

DECISION

Dispute Codes

MNDC, OLC, RP, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, an Order for the landlord to comply with the *Act*, an Order for the landlord to make repairs to the unit, site or property and other issues.

The tenant served the landlord in person on May 13, 2010 with a copy of the Application and Notice of Hearing. The landlord confirmed receipt of the hearing documents and I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The landlord and three witnesses appeared along with the tenant. All parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?
- Is the tenant entitled to an Order for the landlord to make repairs to the unit, site or property?
- What other issues are there?

Background and Evidence

Both Parties agree that this tenancy started on February 01, 2010. This is a fixed term tenancy which is due to expire on February 01, 2011. Rent for this unit is \$600.00 per month and is due on the first of each month. The tenant paid a security deposit of \$300.00 on January 15, 2010. The tenant testifies that his heating is included in his rent. The thermostat for his heating is located in the upstairs unit and is controlled by the tenants living in this unit. The tenant states that these tenants told him that they were not going to pay for his heating and they would only

give him heat when they are cold. The tenant states that these upstairs tenants continually turn off the heat when they leave their unit. The tenant states the temperature in his unit is so cold he has to plug in extra heaters and use his oven to heat his kitchen. The tenant states he has had little or no heat since March 17, 2010. The tenant has kept a diary of the temperature in his unit over April and May, 2010 which indicates that the temperature in his unit is around the low to middle 60 degrees on most days.

The tenant testifies that he has sent letters to the landlord to resolve these issues and the landlord has failed to do so. The tenant has provided copies of these letters in his evidence package. The tenant claims the landlord has blamed him for turning off the furnace or the breakers to both units.

The tenant claims that there was an incident where the upstairs tenants were vacuuming. This kicked off the breakers and the tenant claims he called upstairs to tell the tenants. The tenant claims the upstairs tenant became angry; he came down and kicked the tenants' door in damaging the frame. The tenant seeks an Order for the landlord to repair his door frame.

The tenant wants the landlord to reset the thermostat and programme it with times and temperatures suitable for both units. The tenant also wants the landlord to put a lockable cover over the thermostat to prevent the upstairs tenants turning the heat off or lowering it when they leave their unit.

The tenant claims his tenancy agreement included the free use of the laundry facilities. However, he states since the tenants moved in upstairs he cannot access the laundry because they either lock the door to the laundry room or leave their belongings at the entrance to impede his access to the laundry room. The tenant states he has had to do his laundry elsewhere for over five weeks and he seeks a Monetary Order to recover the amount of \$100.00. The tenant states he has not tried to get into the laundry room since so is unaware if the door is still locked.

The tenant states the upstairs tenants throw their cigarette butts on the ground at the front of the property and leave their garbage cans out. The tenant seeks an Order for the landlord to deal with these issues and comply with the Act.

The landlord disputes some of the tenants' testimony. He claims that the tenant told him he had no heat and when the landlord called around to see him the tenant answered his door with no shirt on and his unit was noticeable hot. The landlord testifies that the tenant is always complaining about the upstairs tenants however the landlord states this tenant has a mains switch in his unit and if the tenant turns this off then the heating goes off. The landlord states that a basement suite will always be colder than an upstairs suite and when the upstairs suite reaches the set temperature then the heating will go off. The landlord states he has given the tenant heaters and fire wood. The landlord states he is happy to cover the thermostat with a lockable cover to prevent the programmed temperatures and times being changed.

The landlord states he was unaware that the tenants' door frame was broken and agrees to repair it.

The landlord states that the laundry room is for all tenants use and the tenants have agreed the following days and times of use of this area: the upstairs tenants will use the laundry room on Saturday, Sunday, Monday and Tuesday each week between 8.00 a.m. and 7.00 p.m. the downstairs tenant will use the laundry room on Wednesday, Thursday and Friday each week between 8.00 a.m. and 7.00 p.m. each week. The upstairs tenants agree not to lock the laundry room door and to keep the access to the room clear.

The landlords witness joined the hearing. She is one of the tenants living in the upstairs portion of the property. The landlords witness claims the tenant downstairs turns off the pilot light and that is why he has no heat. The witness agrees to the days and times that they can use the laundry room and will ensure the door is not locked on the downstairs tenants days and times of usage.

The tenant seeks the sole use of the backyard. The tenant claims that when he viewed the property with the landlords' father he was told he would not have to share the yard. The tenant claims he has cleaned the yard up and does not want to share it with the upstairs tenants who he claims have the use of the front yard.

The landlord claims that the back yard is a common area for all tenants to use. He claims this tenant has had use of it and just assumes it is for his use only.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness; With regard to the tenants claim for money owed or compensation for having to do his laundry elsewhere. In this instance the burden of proof is on the claimant to prove the tenants did lock the laundry room door for an extended period thus preventing the tenant from accessing the laundry facilities. He must prove that the landlord did not take action to resolve the issues concerning the locked door. The tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally it must be proven that the tenant did everything possible to address the situation and to mitigate the damage or losses that were incurred by checking back to see if the door had been unlocked.

I find that the tenant has not met the burden of proof in this matter. While I accept that there was a time that the tenant was unable to access the laundry room, the tenant has provided no evidence as to how long the door was locked preventing him from doing his laundry for five weeks. By the tenants own admission he states that he has not checked the door to the laundry room to see if it is unlocked and has chosen therefore not to mitigate his loss. Consequently this section of the tenants claim for a Monetary Order is dismissed.

With regard to the tenants claim for an Order for the landlord to comply with the Act; the tenant argues that the landlord has not upheld the terms of the tenancy agreement by providing heat, security and sole use of the back yard. I find from the tenants evidence that the temperature in his unit shows he has been without an acceptable level of heat from March 17, 2010. Section 27 (1)(a) of the *Act* states: a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenants use of the rental unit as living accommodation. Although the landlord has not directly restricted the heat to the tenants unit, he is responsible for the actions of other tenants living in the building and must therefore ensure the tenants' heat is not restricted. Consequently, I Order the landlord to comply with the section 27 of the *Act* and ensure the tenant receives heat to his unit as specified in his tenancy agreement.

With regard to the use of the laundry facilities; Section 27 (1)(a) of the *Act* applies in this instance also. Although the tenant has been unable to establish his claim for a monetary award in compensation I do find that there has been an incident between the tenants where use of the laundry facilities has been restricted. The upstairs tenants attending the hearing and this tenant have agreed to the shared use of the laundry facilities for the days and times documented

above. As an agreement has been reached in this matter no further Orders will be made regarding the laundry facilities. However, I caution the landlord to monitor this situation to ensure the agreed upon days and times are adhered to by both sets of tenants.

With regard to the repair to the tenants door frame; the landlords states he was unaware of the damage. The landlord also agrees to make the repair to the doorframe. Consequently, I Order the landlord to carry out this repair within seven days of receiving my decision.

With regard to the tenants application for an Order for the landlord to ensure the front of the property is left clear of cigarette butts and garbage cans. I find it is the landlords responsibility to ensure the upstairs tenants comply with section 32 of the *Act* and maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and other residential property to which they have access

With regard to the tenants claim that he has sole use of the back yard; This agreement has not been documented in the tenancy agreement and the tenant states it was a verbal agreement with the landlords father therefore in the absence of this being documented in the written tenancy agreement, the burden of proving that an agreement exists lies with the person making the claim; however in this case it is just the tenants word against that of the landlords and when it is just one persons word against that of the other that burden of proof is not met. My other concern would be that the verbal agreement the tenant states he had was with the landlords father and not the landlord. Consequently I find the tenant has not established his claim that there was an agreement in place therefore the backyard remains a common area for all tenants to use.

Conclusion

The tenant has been partially successful with his claim.

I HEREBY ORDER the landlord to comply with the Act by ensuring the tenant has adequate heat to his unit and to enforce the agreed upon days and times for the shared use of the laundry facilities.

I HEREBY ORDER the landlord to repair the tenants' door within seven days of receiving my decision.

I HEREBY ORDER the landlord to ensure the property is kept clean and sanitary.

The reminder of the tenants claim is dismissed without leave to reapply.

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: June 28, 2010.

Dispute Resolution Officer