Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover costs of emergency repairs.

At the original hearing the Agent for the Landlord stated that the Notice of Hearing and the Application for Dispute Resolution were first sent to the Tenant at the service address provided by the Tenant, via courier, on April 11, 2014. He stated that the documents could not be delivered by the courier service. The hearing on May 28, 2014 was adjourned, in part, to provide the Landlord the opportunity to re-serve these documents.

At the reconvened hearing on November 04, 2014 the Agent for the Landlord stated that the Application for Dispute Resolution and evidence the Landlord wishes to rely upon as evidence was sent to that address, via registered mail, although he cannot recall the date of service. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

At the original hearing the Tenant stated that the Notice of Hearing, 32 pages of evidence, and the Application for Dispute Resolution were sent to the Landlord, via registered mail, on February 15, 2014. The Agent for the Landlord stated that the Landlord received the Notice of Hearing, the Application for Dispute Resolution, and only two letters. The hearing on May 28, 2014 was adjourned, in part, to provide the Tenant the opportunity to re-serve these documents.

At the reconvened hearing on November 04, 2014 the Tenant stated that on June 23, 2014 evidence the Tenant wishes to rely upon as evidence was sent to Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that she submitted documents to the Residential Tenancy Branch on October 23, 2014, copies of which were mailed to the Landlord on that date. The Landlord acknowledged receipt of these documents. Although these documents were not served prior to the start of the proceedings, I accepted the documents as at least some of them are highly relevant to the issues in dispute.

The parties were advised that I did not have the aforementioned documents with me at the time of the hearing on November 04, 2014. They were advised that the hearing would proceed; that the Tenant could describe the documents that were submitted on October 23, 2014; and that an adjournment would be considered if there was a dispute about the content of the documents. I received this package of evidence after the conclusion of the hearing on November 04, 2014.

There was insufficient time to conclude the hearing on November 04, 2014 and the hearing was adjourned. The hearing was reconvened on December 17, 2014 and was concluded on that date.

Both parties were represented at all of the hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

Section 59(5)(b) of the *Residential Tenancy Act (Act),* requires a party to provide full particulars of the dispute that is to be the subject of the dispute resolution proceedings. In the Landlord's evidence package that was served to the Tenant after the hearing was adjourned on May 28, 2014 the Landlord indicates the Landlord is seeking compensation for damage to the fire alarm and heat register, in the amount of $100.00, however there is no mention of these claims on the Application for Dispute Resolution.

I find that the Landlord did not provide sufficient particulars of his claim for compensation for damage to the fire alarm and heat register in the Application for Dispute Resolution, as is required by section 59(2)(b) of the *Act*. Although the information was included in the evidence package that was submitted after the proceedings commenced, I find that is not sufficient notice of the claim. I find that proceeding with the Landlord's claim for these damages at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult for the Tenant to adequately prepare a response to the claims. The Landlord retains the right to file another Application for Dispute Resolution in which the Landlord claims compensation for damages to the rental unit.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue?
Is the Tenant entitled to compensation for loss of quiet enjoyment of the rental unit and to recover the cost of replacing the locks?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 01, 2012 and that the Tenant agreed to pay rent of $690.00 by the first day of each month.

The Landlord and the Tenant agree that the tenancy ended on May 31, 2013. The Landlord stated that the Tenant did not vacate the rental unit until June 02, 2013.

The Tenant stated that all of her property was moved out of the rental unit by May 30, 2013 and that the keys were returned on May 31, 2013 after the rental unit was inspected for damages. The Landlord contends that the keys were returned on June 02, 2013.

The Landlord and the Tenant agree that they met in the first week of June, at which time the Landlord returned the security deposit to the Tenant. The Tenant argued that the security deposit would not have been returned if the Landlord believed the Tenant still owed rent. The Agent for the Landlord stated that the security despot was returned simply because the Landlord did not wish to go through a dispute resolution proceeding and that the Landlord did not file an Application for Dispute Resolution until after the Tenant filed an Application.

The Landlord stated that a female had agreed to move into the rental unit on May 31, 2013 but she was unable to do so because the Tenant had not fully vacated the rental unit. The Landlord submitted a letter from this female, dated April 06, 2014, in which she declared that she was unable to move into the rental unit in the afternoon of May 31, 2013 as the Tenant had still not moved out. She declared that she found another rental unit to move into as she had to vacate her previous residence on May 31, 2013. She declared that “several days later” she observed two males and a woman who she believes was the Tenant’s mother moving out of the rental unit.

The Tenant submitted a letter, dated May 30, 2014, in which her current landlord stated that the Tenant moved into his rental unit on May 31, 2013.

The Tenant submitted a letter, dated October 19, 2014, in which her father declared that he picked up the Tenant from this rental unit on May 31, 2013, at which time she told him she had finished cleaning. He stated that on May 31, 2013 he observed a woman who appeared to be waiting to move into the rental unit.

The Tenant submitted an undated letter, in which her mother declared that she helped her daughter clean the rental unit on May 31, 2013 and that the unit was inspected at approximately 1:30 p.m. on that date. She stated that when she left she observed a woman who appeared to be waiting to move into the rental unit.

The Tenant submitted a letter, dated October 19, 2014, in which a friend stated the Tenant stayed with him on May 30, 2013 and the next day she told him she was returning to the rental unit finish cleaning.

The Agent for the Landlord argued that all of the letters submitted in regards to the date the rental unit was vacated were written many months after the rental unit was vacated, and are therefore subject to the frailties of the passage of time. He argued that the fact the women did not move into the rental unit on May 31, 2013 is the best evidence that the rental unit was not vacated.

The Landlord stated that he is acquainted with the woman who was going to move into the rental unit on May 31, 2013, because she lives in the neighbourhood, but they are not friends.

The Landlord stated that after the aforementioned woman found alternate accommodations he was able to find a new tenant, who moved into the rental unit on June 15, 2013. He is seeking compensation for unpaid rent for the first two days of June 2014 and for lost revenue for the period between June 03, 2014 and June 14, 2014, in the amount of $345.00.

The Landlord is seeking compensation for loss of quiet enjoyment. The Landlord was advised that only a tenant is granted the right to quiet enjoyment of the rental unit. As the Landlord does not enjoy this same right, the Landlord was not permitted to provide details on the Landlord's claim for a breach of the Landlord's quiet enjoyment.

The Tenant is also seeking compensation for loss of quiet enjoyment, in the amount of $621.00. The Tenant's claim is based on her belief that she has been harassed by the Landlord and that he has illegally entered her rental unit on a variety of occasions.

The Landlord and the Tenant agree that in December of 2012 the Landlord entered the common area without knocking and then knocked on the door of the Tenant's private living quarters for the purposes of providing her with a copy of the tenancy agreement.

The Tenant stated that on December 14, 2012 her boyfriend was outside smoking and the female Landlord told him that he could not have keys to the rental unit, even if it was just for the purposes of smoking.

The Tenant stated that on December 15, 2012 the male Landlord approached her and her boyfriend and asked them if he was living in the rental unit, at which time she was told he could not shower at the residential complex. She stated that on December 19, 2012 her boyfriend stayed overnight and the male Landlord asked him if he was living in

the rental unit. She stated that on December 20, 2012 she gave her boyfriend her keys so he could pick property up from the rental unit and the male Landlord again approached him and asked if he was living in the rental unit. She stated that on all three occasions the Landlord was advised that the boyfriend was not living with her.

The male Landlord acknowledges that the Landlords were concerned that the boyfriend was moving into the rental unit, in part, because he had seen this individual bring a gas can into the rental unit. He stated that he did ask if the individual was living in rental unit on more than one occasion; that he does not recall the dates of the inquiries; and that he did not ask frequently.

The male Landlord stated that he did tell the Tenant that her boyfriend could not shower in the rental unit because he was concerned for the privacy of a tenant in another rental unit, who is a male, who shares the common bathroom with the Tenant. The female Landlord does not recall if she told the Tenant's boyfriend he could not have keys to the rental unit.

The Tenant stated that on January 05, 2013 the Landlord entered the common area without knocking and then knocked on the door of the Tenant's private living quarters for the purposes of discussing a water leak with her. The Landlord stated that on this occasion he noticed water dripping into an area of the building below the common bathroom; that he went to the common bathroom and discovered water on the floor; and that he then went to the Tenant's private living quarters to discuss the leak with the Tenant.

The Tenant stated that on March 19, 2013 she gave her keys to a friend for the purpose of checking her cat and that the Landlord "accosted" the friend when she was entering the residential complex. The Tenant submitted a letter from this individual who stated that she was asked several questions about why she had the key and about where the Tenant was before she was permitted to enter the residential complex.

The Landlord agreed that the female Landlord observed an unknown female entering the rental unit but the Landlord contends they had a polite conversation regarding her purpose before she was allowed to proceed. The Landlord submitted a letter from an individual who overheard this conversation, who stated that the female Landlord politely asked where the unknown female was going, after which they had a brief conversation.

The Landlord and the Tenant agree that when the police were in the rental unit on April 04, 2013 the Landlord entered the common area of the residential complex and entered the Tenant's private living quarters without knocking. The parties agree that he left the rental unit when the police asked him to leave. The Landlord acknowledged this was a mistake.

The Landlord and the Tenant agree that on April 04, 2013 the Tenant introduced a friend to the Landlord and explained that she would be visiting for a few days, at which point the female Landlord told her that she could not stay. The Tenant stated that she

allowed her friend to stay but the visit was not “comfortable”. The Agent for the Landlord stated that due to a language barrier the female Landlord believed the Tenant was telling her that the friend was going to move into the rental unit. The Tenant stated that she never thought there was a language barrier that interfered with her ability to communicate with the Landlords.

The Tenant submitted a letter, dated October 21, 2014, in which the friend corroborated the Tenant’s version of events of April 04, 2013.

The Tenant stated that on April 30, 2013 her mother was visiting and that the Landlord asked the mother if she was living in the rental unit. The Tenant submitted a letter from her mother in which the mother declared that the Landlord asked her if she was living in the unit on at least two occasions, although she does not declare the dates of those incidents. The Landlord does not dispute that he has asked the Tenant’s mother if she was living in the rental unit.

The Tenant stated that on May 29, 2013 the Landlord attended the rental unit to show it to a prospective tenant; that the Landlord had provided written notice of his intent to show the rental unit; that the door to her private living quarters was slightly ajar; that the Landlord opened the door without knocking; that the Landlord took one step into the room; and that the Landlord retreated when he realized someone was in the unit.

The Agent for the Landlord stated that the Landlord does not specifically recall this incident however he may have entered the rental unit because he did not realize the Tenant was not at home.

The Tenant stated that in the morning on May 01, 2013 and April 01, 2013 the Landlord knocked on her door and asked for the rent and that she told him she had all day to pay the rent. She stated that the Landlord told her the rent was due on the last day of the previous month. The Landlord does not dispute that he knocked on her door to collect the rent on May 01, 2013 and April 01, 2013; that he knows the rent is due by the first day of each month; and that he does not recall telling the Tenant the rent was due on the last day of the previous month.

The Tenant described a variety of occasions when she believed the Landlord spoke with her, or her guests, in a rude and/or confrontational manner.

The Tenant stated that the Landlord gave her written notice that he would be showing the rental unit to any new tenant and that he will provide as much notice as possible once an appointment has been set up. She contends this is improper notice to enter the rental unit and that she advised the Landlord of that opinion. She acknowledged that the rental unit was not shown without proper notice.

The Tenant submitted letters to show that she had informed the Landlord of some of her concerns with his actions.

The Tenant is seeking compensation for the cost of unlocking the rental unit. She stated that she accidentally locked her keys inside her rental unit and she was unable to contact the Landlord or a representative of the Landlord for assistance. She stated that she had to contact a locksmith to provide her with access to the rental unit, for which she is seeking compensation.

Analysis

I favour the testimony of the Landlord, who stated that the rental unit was not vacated until June 02, 2013, over the testimony of the Tenant who stated that the rental unit was fully vacated on May 31, 2013.

The difficulty with all of the letters submitted in evidence in regards to this issue, is that they were all written many months after the event and are, therefore, subject to the frailties of the passage of time. I find these letters to be less compelling than the letter from the woman who intended to move into the rental unit, as the precise date of this incident would have had the most impact on the women intending to move into the rental unit.

In reaching this conclusion I was heavily influenced by the letter written by the woman who declared she was unable to move into the rental unit on May 31, 2013. I find it highly unlikely that this woman would have sought alternate accommodations on that date if the rental unit had been vacated. Although this letter was also not written until almost a year later, I find it unlikely that the woman has confused the date of this interaction, as tenants typically move out of a rental unit at the end of each month.

I find that the Tenant's testimony that the woman was waiting to move into the rental unit on May 30, 2014 less credible that the version of events provided by the Landlord and the woman intending to move into the rental unit, simply because I find it unlikely the woman would have been required to vacate her own residence once day before the end of the month.

Section 37(1) of the *Act* stipulates that the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends, unless the landlord and the tenant otherwise agree. On the basis of the letter to the Tenant from the Landlord, dated May 27, 2013, I find that the Landlord authorized the Tenant to retain possession of the rental unit until 2:00 p.m.

I find that the Tenant must pay rent for the two days in June that she remained in the rental unit, at a per diem rate of $23.00, which equates to $46.00.

I find that the Landlord suffered lost revenue of $322.00 as a direct result of the Tenant failing to vacate the rental unit by 2:00 on May 31, 2013, as the tenant planning on moving into the rental unit found alternate accommodation and the unit remained vacant until June 15, 2013. I therefore find that the Tenant must pay the Landlord $322.00 in lost revenue, pursuant to section 67 of the *Act.*

In determining this matter I have placed no weight on the Tenant's argument that the Landlord would not have returned the security deposit if rent was outstanding. It is my experience that many landlords do not seek to retain the security deposit, as they find the dispute resolution process daunting. I find this to be particularly true when the amount of unpaid rent is minimal or there is only minor damage.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment including, but not limited 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 section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the *Act* stipules that 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.

On the basis of the undisputed evidence I find that the Landlord entered the common area of the residential complex in December of 2012 without knocking, for the purposes of providing the Tenant with a copy of the tenancy agreement. Although this was likely a breach of section 29 of the *Act*, I find that the breach should not have had any significant impact on the Tenant's enjoyment of the rental unit, as she did not have any reasonable expectation of privacy in this common space, considering it was used by three other tenants.

On the basis of the undisputed evidence I find that the Landlord entered the common area of the residential complex in January of 2013 without knocking, for the purposes of determining why water was leaking into the lower portion of the building. I find that the Landlord had the right to enter the common area on this occasion in accordance with section 29(f) of the *Act* and that the entry does not, therefore, constitute a breach of the Tenant's right to the quiet enjoyment of the rental unit.

On the basis of the undisputed evidence I find that the Landlord entered the rental unit on April 04, 2013 without knocking. As this entry did not comply with section 29 of the *Act*, I find that this entry breached the Tenant's right to the quiet enjoyment of the rental unit.

I find that it is reasonable for a landlord to inquire about who is living in a rental unit, particularly when a tenant is sharing common areas with tenants living in other suites, even though the landlord may not have the right to prevent a party from living in a rental unit. On the basis of the testimony of the Tenant, who was able to state that her boyfriend was asked if he was living in the rental unit on three specific dates in December of 2012, I find that the question was asked an unreasonable number of times, which breached the Tenant's right to the quiet enjoyment of her rental unit.

In determining that the Landlord asked the question an unreasonable number of times, I was influenced by the fact the Landlord was unable to recall the specific dates the question was asked, so he could not deny it was asked on at least three occasions in December. In determining that the Landlord asked the question an unreasonable number of times, I was also influenced by the fact that the Landlord received an answer to the question on each occasion so there was no reason to repeat the question.

On the basis of the letter from the Tenant's mother I find that she was also asked if she was living in the rental unit on two occasions. I do not find this to be an unreasonable number and that these interactions, in and of themselves, did not breach the Tenant's right to the quiet enjoyment of her rental unit.

Section 30 of the *Act* stipulates that a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by that tenant. On the basis of the undisputed evidence, I find that the male Landlord told the Tenant her boyfriend could not shower in the common bathroom. As this has a significant impact on the Tenant's right to have overnight guests, I find that it was a breach of section 30 of the *Act* and that it was a breach of the Tenant's right to the quiet enjoyment of the rental unit.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the female Landlord told the Tenant her boyfriend could not have keys to the rental unit. As this impacts the Tenant's ability to allow people to frequent her rental unit in her absence, I find that it was a breach of section 30 of the *Act* and that it was a breach of the Tenant's right to the quiet enjoyment of the rental unit.

I find that the female Landlord acted reasonably when she asked the Tenant's friend why she was entering the residential complex, given that they did not know her and she was not being escorted by the Tenant. I find that the Landlord acted reasonably when the Landlord did not prevent this person from entering the rental unit once it was determined that she was there for a legitimate purpose. Even if I were to conclude that the Landlord was not polite during this interaction, I would not conclude that the Tenant's right to the quiet enjoyment of her rental unit was breached as a result of this

interaction, as the Tenant was not present during the interaction. I note that a guest does not enjoy the same right to the quiet enjoyment of the rental unit.

I am aware of nothing in the *Act* that authorizes a landlord to prohibit a tenant from having a roommate, although a landlord does have the right to end a tenancy if there are an unreasonable number of people living in the rental unit. I therefore find that even if the female Landlord understood the Tenant was telling her that her friend was moving into the rental unit on April 04, 2013, the Landlord did not have the right to tell the Tenant it was not permitted. I therefore find that the female Landlord breached the Tenant's right to quiet enjoyment of the rental unit when she stated that the friend could not stay, even though the friend did stay.

On the basis of the undisputed evidence, I find that the Landlord gave the Tenant written notice of his intent to show the rental unit on May 29, 2013 and that he entered the unit on that date without knocking. I find that entering a rental unit without knocking even if written notice of the entry has been provided is an unreasonable disturbance and that the Landlord breached the Tenant's right to the quiet enjoyment of her rental unit.

In the absence of evidence that corroborates the Tenant's testimony that the Landlord informed the Tenant that rent was due prior to the first day of each month, I cannot conclude that the Landlord breached the Tenant's right to quiet enjoyment when he attempted to collect the rent in the morning of the first day of the month. While the Tenant is not obligated to pay the rent until the end of the day on which it is due, there is nothing to prevent the Landlord from simply asking for the rent at an earlier time on the date it is due.

While I accept that the Tenant believes the Landlord has spoken with her, or her guests, in a rude or confrontational manner, I have placed limited weight on those concerns when determining this award. In the absence of evidence of the extensive use of abusive or foul language, I find that the Landlord's method of communication does not constitute a breach of quiet enjoyment. I find that to be particularly true in these circumstances, where English is not the Landlord's first language, which can contribute to misunderstandings, etc.

In determining this matter I have placed no weight on the Tenant's submission that the Landlord acted inappropriately when he informed the Tenant that he will be showing the rental unit to potential tenants and that he will provide as much notice as possible once an appointment has been set up. I have viewed that document and determined that it simply informs the Tenant of the Landlord's intent and does not appear to serve as proper notice to enter the rental unit. I note that there is no evidence that the rental unit was not shown without proper notice

When all of these events are considered in their entirety, I find that the Tenant is entitled to compensation for a breach of her right to the quiet enjoyment of her rental unit. It is always difficult to determine how much compensation should be due as a

result of such a breach but in these circumstances I find that $345.00, which is one half of one month's rent, is appropriate compensation. While none of the incidents were significant, in and of themselves, I find that the collectively the Landlord's actions did interfere with the Tenant's enjoyment of the rental unit.

In determining that the Tenant is not entitled to the full amount of compensation claimed, I was influenced by my determination that the Tenant appears to be unduly focused on minor technicalities and, in some cases, has erroneously concluded that the Landlord has breached the *Act,* as is the case with the notice to show the unit to prospective tenants.

I find that the Tenant is not entitled to compensation for any costs arising out of her locking her keys in the rental unit. There is nothing in the *Act* that requires a landlord to help a tenant who has accidentally locked herself out of her rental unit. Although this is a service typically provided by a landlord as a gesture of good will, a landlord is not obligated to provide this service and is certainly not obligated to pay for someone to provide the service if the Landlord is not available to assist.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $418.00, which is comprised of $368.00 in unpaid rent/lost revenue and $50.00 in compensation for the filing fee paid by the Landlord to file an Application for Dispute Resolution.

The Tenant has established a monetary claim, in the amount of $395.00, which is comprised of $345.00 in compensation for loss of quiet enjoyment of the rental unit and $50.00 in compensation for the filing fee paid by the Tenant to file an Application for Dispute Resolution.

I find that after offsetting the two claims, the Tenant owes the Landlord $23.00 and I have granted the Landlord a monetary Order in that amount.

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: December 17, 2014

Residential Tenancy Branch