Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1 REMEDY HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FF

Introduction
Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to ask questions of one another. The landlord agreed he received a copy of the Application for Dispute Resolution by registered mail. The tenant said she did not receive the landlord's evidence until 7 days before the hearing. I find the documents were legally served pursuant to sections 88 and 89 of the Act. I find the landlord's evidence was not late according to Rule 4.1 of the Residential Tenancy Rules of Procedure which states the respondent's evidence must be served at least 5 days before the hearing. The tenant applies pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for compensation for the landlord withdrawing facilities (laundry and storage) contrary to section 27;
- an order that the landlord repair her door lock and handle;
- an order that the landlord obey the Act and protect her peaceful enjoyment;
- to reduce rent for repairs, services or facilities agreed upon but not provided. and
- to recover the filing fee for this application from the landlord, pursuant to section 72.

Issue to be Decided
Has the tenant proved on a balance of probabilities that she is entitled to the orders as requested? Is she entitled to recover the filing fee for this application from the landlord?

Background, Evidence
Both parties attended the hearing and were given opportunity to be heard, to provide evidence and make submissions. The tenants' testimony is as follows. The tenancy began September 2015 with a room mate and then she took it over, rent is now $775 and a security deposit was paid but not a pet deposit as it was not requested. She arranged with the tenant of the adjoining half of the duplex to use the laundry facilities and paid her some money for hydro. A letter from a previous tenant of the adjoining half

duplex confirmed the arrangements for use of the washer and dryer. The letter said this tenant was permitted to store her belongings in the basement of the house and the landlord was aware of and consented to the storage and the use of washer and dryer. She said she had two cats and this tenant had one from 2016 onwards and installed a cat door and the landlord was fully aware and consented to this arrangement. The tenant submitted photographs of two outlets in the basement laundry and said one was connected to her hydro. She said the landlord has now done the requested repair to her door and key but it took a long time. The landlord said the contractor is working through the house and it takes time.

The landlords gave the following testimony. The property is a 107 year old duplex with one number ending in a 50 and the other ending in 52. This tenant resides in the 52 side. The tenant of the 50 side vacated in July 2017 and the landlord has been doing renovations. The laundry and storage area belong to the 50 side and this tenant was not given permission by the landlord to use them. The 50 side is vacant but if the tenant makes arrangements with the tenant in the 50 side to share laundry, that arrangement is up to them. The landlord does not want to participate in it. He has made a written request that the tenant remove her goods from storage on the 50 side and cease using the laundry and return the access key. She has moved out her belongings but the tenant emphasized this is only pending the result of this hearing.

The landlord said he is not objecting to her pet cat although she obtained no written permission for it as required by clause 18 of her lease but he is asking her to pay a pet damage deposit as she has installed a cat access door in the door. The tenant said she does not believe she should have to pay a pet damage deposit as it was not required at the commencement of the lease and the landlord has seen the cat and impliedly consented to it and the installation of the cat door as nothing was said about it over the years.

The tenant said the landlord has also disturbed her reasonable enjoyment by allowing his contractor to enter her suite “dozens of times” without written notice. The landlord said there was an emergency bathroom repair on which he spent $7,000 and the tenant always has notice by telephone of entry. She said he also is disturbing her peaceful enjoyment by requiring her to not use the parking area which she has used for a long time. The landlord said the parking area is included in the lease of the 50 side of the duplex but not in this tenant’s lease. She used it because the tenant in 50 did not have a car.

The tenant said the landlord is harassing her as there was no problem with the cat and parking previously and now he makes repeated requests. He is also demanding proof that the boyfriend is not living there.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Sections 7 and 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof**. The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the tenants claim and my findings as follows.

Section 27 of the Act provides a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation or is a material term of the tenancy agreement. Section 27 (2) provides that if the landlord restricts a service or facility, the landlord must give notice and reduce rent accordingly. I find the tenant has provided insufficient evidence to prove that the landlord has violated the Act or tenancy agreement by denying her use of laundry facilities or parking. I find the facilities and the parking are not essential to the tenant's use of the rental unit as living accommodation and according to the leases in evidence are provided only to the duplex with the 50 address and not to her half. She has failed to provide sufficient evidence to satisfy the four grounds listed above as required under sections 7 and 67 of the Act. Based on the insufficient evidence before me, I dismiss this portion of her application.

Repair of lock and door –I find the repairs have been completed. I find a slight delay due to the contractor's timing in renovating this 107 year old house is not unreasonable. I dismiss this portion of her application for a rent rebate.

In respect to her claim for loss of peaceful enjoyment, I find the weight of the evidence is that the landlord has violated section 29 of the Act by not providing written notice of his contractor's entry with dates, times and reasons and this has disturbed her peaceful enjoyment and privacy. Telephone notification does not comply with section 29. Policy Guideline 16 provides:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:
□ "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find the tenant entitled to $100 as a nominal award for the landlord's infraction of her legal right to Notice of Entry under section 29 of the Act.

Regarding the landlord's requests concerning the cat and her boyfriend, I find the landlord is within his legal right to ask for the cat to be removed and for some proof as to who is living in the unit. Clause 18 of her lease states that the tenant must have specific permission in writing and it is underlined. She confirmed she never had permission in writing and the landlord's parents who were the previous landlords stated they gave no permission in writing.

Section 20(c) of the Act states that a landlord may not require a pet damage deposit at any time other than (1) when the landlord and tenant enter into the tenancy agreement, or (2) if the tenant acquires a pet during the term, when the landlord agrees the tenant may keep the pet on the property. I find the landlord has agreed that if the tenant wants to keep the pet cat, she may do so providing she pays a pet damage deposit. I find insufficient evidence of any written permission to keep her cat. The landlord is willing to consent now in writing so I find she is required to pay the pet damage deposit now according to the Act.

The tenant has contended that the landlord's toleration of her actions for a time implies consent. I find Policy Guideline 28 clarifies this issue:

In some cases a landlord may know of a pet being kept by a tenant in contravention of a pet's clause and do nothing about it for a period of time. The landlord's mere failure to act is not enough to preclude him or her from later insisting on compliance with the pet's clause.

I find the same principle applies to the tenant using the neighbor parking place or storage for a time. I find the landlord's failure to act does not preclude him from insisting on compliance with the tenancy agreement which he is doing at this time. I find the landlord asserting his legal rights is not an illegal disturbance of the tenant's peaceful enjoyment so I dismiss this portion of her claim.

Conclusion

I find the tenant entitled to the nominal award of $100 for the reasons given above. I find her entitled to recover half her filing fee or $50 due to her limited success. I dismiss the balance of the tenants' application in its entirety.

I HEREBY ORDER THAT the tenant may recover the $150 awarded by deducting $150 from her rent.

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: April 24, 2018

Residential Tenancy Branch