

DECISION

Dispute Codes MNDC, OLC, RP, LRE, LAT
 MND, MNDC, FF

Introduction

This hearing dealt with cross applications from the tenant and landlord. The tenant's application is for a monetary order for compensation for damage or loss, to order the landlord to comply with the Act, to order the landlord to make repairs to the unit, set conditions on the landlord's right to enter and allow the tenant to change the locks. The landlord's application is for a monetary order for damage to the unit or site, compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Is either party entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started in September 1. 2005 with current monthly rent of \$670.94

The tenant testified that the landlord's agent unlawfully entered her suite on 5 different occasions and these incidents date back to 2005. On 3 occasions the maintenance man entered her suite to repair what was thought to be a water leak and mould, on 1 occasion plumbers went through the entire building to complete repairs and on 1 occasion the fire department was conducting inspections to ensure that the suites were in compliance with the landlord's insurance. The tenant is requesting an order that the landlord's access to the unit be restricted, that authorization is granted to the tenant to change the locks, that the landlord is ordered to comply with the Act and that there is compensation to the tenant for loss of peace and quiet enjoyment in this regard.

The tenant stated that she told the landlord's agent in 2005 that her fridge freezer was leaking but that as of this date it has not been repaired or replaced. In October 2010 the tenant advised the landlord's agent that the stove was not working and as of this date it has not been repaired or replaced. The tenant is requesting an order for the landlord to complete repairs.

The tenant felt that she had been threatened with eviction for not complying with a request from the landlord's agent to remove sheets and bedding from the front windows and put up the blinds provided by the landlord. The tenant stated that she did not put up the blinds as the hardware provided was inadequate and the windows leaked. The

tenant is seeking compensation for loss of peace and quiet enjoyment in this regard. The tenant is seeking a monetary order for \$13,817.74 in this application.

The tenant has not provided any of her requests for repairs in writing to the landlord or landlord's agent and maintains that the landlord's agent never spoke to her about a move-in inspection or signing a tenancy agreement at the start of the tenancy.

The landlord's agent testified that the tenant refused to make herself available at the start of the tenancy to complete a move-in inspection or sign a tenancy agreement with the landlord's agent. The landlord's agent stated that she always provides tenants with notice before entering their suites and would not enter without a tenant's permission. The landlord's agent stated that on a number of occasions the tenant has denied access to the suite even with notice having been given.

The landlord's agent stated that she attempted to check the fridge when the problem was first reported in 2005 by the tenant but that the tenant denied her access to the suite. When access was denied on subsequent occasions, the landlord's agent requested that the tenant contact her and let her know when the tenant would be available to allow access. The tenant has not contacted the landlord's agent to this date.

The landlord testified that he very pro-active when tenants call with issues and that he attempted to address the problem with the fridge and stove as soon as he had been informed however access to the suite has been an on-going issue.

It was agreed in this hearing by all parties that the tenant will allow the landlord and or the landlord's agent access to the suite before January 4, 2011 so that the fridge and stove can be replaced; the parties will mutually agree to a date and time. The tenant also agreed to allow access for the maintenance man to caulk the windows and install the curtains that had been provided to her on this same date and time.

The landlord's agent testified that the tenant has been responsible for 7 water leaks in her suite over the past 5 years and that in a recent inspection it was noted that: the tenant's children had been writing all over the walls, the balcony door handle was broken, window screens were cut and torn, the kitchen counter was chipped, closet doors were missing and that the tenant had attempted to cover some of the writing on the walls with white primer.

No receipts for work done were provided by the landlord as they have their own maintenance man, some of the compensation for repairs requested date back to 2005.

The landlord is requesting a monetary order for the following:

Water Leaks	\$2000.00
Compensation to tenants below	\$400.00
Balcony Door	\$80.00

Repaint Suite	\$800.00 est
Balcony Door Glass Replaced	\$80.00
Balcony Door Handle	\$50.00
Replace Closet Doors	\$150.00 est
Replace Curtains	\$50.00
Repair Counter Top	\$50.00
Replace Window Screens	\$165.00 est
Total repairs/compensation	\$3795.00

Analysis

Residential Tenancy Act **Section 32 speaks to Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Residential Tenancy Act **Section 33 speaks to Emergency Repairs**, and provides in part as follows:

- (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,

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

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 rental unit restricted]*;

Residential Tenancy Act **Section 29 speaks to the Landlord's right to enter rental unit restricted**, and provides in part as follows:

(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;
 - (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).

Based on the documentary evidence and undisputed testimony of the landlord and tenant, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for compensation, that the landlord must be ordered to comply with the Act, that the landlord have conditions set on the landlord's right to enter the suite or that the tenant requires that the locks be changed. The landlord has required access to the tenant's unit five times during this five year tenancy, provided notice as required and the grounds for access were reasonable and or of an emergency nature. A tenant requesting repairs must allow the landlord reasonable and timely access to complete those repairs. If or when a tenant does not comply with established building policies and is warned of eviction because of their failure to comply, this warning does not constitute a breach of the tenant's peace and quiet enjoyment.

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

Residential Tenancy **Policy Guideline # 5 speaks to the Duty to Minimize Loss**, and provides in part as follows:

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The landlord who finds his or her building is being damaged due to actions by a tenant should apply for an order for compensation for damage or loss under the Legislation. While the landlord had the option of applying for dispute resolution in order to seek a monetary order for compensation for damage or loss at the time the loss occurred, there is no evidence that they did so.

Based on the documentary evidence and undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has established that they may have grounds for entitlement to future compensation for damage to the unit or site. However as a number of the incidents referred to in this hearing happened one to five years ago, the landlord has not submitted proper receipts for work completed, some amounts are estimates for future work not yet completed and the tenancy continues in place, I find that the landlord at this time is not entitled to compensation for damage or loss.

The landlord's application is hereby dismissed with leave to reapply.

The landlord is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The tenant's application is hereby dismissed without leave to reapply.
The landlord's application is hereby dismissed with 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: December 30, 2010

Dispute Resolution Officer