Analysis

In the February 15, 2014 decision, Arbitrator wrote as follows:

*When I asked the tenant if she would be interested in a settlement of her application, as the landlords expressed a desire to do so, the tenant once again became hostile and began speaking of her past and present ills with the landlord.*

After review of Arbitrator  full decision, and after consideration of the Landlord's submission before me, I accept that Arbitrator Vaughn made a finding that the Tenant had submitted insufficient evidence, on the same events that were presented here, and that her claim was dismissed, without leave to reapply. That being said, the Tenant's previous application did not include a request for monetary compensation. Therefore, a finding was not made in respect to the Tenant's claim for a Monetary Order and the matter before me is not res judicata.

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.

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*.

Section 29 of the Act stipulates a landlord's right to enter a rental unit is restricted 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).

Upon review of the Notices of entry, submitted as evidence by the Tenant, I find they meet the form and content statutory requirements as set out by section 29 of the Act. I note that of the 9 notices of entry provided in evidence, only 6 were addressed to the Tenant's unit; 2 were dated in 2014, 3 were dated in 2013, and 4 were dated in 2012. The Tenant also submitted 10 letters that were issued by the Landlord which spoke to issues with the building or required repairs in 2012 and 2013. Only two of this letters listed the Tenant's rental unit number.

Upon consideration of the totality of generalized issues brought forth by the Tenant, I find the Tenant has submitted insufficient evidence to prove the Landlord has breached the Act, by issuing notices or by entering her unit in breach of section 29 of the Act. Therefore, I find the Tenant has failed to prove entitlement to monetary compensation, and that claim is dismissed.

The Tenant has filed an application pursuant to section 70(2) of the Act, to allow her to change her locks. As noted above, I find there to be insufficient evidence to prove the Landlord has entered the rental unit, in breach of section 29 of the Act. Therefore, I dismiss the Tenant's request to change her locks, without leave to reapply.

I caution the Tenant that if she continues to bring claims forward against the Landlord, without providing sufficient evidence, then she may be found to be filing applications that are frivolous and vexatious, or may be found to be abusing the process.

Conclusion

I HEREBY DISMISS the Tenant's application, without liberty to reapply.

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: September 15, 2014

Residential Tenancy Branch