



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes ERP, OLC, LAT, MNDC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking a monetary order under the Residential Tenancy Act (the "Act") or tenancy agreement, and orders for the Landlord to comply with the Act and tenancy agreement, for orders for the Landlord to make emergency repairs to the rental unit, for authority to change the locks to the rental unit, for order suspending or setting conditions on the Landlord's right to enter the rental unit and to recover the filing fee.

The Tenant served the Landlord with the Notice of Hearing and the Application by registered mail on March 25, 2011. The Tenant has supplied the registered mail receipt into evidence, which was sent to the Landlord's address at which she carries on business as a landlord. The Tenant went on to state that when the registered mail was sent, she believed the Landlord was still residing in her home, which was in the back of the rental unit on the same property. The Tenant stated that she later found out on March 30, 2011, from another tenant on the premises that the Landlord had departed for an extended vacation in France, but did not inform the Tenant when she left and did not leave an emergency name and number for the Tenant to contact for emergency repairs.

The Landlord did not appear at the hearing; however I find the Landlord has been duly served in accordance with the Act.

The Tenant appeared, gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Has the Tenant established that Orders to the Landlord are required for emergency repairs?
2. Has the Tenant established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?

3. Has the Tenant established an entitlement to an order requiring the Landlords to comply with the Act?

Background and Evidence

This ten month fixed term tenancy began on September 1, 2010, and is to expire on June 30, 2011, monthly rent is \$1,800.00 and a security deposit of \$900.00 was paid by the Tenant on September 2, 2010.

The Tenant submitted that she came to rent this rental unit, as it was on an island and presented as a house with land and that she would be assured of privacy, which she needs to deal with some issues. The Tenant stated it was not until after the tenancy began that she was made aware the Landlord occupied a small bunkhouse directly in back of the Tenant's rental unit. The Tenant was surprised that anyone would live there as there was no toilet or shower in the bunkhouse.

The Tenant submitted that the Landlord almost immediately began intruding on her privacy, in September, when the Landlord came around late at night in her housecoat while the Tenant, startling the Tenant.

The Tenant submitted that the Landlord knocked on her door on a repeated basis during the month of October, which has continued thereafter, disturbing the Tenant's peace and quiet.

The Tenant submitted that on the occasions when she or her family don't answer the Landlord's knocks, the Landlord enters the rental unit without permission.

The Tenant submitted that the situation reached a breaking point on February 13, 2011, when the septic tank overflowed, resulting in the Landlord's yelling and accusations to the Tenant that she broke the septic. Later on that evening, the Landlord, according to the Tenant, came out of her bunkhouse in her housecoat and started berating her son about the septic, who had been chopping wood.

The Tenant stated that the Landlord has billed her, the Tenant, for cleaning of the septic and to date, has yet to repair the septic.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

On a balance of probabilities and in the absence of evidence from the Landlord, I find the Tenant has established that the Landlord has interfered with the Tenant's right to quiet enjoyment by intruding on the Tenant for frequent, unannounced visits beginning in October 2010 and continuing through most of March 2011. I find that the Landlord possessed no right to enter the rental unit on the occasions that she did.

For the period of October 2010 through March 2011, I find it undeniable that the tenant suffered a loss of quiet enjoyment due to the Landlord's intrusions, and therefore a subsequent loss in the value of the tenancy for that period. As a result, I find the tenant is entitled to compensation for that loss.

Residential Tenancy Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

I note that the loss of quiet enjoyment was from the Landlord's frequent interruptions and unannounced visits period of October 2010 through March 2011. The Tenant, however, provided no evidence or testimony that indicated that she was restricted from cooking; toileting; sleeping or other general uses of the rental unit, as such I find the amount of \$360.00 per month for the life of the tenancy for disturbance to be unreasonable. However, the Tenant testified that she rented the house and property due to her fragile condition which required solitude and freedom from disruptions.

I allow the Tenant **\$200.00 per month** for the devaluation of the tenancy for the months of **October 2010 through March 2011** and **\$50.00** for the return of the filing fee for the Application. I find the Tenant has established a total monetary claim of **\$1,250.00**.

Pursuant to Section 67 of the Act, I have provided the Tenant with a monetary order for \$1,250.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Alternatively the Tenant may deduct the amount of \$1,250.00 from the next monthly payment of rent in satisfaction of the claim.

As to the Tenant's request to suspend or set conditions on the Landlord's right to enter the rental unit, I direct the Landlord to comply with Section 29 of the Act and give the Tenant at least 24 hours written notice that includes the purpose of entering, which must be reasonable and the date and the time of the entry, which must be between 8:00 a.m. and 9:00 p.m. Upon the Landlord's failure to comply with section 29, the Tenant is at liberty to make further application for dispute resolution for an order for a further rent reduction.

As to the issue of the septic tank, I find its repair and/or replacement is the obligation of the Landlord pursuant to Section 33 of the Act, which requires the landlord to make

emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property.

I hereby direct the Landlord to immediately cease and desist from making any further demands upon the Tenant for reimbursement of any costs associated with the septic tank repair.

Conclusion

The Tenant is granted a monetary order for \$1,250.00.

The Tenant is allowed to satisfy the monetary order by deducting this amount from the next monthly 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: April 27, 2011.

Residential Tenancy Branch