

DECISION

Dispute Codes MNDC OLC ERP RP RR FF O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to obtain an Order to have the Landlord comply with the Act, make emergency repairs for health or safety reasons, make repairs to the unit, site or property, to allow the Tenant reduced rent for repairs, services or facilities agreed but not provided, other, and to recover the cost of the filing free from the Landlord for this application .

The hearing documents were served personally to the Landlord's office by the Tenant on April 12, 2010. The Property Manager confirmed receipt of the hearing package.

The parties appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under section 67 of the *Residential Tenancy Act*?

Is the Tenant entitled Orders to have the Landlord comply with the Act and make repairs under sections 62, 32, and 33 of the *Residential Tenancy Act*?

Is the Tenant entitled to reduced rent for repairs, services or facilities agreed upon but not provided under section 65 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the tenancy agreement began on October 1, 2009, which switches over to a month to month tenancy after the completion of the one year fixed term. Rent is payable on the first of each month in the amount of \$800.00 and the Tenant paid a security deposit of \$400.00 on September 10, 2009. A move-in inspection report was completed in the presence of the Tenant and both parties signed the move-in inspection form.

The Tenant testified that her apartment is located on the main floor of the building and was broken into through her bedroom window by a thief on March 4, 2010. The Tenant stated the thief stole her computer, jewellery, and a guitar. The Tenant confirmed she does not have insurance on her contents but that she did call the police to report the break in and theft. The Tenant argues the Landlord is responsible to cover her loss of \$2,200.00 as her rental unit is old with poor quality windows that can be bent for easy access to thieves. The Tenant confirmed she signed the move-in inspection report which states the window in the bedroom is "clean and secure (locks in place)". The Tenant argued that she didn't physically check the window strength and later noticed that the glass was separating from the window frame. The Tenant stated that after the break in her window was damaged and had to be replaced and the Landlord replaced it with another window that was weak and old. The Tenant advised that she had a friend come by and install two pieces of wood to ensure the replacement window could not be bent.

The Tenant confirmed the repairs to her suite have now been completed and a security bar installed therefore she no longer wished to pursue her request for an Order to have the Landlord complete repairs and emergency repairs. The Tenant is seeking an Order to have the Landlord comply with the Act to remove the fence the surrounds the building because the police officer who attended the break in told the Tenant the fence provided a screen for thieves which allows them more time to break into the apartments. The

Tenant also stated that she was not currently requesting reduced rent as the repairs to her window have been completed.

The Property Manager testified the Tenant should have her own content insurance and the Landlord acted quickly to have a window installed in an emergency and then went above their responsibility by having the security bar purchased and installed. The Property Manager argued they have taken over management of this property December 1, 2009 and have had no prior problems or complaints about the fence. The Property Manager then stated that she wanted to remind the Tenant that her maintenance requests should be in writing.

The Resident Manager stated that when the Tenant first viewed their apartments there were two available, this one on the first floor and another one on the fourth floor. The Tenant chose the first floor apartment because she could let her cats out and she commented on how the fence would prevent her cats from getting too far away. The Resident Manager confirmed the window has been replaced, the security bar installed, and he also readjusted the two 1" x 2" wood slats to ensure they were not causing additional damage to the window.

The Tenant stated that she does not appreciate the Landlord posting notices to enter her unit with less than 24 hour notice. The Tenant argued the notice to enter on April 13, 2010 was not posted on April 12, 2010 until after 10:00 p.m. as it was not there when she arrived home from work. The Tenant stated she found the notice on her door on the morning of April 13, 2010, when she left to go to work and by this time she didn't have an opportunity to move her books or prepare her suite for the Landlord's entry. The Tenant requested that the Landlord ensure his notices are posted a full 24 hours before entry.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports that the Tenant suffered a loss which is a result of a break and enter and theft to her apartment. There is no evidence to support that the Landlord contravened the act or was negligent in any way which could have led to the break and enter to occur, nor is there evidence to support the actual amount required to compensate for the Tenant's loss. The evidence supports that the Tenant chose not to have content insurance for her property and in making this choice the Tenant accepts the burden of a potential loss. Based on the aforementioned I find the Tenant has failed to prove the test for damage or loss, as listed above, and I hereby dismiss her monetary claim.

The Tenant has withdrawn her requests for Orders to have the Landlord complete emergency repairs, make repairs to the unit, for other reasons, and to request reduced rent.

The Tenant is seeking an Order to have the Landlord comply with the Act to ensure notices are posted 24 hours prior to entry and to have the Landlord Ordered to remove the fence for security reasons.

Section 29 of the Act provides a landlord must not enter a rental unit unless the landlord provides the tenant written notice at least 24 hours prior to entry and not more than 30 days prior to entry. The notice must include the purpose for entering and the date and time of the entry, which must be between 8:00 a.m. and 9:00 p.m., unless the tenant otherwise agrees. A Landlord and Tenant are both obligated to comply with the Act therefore I approve the Tenant's request and I hereby Order the Landlord to ensure notices to enter are posted a minimum of 24 hours prior to the expected time of entry and comply with the form and content required under the Act.

Section 32 of the Act provides that a Landlord must maintain the rental unit in a state of decoration and repair that complies with health, safety, and building standards required by law. The Tenant is seeking an Order to have the Landlord remove the perimeter fencing however there is no evidence before me to support that this fence is a safety risk, therefore I dismiss the Tenant's request.

The Tenant has been partially successful with her application, therefore I award her recovery of the \$50.00 filing fee.

Conclusion

I HEREBY ORDER the Landlord to comply with the Act and to ensure notices to enter the Tenant's rental unit are posted a minimum of 24 hours prior to the expected time of entry and comply with the form and content required under the Act.

The Tenant has been awarded recovery of the \$50.00 filing fee and may deduct this one time amount from her future rent payment.

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: May 28, 2010.

Dispute Resolution Officer