



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LAT, OLC

Introduction

This hearing dealt with the tenant's application for monetary compensation; authorization to change locks; and, orders for the landlord to comply with sections 28 and 29 the Act, as amended. 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.

The tenant also attempted to raise issues that were not identified on her Application for Dispute Resolution or the Amendment. I did not permit the tenant to do so given the landlord's right to receive notification of the matters to be addressed at this hearing by way of the Application for Dispute Resolution or Amendment; the time constraints of this hearing; and, as provided in Rule 2.3 of the Rules of Procedure issues contained in a single application.

It should be noted that the tenant hung up her end of the telephone call before the landlord had an opportunity to respond to the last issue she raised. Accordingly, I did not further consider that issue as to do so would be unfair.

Issue(s) to be Decided

1. Has the tenant established an entitlement to compensation from the landlord for the amounts claimed?
2. Is it necessary and appropriate to authorize the tenant to change locks?
3. Is it necessary and appropriate to order the landlord to comply with sections 28 and 29 of the Act?

Background and Evidence

The parties entered into an oral tenancy agreement for a tenancy that started on October 1, 2017 on a month to month basis. The landlord collected a security deposit of \$425.00 and the tenant is required to pay rent of \$850.00 on the first day of every month. The rental unit is one of two rental units in the residential building.

Below, I have summarized the tenant's claims and against the landlord and the landlord's responses.

Monetary claim

The tenant seeks compensation of \$2,325.00 from the landlord to clean and paint the other rental unit at the property. The tenant testified that the other rental unit is occupied by her former friend and at the time she offered to help clean up and paint the other unit to be helpful, improve the appearance of her friend's unit and for respect. The tenant acknowledged that there was no discussion about being compensated monetarily. I informed the tenant that I do not have authority to resolve disputes concerning contracts for services, if there was one, unless the agreement involves a tenancy related matter such as rent. There was no indication from what the tenant told me that she was to be compensated by the landlord or that any such compensation would involve deductions from rent otherwise payable to the landlord. Accordingly, I dismissed this claim without seeking a response from the landlord.

The tenant also requested compensation of \$300.00 from the landlord for time spent doing laundry for the other tenant and for electricity associated to use of the laundry machines. The tenant explained that she often did the laundry for the other tenant, her former friend, as a favour to that tenant and since her efforts were not appreciated she seeks compensation. I informed the tenant that the landlord is not obligated to pay the tenant compensation for a favour she performed for another tenant at the property or her former friend and I dismissed this claim without seeking a response from the landlord.

With respect to use of electricity for the laundry machines, I heard that both tenants had access to the laundry room and were using the laundry machines and that the laundry machines are powered by the tenant's electricity account. The tenant has not been compensated for the electricity used by the other tenant to do laundry. The tenant stated that she has not determined or estimated the electricity consumed by the other tenant doing laundry. Accordingly, I informed the parties that I would dismiss this

portion of the tenant's claim with leave to reapply and that she may reapply after determining the value of the electricity used for this purpose. I also stated that I make no finding as to whether the landlord is obligated to compensate the tenant for such electricity consumption and that if the tenant applies for compensation for this issue in the future the parties will be expected to make their respective arguments once it is quantified.

Request to change locks

The tenant requested authorization to change the locks to the laundry room so that the other tenant is unable to access the laundry room.

Both parties provided consistent testimony that other tenant had a key to the laundry room but that the key was returned to the tenant in May 2018 and the tenant then gave the key to the landlord. The landlord continues to hold that key and the other tenant does laundry elsewhere.

The tenant requested that the landlord not give the other tenant a key to the laundry room and the laundry room should be for her exclusive use. The landlord stated that prior to the start of this tenancy, the other tenant did not have access to the laundry room and that the laundry room has always been for the exclusive use of the upper tenants in the past; however, when this tenancy started both tenants requested the other tenant be able to have access to the laundry machines and the landlord gave both tenants keys to the laundry room. Since the other tenant does not have laundry privileges under her tenancy agreement, the landlord agreed that he will not give the other tenant access to the laundry room during the remainder of this tenancy. The tenant appeared satisfied with this resolution.

Order for the landlord to not enter rental unit or property without notice or consent

The tenant testified that in October 2017 the landlord entered her rental unit without advance notice or her consent when he was at the property having the furnace replaced.

The landlord explained that when the furnace was being replaced he did not anticipate having to access the rental unit since the furnace is in the attic and is accessible from the exterior of the building; however, the serviceman instructed the landlord to turn off the thermostat to facilitate the replacement and the thermostat is in the rental unit. The

landlord knocked on the tenant's door and when there was no answer he entered for the purpose of turning off the thermostat.

Discussion ensued with respect to a landlord's obligation to obtain a tenant's consent to enter or give a written 24 hour written, except in certain circumstances such as where an emergency exists, as provided under section 29 of the Act.

The landlord stated that the above described situation was unique and he only did it to facilitate the replacement of the furnace and at the instruction of the serviceman and that he has not entered without consent or notice at any other time. The landlord assured me that he would comply with section 29 in the future.

The parties also raised an issue with respect to the landlord coming to the property to cut the grass. The tenant wants notice when the landlord intends to come cut the grass. I explored whether the grass area was common property or for the tenant's exclusive use. Both parties were in agreement that when the tenancy formed there were no areas of the yard that were designated for the exclusive use by the tenant.

The tenant claims that areas of the property have turned into her exclusive use due to police orders for the other tenant to stay away from the tenant. I informed the tenant that the police or restraining orders do not create terms of tenancy and that any order for the other tenant to stay away from the tenant does not create an area of exclusive use under the tenancy agreement. As I informed the parties, my jurisdiction is limited to tenancy agreements, the *Residential Tenancy Act*, and its regulations, and my focus is on the terms of tenancy. Since the tenancy started October 1, 2017 I instructed the parties to describe their agreement, as it pertains to yard maintenance at or around that time.

The parties provided consistent testimony that the tenant stated she was going to cut the grass but that she has let it grow quite long and when the landlord is in the area tending to another property he will also cut the grass at the subject property.

Shortly after dealing with the above described issue and dismissing the tenant's monetary claim the tenant hung up her end of the telephone call.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Monetary claim

A party that makes an application for monetary compensation against another party has the burden to prove their claim. 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.

In order for a tenant to succeed in obtaining compensation from the landlord, the tenant must establish that the landlord has violated the Act, regulations or tenancy agreement. The tenant's offer and decision to clean and paint her friend's rental unit at the property does on her own volition not form a basis for the tenant to seek compensation from the landlord after the fact. If the landlord failed to repair and maintain the other tenant's unit that would be a matter between that other tenant and the landlord. If the tenant was hired by the landlord to perform services at the property and a dispute concerning that contract for services arose, it must be resolved in the appropriate forum such as Small Claims court. I do not have jurisdiction to resolve disputes concerning contracts for services, even if there was one in this case. Therefore, I do not further consider the tenant's request for compensation from the landlord to clean and paint another rental unit on the residential property.

In order for the tenant to succeed in a monetary claim the tenant must also provide verification of the amount claimed, including a mathematical calculation where appropriate. A tenant who pays for services or facilities that are provided to another tenant (such as electricity) may be entitled to recover costs for the electricity provided for the other tenant's benefit; however, the amount of the claim must be reasonably estimated or calculated and supported by evidence. The tenant has not determined or estimated the electricity consumed for the other tenant using the laundry machines at

the property. As such, I find I cannot further consider the tenant's request for compensation for this matter and I dismiss this portion of her monetary claim with leave to reapply.

Request to change locks

The parties reached a mutually agreeable resolution during the hearing with respect to the lock/key to the laundry room and I issue an order based on that mutual agreement.

The landlord is ordered to not give the other tenant access to the laundry room during the remainder of this tenancy.

Consent or notice to enter the rental unit or property

Section 29 of the Act provides for the circumstances when a landlord may enter a rental unit. The landlord is obligated to ensure compliance with section 29 of the Act and I order the landlord to do so in the future. Below, I have reproduced section 29 for the parties' reference.

Landlord's right to enter rental unit restricted

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).

For further information on emergency repairs that may warrant a landlord entering a rental unit without consent or advance notice, I refer the parties to section 33 of the Act for the definition of an emergency repair. An emergency repair is where:

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

As for grass cutting, Residential Tenancy Branch Policy Guideline 1 provides that tenants are typically responsible for cutting the grass of a single family home or where the tenant has exclusive possession of an area. Landlords are typically responsible for cutting the common areas of multiple unit properties.

In this case, the property has multiple units and the area that the landlord has been cutting is not for the tenant's exclusive use under their terms of tenancy. A landlord is not obligated to obtain a tenant's consent or give a tenant notice before entering

common property. Therefore, I deny the tenant's request that the landlord give her notice before he enters the common property for purposes of cutting the grass.

Conclusion

The tenant's monetary claim is dismissed without leave with the exception of one specific issue: the tenant's request for compensation for electricity used by the other tenant for the laundry machines. That portion of the tenant's claim is dismissed with leave to reapply.

The landlord is ordered to not give the other tenant on the property a key to the laundry room and the laundry room is for the tenant's exclusive use.

The landlord is required to comply with section 29 of the Act; however, I have determined that the grass area is common area and the landlord is not required to obtain consent or give the tenant notice before cutting the grass.

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: July 05, 2018

Residential Tenancy Branch