



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC RPP LAT

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 Tenant's personal property, and to authorize the Tenant to change the locks to the rental unit.

Service of the hearing documents, by the Tenant to the Landlord, was completed via personal service. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, 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.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?
3. Does the Landlord have the Tenant's personal property in their possession?
4. Is the Tenant authorized to change the locks on the rental unit?

Background and Evidence

The Tenant testified she did not receive the Landlord's evidence until 1:00 p.m. March 31, 2011, the day before the hearing. She confirmed she has read the evidence however she has not had an opportunity to obtain witness statements in response to this evidence. The Tenant was given the option to request an adjournment or to proceed with her application. She chose to proceed with the hearing today.

The Tenant advised her request for \$2,393.00 in compensation is for not having peace or quiet enjoyment of her rental unit since January 2010 plus the costs of cleaning and repairing her property after she was the victim of a break and enter. She called the police and was told there was no break-in as someone had to have had a key to enter her unit. She referred to her evidence which included receipts and a note from a locksmith which states that a key must be used to gain entry where there is a deadbolt lock. She is also requesting permission to have her lock changed because she is of the opinion that the maintenance person used the master key to allow her neighbours into her unit to cause the vandalism.

The Tenant acknowledged that the basis of her claim relates to a dispute she has been having with her two neighbors. Her Advocate stated that he was a witness to some of the abuse inflicted on the Tenant and that the maintenance person was in attendance during this dispute. These issues have been reported to the maintenance person, their first point of contact, and to the two emergency numbers posted at their rental building. The Tenant and her Advocate raised concerns that the Landlords are not returning phone calls and that the maintenance person may be assisting the other tenants in this dispute. The Tenant confirmed that she does not know who has her personal property that was taken during the break and enter on her unit but she suspects it is the neighbouring tenants.

The Landlord testified they were informed of the dispute between the neighbours which started over an incident involving the Tenant's dog. Things escalated in November 2010 and the police were called on December 2, 2010. The Landlord attempted to mediate this situation on numerous occasions and has issued letters to the Tenants involved as well as all the other tenants in the building, as supported by their evidence.

The Landlord stated that this was the first time she has heard of a break and enter, about urination in the Tenant's unit, the issue of a master key being used, and she has never heard complaints relating to their maintenance person before. She is not opposed to the Tenant changing her locks as long as the Landlord has a copy of the key for emergency purposes.

The Secretary Manager confirmed he has received calls from the Tenant that he did not reply to. He states these messages were forwarded onto the Landlord (the Chair of the Housing Committee) to deal with. The Landlord stated a second time that she has never been informed of the issues the Tenant states were left in the messages. The President also stated that he has never received telephone messages relating to the Tenant that he has failed to respond to.

The Advocate stated that he has met with the Secretary Manager to attempt to resolve this issue and when calls were not being returned they took their issue to their local Member of the Legislative Assembly (MLA).

The Tenant disputed the Landlord's testimony stating she reported everything to the maintenance person but he refused to come and inspect her unit. This is when she called the two emergency numbers posted in the building. She has even requested to move to a different unit to get away from the next door neighbours however nothing has been done about that request even though there has been an empty unit.

The Landlord confirmed that the Tenant requested to move and there was an empty unit. However they were not going to approve the move until they knew the outcome of this hearing.

In closing Legal Counsel stated that he does not know why the Landlord is named in this dispute as there has been no evidence presented to substantiate the Landlord breached the *Act*.

Analysis

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

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

There is insufficient evidence to support the Landlord breached the Act, regulation or tenancy agreement; therefore I hereby dismiss the Tenant's claim for monetary compensation, without leave to reapply.

There is no evidence to substantiate the Landlord is in possession of the Tenant's personal property. Therefore I hereby dismiss the Tenant's claim for return of personal property, without leave to reapply.

The Tenant and her Advocate have raised concerns that the Landlord's maintenance person may be involved in the dispute or may be taking sides to this dispute. The evidence supports that messages and complaints are not being passed from the maintenance person up to the Landlord and telephone calls are not being returned to the Tenant. In cases where tenants are disputing amongst themselves and causing a disruption to other tenants in the building, the Landlord is obligated to operate in the most transparent fashion to ensure rights of all parties are protected as well as the integrity of all agents employed by the Landlord. The Landlord is now obliged to ensure they conduct a thorough review of the maintenance person's involvement, if any, to this dispute, to ensure that due diligence has been practiced in this matter.

The Tenant requested to change the locks on her rental unit during the hearing. The Landlord has agreed to allow the Tenant to change the locks providing they are provided with a key for emergency purposes. The evidence supports the locks were changed on March 11, 2011. Section 31 (3) of the Act states A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change. Given the circumstances before me, I grant the authority to the Tenant to have the locked changed and I Order the Tenant to provide the Landlord (Chair of the Housing Committee), not the maintenance person, with a copy of the new key.

Conclusion

The Tenant is HEREBY ORDERED to provide the Landlord with a copy of the new key for her rental unit no later than April 15, 2011.

I HEREBY DISMISS the Tenant's claim, 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: April 01, 2011.

Residential Tenancy Branch