Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Issue – Jurisdiction

The landlord was of the position that the *Residential Tenancy Act* (the Act) does not apply to the living accommodation or the agreement between the parties as he considered the tenant to be a roommate with shared use of common property. The tenant did not consider the landlord to be her roommate and was of the position there were no common areas. Both parties provided consistent testimony that the landlord is the owner of the residential property and he resides in the main part of the house. The tenant occupied a furnished room that had its own entry door located on the exterior of the house, its own a private bathroom, and some cooking appliances including a microwave and coffee pot (herein referred to as the rental unit). Both parties agreed that the landlord and the tenant never shared the same kitchen or bathroom facilities.

The Act applies to tenancy agreements between a landlord and tenant with respect to a residential rental unit unless exempted under section 4 of the Act. As the owner of the property, the landlord meets the definition of "landlord" under the Act. The parties had an agreement that required the tenant to pay rent for possession of living accommodation and I am satisfied the parties had a tenancy agreement with respect to a rental unit. As for exemptions under section 4, a tenancy is exempt from application of the Act where the owner and the tenant share kitchen or bathroom facilities; however, the parties did not share kitchen or bathroom facilities.

In light of the above, I was satisfied that the Act applies to the agreement between the parties and I have jurisdiction to resolve this dispute.

Preliminary Issue – Service of landlord's evidence

The landlord testified that he had sent evidence to the tenant's service address via registered mail on December 21, 2017. The tenant stated the landlord used the wrong postal code and that it was not available for pick up until December 29, 2017; however, she was in another town at that time. The tenant stated her roommate picked up the evidence package the same day as the hearing and that she has not had the opportunity to review it. The landlord was of the position he used the correct postal code and had served the evidence within the time limit for doing so. Neither party was able to provide me with the registered mail tracking number during the hearing.

The landlord's evidence package was received by the Residential Tenancy Branch on December 22, 2017 and it was before me. I noted that the majority of the landlord's evidence contained information the tenant likely already had or had access to (text messages and receipts for the security deposit and payment of rent), leaving only a few documents that the tenant may not have seen, with the most relevant being a letter purportedly written by the landlord's roommate, referred to by initials DC. Rather than adjourn the proceeding, I described the evidence to the tenant and permitted the tenant the opportunity to respond to it. Accordingly, in making this decision, I have considered all of the evidence that was presented to me, including the landlord's evidence package.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation from the landlord, as claimed?

Background and Evidence

The tenant was provided possession of the rental unit for the period of June 1, 2017 through June 30, 2017 in exchange for a rent payment of $1,295.00. The tenant also paid a security deposit of $400.00 that has been refunded to the tenant.

This dispute concerns events that occurred on or about June 23, 2017 when entry was made to the rental unit while the tenant was not home.

The tenant contends that unlawful entry was made into the rental unit on June 23, 2017. The tenant submitted that she was not given any notice of entry and she had not given consent for entry on June 23, 2017. The tenant testified that when she arrived home on June 23, 2017 she found the door to the rental unit open and the lights on. She determined that another tenant at the property had entered the rental unit to show the rental unit to a prospective tenant(s) at the request of the landlord. The tenant testified that she confronted the landlord about the unlawful entry immediately afterward in the driveway of the property and subsequently by text message. The tenant claims that a wallet with $550.00 in US currency went missing during the time of the showing. The tenant seeks compensation of: $50.00 for the missing wallet; the Canadian equivalent of $550.00 US dollars; and, $500.00 for distress and aggravation.

The tenant pointed out that the landlord advised her on June 27, 2017 via text message that another entry was required to show the unit to a prospective tenant but that message was only conveyed after the unlawful entry already took place and constitutes insufficient notice.

As for the source of the funds that were allegedly stolen, the tenant stated that the amount was accumulated over time as she was saving to go on a trip with her son to the United States and buy a food dehydrator. The US currency came from previous trips to the US; earnings when she worked at the BC Ferry terminal; and, tips her son received at his job that were in US currency. The tenant did not produce any documents from a bank or other financial institution to demonstrate withdrawal of US funds or evidence from her son. Rather, the tenant presented a letter purportedly written by her current roommate on December 11, 2017 who claims to have “placed her wallet containing 550 US dollars and passport inside a desk in the apartment.”

As for distress and aggravation, the tenant submitted that she suffered from loss of privacy and embarrassment, having left feminine hygiene products out at the time of the showing. The tenant also submitted that after confronting the landlord and KF she was no longer treated the same and she felt a loss of community with the other people living on the property. The tenant also claimed that she continues to live in the same area and that approximately one month ago her car window was broken and the landlord’s roommate DC has made inflammatory comments to her.

The landlord stated that when the tenancy started he told the tenant orally that he would be showing the unit to perspective tenants near the end of the month. On June 23, 2017 a showing was scheduled for the rental unit and he asked KF to enter the rental unit and show the unit to the prospective tenant(s). The landlord claims to have posted

a notice of entry on the door of the rental unit; however, he could not recall the date this was done with any certainty and during the hearing he provided various different dates. The landlord provided a letter purportedly written by his roommate DC, dated December 20, 2017, who claims to have witnessed the landlord put a notice of entry on the door of the rental unit on June 22, 2017. The landlord did not produce a copy of the notice of entry.

The tenant stated that she had been away the three days prior to June 23, 2017 and that there was no notice of entry on the door of the rental unit when she arrived at the property on June 23, 2017. The tenant pointed out the number of discrepancies in the landlord's testimony regarding the date he allegedly posted a notice of entry on the door. The tenant also pointed out that when he wanted to enter on June 27, 2017 he sent her a text message that same day. The landlord did not send her a text message her or otherwise try to obtain her consent to enter on June 23, 2017.

The landlord submitted that the tenant raised her concerns regarding the June 23, 2017 entry via in text message but not in the driveway as she alleged. In response to her concerns he enquired with KF who confirmed that she had locked the door after the showing.

The landlord pointed out that he had told the tenant that she should report the incident to the police. The tenant claims she did report the incident to the police although she did not have a police report or police file number to provide as evidence. The landlord also enquired as to whether the tenant carried tenants' insurance and she acknowledged that she did not. The landlord questioned whether the tenant had guests in the rental unit during the tenancy. The tenant confirmed that she did have guests while she was also in the rental unit.

The landlord was of the position that he did not enter the rental unit; he did not take anything from the rental unit; and, the tenant has not proven a loss of money and wallet as she claims. The tenant was of the position that that the landlord is responsible for her losses regardless of who took her money and wallet on June 23, 2017 due to the landlord's breach of the Act.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to this claim.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Under section 28 of the Act, every tenant is entitled to quiet enjoyment of the rented premises. Quiet enjoyment includes the right to reasonable privacy and exclusive possession of the rental unit subject only to the landlord's restricted right to enter the rental unit under section 29 of the Act.

Section 29 of the Act provides for the circumstances when a landlord may enter a rental unit. In this case, the landlord wanted to gain access to the rental unit for the purpose of showing the unit to a prospective tenant. Accordingly, the landlord was required to either: gain the tenant's permission to enter the rental unit; or, serve the tenant with a notice to enter that contains the date, time and purpose for entry at least 24 hours in advance.

I do not consider the landlord's oral advice to the tenant at the start of the tenancy that he would be showing the unit to prospective tenants near the end of the tenancy to constitute consent on part of the tenant since it is not a specific request for entry on a particular date and time. Rather, I find a reasonable person would consider this to be information and that a proper notice of entry would be given or request for consent would be made when the date and time of the showing is known.

As for the landlord's assertion that he posted a notice to enter on the door of the rental unit prior I find the landlord's assertion unlikely when I consider the following:

- The landlord provided varying and inconsistent statements with respect to the date the notice of entry was alleged posted on the door of the rental unit;
- I was not provided a copy of the alleged notice of entry;
- The landlord did not mention a notice of entry in any of the text message exchanges he had with the tenant after she confronted him about the entry;
- The landlord notified the tenant of an anticipated showing scheduled for June 27, 2017 by way of text message, not by way of a notice of entry.
- If I were to accept the statement of DC that he witnessed a notice of entry posted to the door of the rental unit on June 22, 2017, I was not provided a copy of the alleged notice to verify that it met the content requirements of section 29. Further, where a notice is posted to a door, section 90 of the Act deems the document to be received three days later, meaning a 24 hour notice of entry should be posted four days before the entry is to take place.

In light of the above, I find the evidence does not support that a proper notice of entry was served with sufficient advance notice to the tenant. Therefore, I find the landlord violated sections 28 and 29 of the Act.

Upon review of the text messages provided as evidence, I note there is an exchange between the tenant and KF where KF describes how she was able to gain entry to the rental unit. KF states in her text message to the tenant: "[landlord's name] left the door open for me to show it…" KF goes on to indicate that she showed the unit to the prospective tenant for approximately two minutes and then locked the unit. KF further indicates that the landlord was the only person with the code to the lock for the rental unit.

Although the showing of the unit to a prospective tenant on June 23, 2017 was not conducted by the landlord himself, the landlord unlocked the tenant's door and then a person acting on the landlord's behalf showed the unit to a prospective tenant. A landlord is responsible for not only his actions but those acting on his behalf. I find that the landlord's action of leaving "the door open" and unattended is egregious conduct. The landlord also facilitated an entry into the rental unit by KF and a prospective tenant without giving proper notice of entry to the tenant. In these circumstances, I find the landlord solely responsible for the tenant's losses associated to leaving the rental unit unlocked and during the unlawful entry and the issue to resolve is: what are the tenant's losses as a result of the landlord's breach?

Upon reading the several text messages exchanged shortly after the unlawful entry occurred it is very apparent that the incident greatly disturbed the tenant. I find I am satisfied that the tenant suffered a loss of privacy and was unreasonably disturbed by the landlord's actions, at the very least, and that these losses are reasonably foreseeable where there is unlawful entry. I find the tenant has satisfied me that she suffered loss of quiet enjoyment of the rental unit from June 23, 2017 onwards. Since the tenancy ended June 30, 2017, I find it appropriate to award the tenant compensation equivalent to the rent paid for the period of June 23, 2017 through June 30, 2017 which I calculate to be: $345.33 [$1,295.00 x 8 / 30 days].

As for the loss of $550.00 US and a wallet, I find the evidence before me is less persuasive, considering the following factors. The tenant did not produce a police report or police file number even though she claims to have made one. The tenant did not provide evidence from her son even though the tenant claims that some of the stolen money was obtained from her son. The text messages indicate the tenant notified the landlord of missing money four days after the entry took place. The tenant produced a letter purportedly written by her current roommate on December 11, 2017. This person refers to $550.00 being in a wallet in early June 2017; however, he does not indicate how he determined $550.00 was in the wallet or describe the denominations he observed. Accordingly, I find this letter in the absence of other evidence to be weak. Therefore, I find I am unsatisfied by the evidence before me that $550.00 in US dollars and a wallet was stolen from the tenant.

As for the allegations of harassment and damage to the tenant's vehicle more recently, I find the allegations largely unsubstantiated and not something that falls under my jurisdiction. If the tenant is of the position she is being harassed she may pursue the avenues available to her such as making a complaint to the police.

Since the tenant's claim had merit, I further award the tenant recovery of the $100.00 filing fee she paid for this application.

For all of the reasons provided above, the tenant is provided a Monetary Order in the sum of $445.33 to serve and enforce upon the landlord.

Conclusion

The tenant is provided a Monetary Order in the amount of $445.33 to serve and enforce upon the landlrod.

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: January 05, 2018

Residential Tenancy Branch