



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LRE, LAT

Introduction

This hearing dealt with a tenant's amended application for monetary compensation for overpayment of rent; authorization to change the locks; and, for conditions to be set on the landlord's right to enter the property. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The tenant had named two landlords in filing his application; however, only one landlord appeared at the hearing. The tenant testified that he served each landlord via registered mail; however, he had not provided the registered mail receipts as proof of service prior to the hearing and was unable to locate the receipts during the hearing so as to provide me with the registered mail tracking number and date of mailing. Where a respondent does not appear at the hearing, the applicant bears the burden to prove service occurred. Given the lack of proof of service, I was unsatisfied that the second named landlord was served and I excluded him as a party to this dispute.

The landlord in attendance stated that he could not recall how he was served or what he was served with but claimed that he did not have the evidence the tenant was relying upon. Nevertheless, the landlord insisted on proceeding with the dispute. Accordingly, I continued to hear from the parties and evidence was described to the landlord orally during the hearing.

The tenant testified at the outset of the hearing that he had been living at one property owned by the landlord and moved to the current location. When a tenant vacates one rental unit to moves to another, one tenancy ends and another begins. As such, there would be two separate tenancy agreements, at least, for two different rental units. A party to a dispute cannot combine two different rental unit and separate tenancy agreements under a single application. Therefore, I have limited the tenant's claims to those related to his current tenancy.

The tenant remains at liberty to file another application with respect to any claims he may have with respect to his former tenancy, provided it is filed within the time limit for doing so.

Issue(s) to be Decided

1. Is the tenant entitled to recover overpaid rent from the landlord?

2. Has the tenant established a basis for restricting the landlord's right to enter the property?
3. Has the tenant established a basis for authorizing him to change the locks?

Background and Evidence

The tenant began renting a room in the property, with shared access to the common rooms, starting in December 2013 for the monthly rent of \$400.00. I heard conflicting testimony as to the existence of a written tenancy agreement; although, it appears that the landlord signed a document so that rent is sent directly to him from the Ministry of Social Development. The landlord confirmed that he has been receiving \$400.00 per month from the Ministry on behalf of the tenant.

Overpaid rent

The tenant submitted that he mistakenly believed that only \$375.00 was being sent to the landlord by the Ministry so he was giving the landlord's caretaker the balance of \$25.00 per month, in cash, since the tenancy started until March 2015. The tenant calculated that this is an overpayment of \$625.00.

The landlord acknowledged that his caretaker collects rents from tenants as part of the duties he performs for the landlord; however, the landlord stated that he was unaware that the tenant was giving the caretaker \$25.00 per month as the caretaker had not forwarded it to him.

The tenant had produced as evidence copies of 15 receipts indicating he had paid the caretaker rent of \$25.00. The landlord stated that he did not have copies of the receipts but that he would like to have copies of them. The tenant was agreeable to providing the landlord with copies of the receipts. Nevertheless, the landlord stated that he believed the tenant as he had found him to be honest in his past dealings with him.

Request to change locks and set conditions on the landlord's right to enter the property

The tenant submitted that the caretaker entered the house without consent and began searching for a missing tool in the kitchen. The tenant also submitted that the landlord "destroyed" his seed station that he had set up in the kitchen. The tenant claimed to have been starting vegetable plants from the seed in the kitchen with the intention of transferring them to the greenhouse. The tenant acknowledged that in the past it has been common practice for the caretaker to enter the common areas on a regular basis without notice or consent. The tenant confirmed that the caretaker or the landlord did not enter his room.

The landlord was of the position that he or the caretaker do not need to give notice or gain consent to enter the common areas of the house and as the property is run like a rooming house. With respect to the "seed station" the landlord stated that he believed the seeds may

have been marijuana but in any event the tenant's actions were dangerous. The landlord described how the tenant had lined the inside of a cupboard with tin foil and installed a light and a fan. The landlord was of the position that such activity was a potential fire hazard. The landlord submitted that he did not destroy the tenant's equipment. Rather, he removed the light and fan from the cupboard and left it in the kitchen.

Analysis

Under the Act, a tenant is required to pay the rent that is due under the tenancy agreement. A tenancy agreement is defined under the Act to include written and oral tenancy agreements. In this case, I accept the undisputed verbal testimony that the tenant is required to pay rent of \$400.00 per month.

Where a tenant has paid more rent that is required under the tenancy agreement, the tenant is entitled to recover the over-payment from the landlord.. I accept the undisputed testimony that the landlord has been receiving \$400.00 in rent from the Ministry on behalf of the tenant. Therefore, any rent paid over and above \$400.00 per month is recoverable by the tenant.

Having been provided copies of receipts indicating the tenant had been paying the caretaker an extra \$25.00 per month and the tenant's testimony which the landlord accepted as being truthful, I accept that the tenant has overpaid \$25.00 per month for this tenancy up until March 2015. Therefore, I calculate the overpayment for this tenancy to be \$400.00 [December 2013 through March 2015 = 16 months x \$25.00].

The Act defines "landlord" to include the owner of the property; an agent for the owner; or any other person who exercises powers of a landlord on behalf of the owner. The landlord in attendance at the hearing is the owner of the property and he confirmed that the caretaker is authorized to collect rents on his behalf and manage the property. As such, I find that both the owner and the caretaker meet the definition of landlord under the Act. Since the caretaker works on behalf of the owner I find that any overpayment of rent is recoverable from the landlord whether it was paid to the owner or the caretaker as the arrangement between the owner and the caretaker as to what the caretaker is to do with the rent he collects is outside of my jurisdiction. Therefore, I provide the tenant with a Monetary Order in the amount of \$400.00 that he may serve and enforce upon the landlord. If he so chooses, the tenant may withhold \$400.00 in rent to satisfy the Monetary Order.

I deny the tenant's requests to set conditions on the landlord's right to enter the property and change the locks as I was unsatisfied the landlord or caretaker violated the Act in this regard. Having heard from both parties, I accept that this property is operated as a rooming house. As such, the tenant's rental unit is his room and the landlord does not require consent to enter the common areas. Under the Act, a tenant is entitled to "reasonable" use of common areas and the landlord is expected to manage use and maintenance of common areas as appropriate in the circumstances. I accept the landlord's position that the tenant's installation of a lamp and

fan in a tin-foil lined cupboard is a fire hazard. Since the cupboard is in common space I accept that the landlord had a right to remove those items from the cupboard in the circumstances.

Conclusion

The tenant has established that he has overpaid rent by \$400.00 during this tenancy and I provide the tenant with a Monetary Order in this amount to serve and enforce upon the landlord. The tenant is authorized to withhold \$400.00 in rent to satisfy the Monetary Order if he so chooses.

The tenant's requests to change the locks and set conditions on the landlord's right to enter the property have been dismissed.

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: November 03, 2015

Residential Tenancy Branch

