



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC

Introduction

This hearing dealt with an application from the tenant for a monetary order as compensation for damage or loss under the Act, including breach of the right to quiet enjoyment. Both parties participated and / or were represented in the hearing and gave affirmed testimony.

While all of the documentary evidence and oral testimony has been carefully considered, the information set out in this decision will not include reference to each and every detail included in the evidence.

Issue to be Decided

- Whether the tenant is entitled to a monetary order under the Act

Background and Evidence

This tenancy began on May 1, 2007. The tenant's unit is one of many units located within a three storied building. The tenant was absent from her unit for personal family reasons for the period from July 1 to July 19, 2008. The tenant claims that during her absence a diamond ring set and sterling silver cutlery went missing from her unit. Further, at the end of her absence when she returned to her unit she claims she found that her door was unlocked. The tenant asserts that the landlord is liable for the loss of her possessions, and in her written submissions she states in part, as follows:

My landlord illegally entered my premises while I was on vacation. There was no emergency and no notice given although she knew I was going on vacation and the dates.

When I returned home, my apartment was unsecured and had been left unlocked for a week.

I noticed that both the bathroom and kitchen lights were on, all of the items that were normally stored under the bathroom and the kitchen sink had been removed and there was a notice on the floor inside the front door.

I found a note in my mailbox that my locks had been changed, again without my permission.

I then went back to my apartment to check the door key, this key did not work on the dead bolt or on the lock in the handle.

My diamond ring set and sterling cutlery are missing as a result of this negligence.

I am seeking compensation for loss of quiet enjoyment, illegal entry and putting my property and mental health at risk....

The tenant sets out the particulars and the respective monetary values of her claim:

Rings	\$ 5,075.00
Sterling silver	\$ 2,552.00
Damages	<u>\$ 2,373.00</u>
Total:	\$10,000.00

The tenant states that on June 27, 2009 she verbally informed the building's weekend manager of her upcoming absence in July. The tenant said she asked the weekend manager to pass along this information to the building manager. In a written submission from the weekend manager, she states that while she recalls a conversation with the tenant, she cannot remember that the tenant identified the length of her anticipated absence. As for the building manager, she testified that this information did not reach her. In any event, there is no evidence that the tenant informed any of the landlord's agents in writing of the particulars of her absence, or left a key to her unit with a neighbour or friend, or informed the landlord of how she could be contacted while she was away.

The building manager testified that a notice was posted on the facility bulletin board in June 2008, advising residents that at a future date plumbers would be attending the building to undertake work in various units. At that stage, no specific dates or times were known. Work included repair to water shutoff valves, as rusting and malfunctioning had led to leaking and water damage to ceilings, drywall and some furnishings in the building.

The building manager stated that on July 7, 2008 notices were slid under residents' doors, advising them that the plumber would be working in the building starting "tomorrow." While plumbers were expected to start their work on July 8, 2008, in fact they began work on July 9 and continued during July 10 & 11, 2008.

The building manager stated that access to the tenant's unit was required on July 9, 2009. However, when the building manager attended the unit and knocked on the door, she found no one home. After a neighbour informed the building manager that the tenant was away, the building manager found that neither her master key nor the assistant manager's key would unlock the tenant's deadbolt. She then contacted the maintenance man who attended the unit and undertook to replace the faulty deadbolt. In his written submission the maintenance man stated that the plumbers were doing their work as he was installing the new deadbolt.

In her written submissions the building manager stated the plumbers were “bonded and were supervised.” She stated that four plumbers started work on July 9, 2008 and three of the four worked during the last two days. In addition to providing the name of the plumbers’ supervisor, she stated in part:

I was also in the hallway as the plumbers left their toolboxes outside of the apartments in the hallway and took out only the tools that were required.

Plumbers check each others work as they went along, and [plumbers’ supervisor] was in charge of the other two plumbers.

The building manager testified that work in the tenant’s unit was completed within approximately 45 minutes on July 9, 2009.

The building manager stated that two keys were given to her for the tenant’s new deadbolt following its installation. She said that after work in the tenant’s unit was finished, she locked the deadbolt and also locked the entry lock which did not need to be replaced. The building manager placed a key for the new deadbolt in the tenant’s mail box.

When the tenant returned home she said she found that the door to her unit was unlocked. She also said she found that the deadbolt was not functioning.

Subsequently, the tenant claims to have discovered the previously named items missing from her unit. When she reported the missing items to the building manager, the building manager encouraged her to immediately file a report with the police. Further, the building manager contacted the maintenance man who examined the locks and, while he found no evidence of tampering, discovered that the new deadbolt required adjustment. He then dismantled and reinstalled the deadbolt.

In time, the tenant did contact the police to report the missing items. Police attended and the tenant reports that “they wished the report was made closer to the date of loss and that this was a civil matter.”

The tenant stated that she had no insurance coverage for personal possessions located within her unit. And, in response to her inquiry, the President of the landlord's Board of Directors informed the tenant that the landlord's insurance "does not cover claims for personal losses of tenants in our buildings" and that "Claims of theft, losses and damages to tenants properties, have to covered by personal insurance of tenants" [reproduced as written].

Analysis

The full text of the relevant legislation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and other information pertinent to the landlord – tenant relationship can be accessed via the website: www.rto.gov.bc.ca/

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment** and provides in part, as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter unit restricted*];

Following from section 28(c) of the Act, as above, section 29 of the Act addresses **Landlord's right to enter rental unit restricted** as follows:

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).

The landlord's provision of written notification regarding scheduled entry to the unit complies with the Act, however, in view of the tenant's absence, this notification did not come to her attention until after the fact. For future reference, such notices should be dated and should also specify the date and times of anticipated entry to any unit affected.

In relation to the landlord's replacement of the deadbolt on the tenant's unit door, section 31 of the Act speaks to **Prohibitions on changes to locks and other access**, in part, as follows:

31(1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

Further, section 33 of the Act speaks to **Emergency repairs** and provides, in part:

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.

Clearly, the landlord complied with section 31 of the Act by providing the tenant with a key to the new deadbolt installed on her unit door. While the deadbolt was replaced during the tenant's absence and without her consent, it is arguable that the replacement constituted an emergency repair, as set out above under section 33(1)(c)(iv) of the Act. Apparently the landlord had no knowledge of the defective deadbolt until access to the unit was required for repairs to plumbing.

Residential Tenancy Policy Guideline # 6 addresses **Right to Quiet Enjoyment** and provides in part, as follows:

- **Basis for a finding of breach of quiet enjoyment**

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing

interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

Following careful consideration of all the documentary evidence and testimony of the parties, in addition to the relevant statutory provisions and policy guidelines, I am unable to conclude there is sufficient evidence to support the tenant's application for a monetary order under the Act. Specifically, the statutory provisions set out above assign responsibility to the landlord for maintaining the property in a suitable state of repair. Further, the Act provides the landlord with authority to enter the unit under certain, very specific circumstances. Finally, there is statutory provision for the landlord's changing of "damaged or defective locks" and such action is deemed by the Act to constitute an emergency repair.

There is conflicting testimony as to whether or not the door to the tenant's unit was properly secured following completion of the plumbing repairs. However, even if I were to conclude there was an absence of due diligence on the landlord's part in this regard, there is insufficient evidence to support a proposition that the missing items were included amongst other valuables normally stored within the tenant's unit. The tenant states that she had no insurance coverage for household possessions, and there is no evidence that she maintained an inventory of valuables kept in the unit, the likes of which would typically be required by an insurance provider.

The parties may wish to consider trying to achieve a resolution of the matter between them and / or, if they have not already done so, seeking legal advice. Further, the parties might consider a review and / or introduction of certain policies and procedures to assist in the prevention of similar difficulties in future.

Pursuant to all of the above, I hereby dismiss the application.

Conclusion

The tenant's application is dismissed without leave to reapply.

DATE: May 1, 2009

Dispute Resolution Officer