



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, OLC, AAT, 0/OPB, MNR, MNSD, FF, O

Introduction

This hearing was convened in response to an application by the Tenant and a cross application by the Landlord.

The Tenant applied for dispute resolution on April 4, 2011 for:

- A Monetary Order for compensation or loss under the Act, regulation or tenancy agreement – Section 67;
- An Order compelling the Landlord to comply with the Act, regulation or tenancy agreement – Section 62
- An Order allowing the Tenant access to the unit or site for the Tenant or the Tenant's guests – Section 70
- Other.

The Landlord applied for dispute resolution on April 15, 2011 for:

- An Order of Possession based on a Notice to End Tenancy for Cause, that cause being the Tenant has breached an agreement with the Landlord – Section 55;
- A Monetary Order for unpaid rent – Section 67;
- A Order to keep all or part of the security deposit – Section 38
- Recovery of the filing fee – Section 72; and
- Other.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to an Order compelling the Landlord to comply with the Act?

Is the Tenant entitled to an Order allowing her and her guests access to the unit?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on December 10, 2010. Rent in the amount of \$1,125.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$587.50.

On February 28, 2011, the Landlord sent the Tenants an email informing them that they were to be out of the unit by the end of March 2011 due to a number of complaints from the Strata. This letter was also posted on the door of the unit. The Tenant states that this email and letter was not received by her. The Landlord stated at the hearing that he has not received rent for April 2011. The Tenant states that she will pay the April rent within 24 hours.

The Tenant states that on moving into the unit, she and the other Tenant were only provided with one fob and key to access the building and were told by the Landlord that a second fob would only be issued if the Tenant pays \$150.00 as security for that fob. The Tenant also states that since the beginning of the tenancy, they have only had use of the intercom for two days and that it was disconnected shortly after they moved into the unit. The Tenant states that she lives on the 28th floor of a building and has had to use the stairs to let her guests in. The Landlord states that the Strata was responsible for the intercom being disconnected and that this was done due to a belief of drugs being sold. The Landlord provided an incident report from the Strata that notes a suspicion of drug dealing taking place outside the building by an individual visiting the Tenant's unit. The Tenant vehemently denies any allegation of her association with drug dealing. This incident report is dated February 17, 2011. The Tenant requests an order compelling the Landlord to provide her with a second fob and to have the intercom service restored.

The Tenant states that on moving into the unit, she was not aware that she was responsible for ensuring that the hydro was connected in her name. After a few months into the tenancy, the hydro was disconnected and the Tenant then became aware of her obligation. The Tenant states that her connection to hydro required the Landlord's confirmation of her tenancy and that the Landlord failed to provide that confirmation for 5 days. As a result, the Tenant states that she was without hydro and the food in her fridge went bad. The Landlord states that the Tenant was informed of the requirement

to have the hydro registered in her name at the time of the lease signing and that it came as a surprise to him when the Tenant informed him of the situation. The Landlord states that it took him three days to obtain the owner's confirmation for the hydro hook-up. The Tenant claims compensation for the time she spent without hydro in the amount of \$840.00.

Analysis

Section 47 of the Act sets out how a Landlord may end a tenancy. Section 52 of the Act provides the content that must be in a notice to end a tenancy and requires a Landlord to use an approved form in order for the notice to be effective. This approved form is available from the Residential Tenancy Branch and contains legal information about the rights and obligations for both the tenant and landlord. I find that the landlord did not use the correct form to end the tenancy and that the letter used by the Landlord is invalid for ending a tenancy and of no force or effect. As all claims of the Landlord's application is dependent on a finding that the Notice is valid, I dismiss the Landlord's application. Given the ineffective Notice, I find that the tenancy continues and as the Tenant has not paid the April rent, I find that this rent is due and payable immediately by the Tenant. Should the Landlord not receive this rent or has other valid cause, the Landlord is at liberty to issue a new and valid notice to effect a proper end of the tenancy.

Section 27 of the Act provides that a Landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the unit as living accommodation. Further, Section 30 of the Act provides that a Landlord must not unreasonably restrict access to residential property by a tenant or a tenant's guest. Clearly, an intercom system that provides access to a tenant or guests, particularly when a tenant lives on the 28th floor of a building is essential. I find that the Landlord's evidence of an incident of drug dealing is vague and weak in relation to the Tenant. Further, this incident occurred quite some time after the intercom was disconnected so cannot be reasonably connected to the restriction of the Tenant's right. I also prefer the evidence of the Tenant in relation to Landlord's assertion. Accordingly, I find that the Tenant has a right to the intercom service and that the Landlord must ensure its operation for the use of the Tenants. I also find that by not providing a fob to each Tenant, the Landlord has unreasonably restricted the Tenants' access to the residential property. Should the Landlord not provide the Tenant's a fob and intercom access by May 6, 2011, I award the Tenants \$10 for each day after May 6, 2011 that the fob is not provided and \$10.00 for each day after May 6, 2011 that the intercom is not restored. This amount may be calculated and withheld on a monthly basis by Tenants from future rent payable to the Landlord. In order to reduce any future dispute that may occur over

the dates of restoration of the intercom and provision of the fob, upon receipt of these items from the Landlord, the Tenant must provide written receipts to the Landlord indicating the date that the Landlord has provided the fob and the date the Landlord restored the intercom.

The lease agreement does not provide for the provision of hydro by the Landlord. I also accept the Landlord's evidence that the Tenant was informed of her responsibility for the hydro hook-up at the beginning of the tenancy. As such, I find that the Tenant is not eligible for compensation for damages that occurred as a result of the Tenants' failure to carry out her obligations and I dismiss this part of the Tenants' application.

Conclusion

The Notice to End Tenancy is not valid and of no force or effect. The Landlord's application is dismissed. The Landlord is at liberty to issue a new and valid Notice.

I Order the Landlord to restore the Tenants intercom service and to provide a second fob to the Tenants by May 6, 2011. Should this not occur, I have granted the Tenant an amount for loss of use of these items, such amount to be deducted from future rent payable to the Landlord.

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 28, 2011.

Residential Tenancy Branch