



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

MNR, MNSD, MNDC, RR, FF

Introduction

This hearing dealt with cross applications. The landlords applied for monetary compensation for unpaid rent and authorization to retain the security deposit. The tenant applied for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; return of the security deposit; and, a rent reduction. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent?
2. Is the tenant entitled to compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Is the tenant entitled to a rent reduction?
4. Should the security deposit be returned to the tenant or retained by the landlords?

Background and Evidence

The rental unit is a basement suite located below the landlords' residence. The landlords had recently purchased the residential property and the landlords and tenant moved into their respective units at approximately the same time. The house was originally constructed as a single family dwelling in the 1960's.

The parties entered into a tenancy agreement on September 21, 2010 for a tenancy set to commence October 1, 2010. The monthly rent was \$1,400.00 due on the 1st day of every month. The tenant paid a \$700.00 security deposit. A \$350.00 cheque for a pet deposit was returned for insufficient funds. On October 29, 2010 the tenant gave the landlords a notice of her intent to vacate the rental unit. The tenant vacated the rental unit on November 1, 2010.

Landlords' application

The landlords are seeking to recover unpaid rent of \$1,400.00 from the tenant for the month of November 2010. The landlords submit that the tenant failed to give them one full month of written notice prior to ending the tenancy. The landlords testified that the rental unit remains vacant as the landlords have decided not to re-rent the unit; however, the landlords claim to have advertised the unit for rent in the first half of November 2010 without success.

The tenant was of the position that she does not owe rent for November 2010 for the following reasons. The landlords did not give her a copy of the tenancy agreement until October 21, 2010 and upon receiving it noticed the landlords had altered the document. The alteration indicates that the month-to-month tenancy was "until October 31, 2010". The tenant further submitted that the landlords did not provide her with quiet enjoyment of the rental unit due to the lack of soundproofing in the house and the loud and frequent screaming spells by the landlords' young child.

The landlords stated that they did make soundproofing efforts to an adjoining wall and put area rugs down on the floors. The tenant claimed this made little difference to the noises she heard. The parties provided disputed verbal testimony concerning the frequency and severity of the child's screaming episodes and the parties provided disputed testimony as to conversations they had about the noise heard in the rental unit. However, it was undisputed that the tenant gave a written letter to the landlords on October 29, 2010 outlining her concerns.

Both parties provided consistent testimony that the landlords initially wanted to enter into a fixed term but that the tenant was hesitant to enter into a fixed term and requested a month to month tenancy for a trial basis. The female landlord acknowledged that she added the phrase "until October 31, 2010" to the tenancy agreement and explained that it was the landlords' understanding that the parties would enter into a fixed term tenancy after October 31, 2010 if both parties were happy.

Tenant's application

The tenant is seeking compensation of \$42.50 for the NSF charge she incurred for the pet deposit cheque that was returned for insufficient funds. The tenant claims she had instructed the landlord to check with her prior to cashing the cheque but the landlord cashed it without doing so. The landlord stated the tenant provided the pet deposit on September 21, 2010 and asked the landlord to not cash it right away but the landlord was of the belief the cheque could be cashed at the same time as the rent cheque.

The tenant is seeking compensation of \$142.11 for cablevision and internet not provided to her by the landlords as agreed upon in their tenancy agreement. The tenant submitted that cable and internet was not supplied to her until October 23, 2010. The landlords submitted that the tenant told them her computer was available at the beginning of the tenancy and that the landlords had offered the tenant wireless internet access when the tenant enquired about internet service. The tenant was unsure as to whether her computer was capable of receiving wireless internet and that she has always used a cable to receive internet service.

The landlords also testified that at the beginning of the tenancy the tenant had advised them that her TV was broken. The landlords were unaware that the cable connection in the rental unit was not providing the tenant with cablevision; however, upon receiving an email from the tenant they quickly provided her with cablevision.

The tenant is seeking compensation of \$87.00 for insufficient heat in the rental unit. The tenant submitted that the rental unit was frequently very cold and that the thermostat was controlled by the landlords. Upon complaining to the landlords about insufficient heat the landlords provided her with one portable space heater; however, the tenant found this ineffective and inconvenient. The landlords submitted a schedule showing the settings for the thermostat and that upon receiving the tenant's complains they increased the temperature settings. The landlords recognized that basements units are often colder than other parts of a house but that a space heater was sufficient to meet the tenant's needs.

The tenant is seeking \$700.00 or one-half of the month's rent for loss of quiet enjoyment. This claim relates to the lack of soundproofing and the frequent disruptions caused largely by the landlords' child screaming and yelling. The tenant claims she works with children and has never experienced such behaviour before. The landlords submitted that their child was going through a normal settling in period and pointed out that their child is in daycare or sleeping much of the time.

Finally, the tenant is seeking return of her security deposit in the amount of \$700.00.

Analysis

Upon consideration of all of the evidence before me, I have made the following findings with respect to the applications before me.

Landlords' application

A landlord has the obligation to prepare and provide the tenant with a written tenancy agreement and must do so within 21 days of entering into the tenancy. Further, a landlord must ensure that a term of the tenancy agreement is consistent with the Act and regulations; that a term is not unconscionable; and that the term is expressed in a manner that clearly communicates the rights and obligations under it.

Under the Act, a periodic tenancy (such as a month-to-month tenancy) is indefinite and ends in accordance with section 44 of the Act. In other words, there is no expiry date for a periodic tenancy. A fixed term tenancy has an expiration date; however, the tenancy agreement must also express what is to happen at the end of the fixed term. Section 13 of the Act specifies that a tenancy agreement must set out whether the term of the tenancy is on a periodic basis (ie: month-to-month) or for a fixed term.

Upon review of the tenancy agreement, I find the landlords had altered the tenancy agreement by adding "until October 31, 2010" after it was signed which is unconscionable. Further, the alteration made the term non-compliant with the requirements of the Act since the altered term is not consistent with a periodic tenancy or a fixed term tenancy and the altered term does not clearly convey the rights and obligations under the tenancy agreement.

The landlords are seeking compensation on the basis they were not given a full month of written notice to end the tenancy. Landlords are entitled to such notice where a periodic tenancy is in place; yet, I have found that the term of the tenancy was unclearly communicated to the tenant by the landlords by way of the altered tenancy agreement. I do not find the landlords have established an entitlement to the notice afforded landlords who have a clearly defined periodic tenancy in place.

The tenant vacated the rental unit November 1, 2010 and since the tenant paid rent to October 31, 2010 I find the landlords entitled to compensation for the equivalent of one day of rent or \$46.67 (\$1,400.00 / 30 days).

Tenant's application

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I have reviewed the tenancy agreement and do not find a term that the landlords could not cash the pet deposit until a future date. Accordingly, I do not find the landlords violated the Act, regulations or tenancy agreement by cashing a cheque written to the landlords by the tenant for a legitimate purpose. Ultimately, a person is responsible for managing their funds so that a cheque they have written is capable of being cashed. Therefore, I deny the tenant's claim for compensation of \$42.50 for an NSF cheque.

Upon review of the tenancy agreement I accept that cablevision and internet service was to be provided to the tenant as a service or facility. I also accept that it was not provided to the tenant until October 23, 2010 and that violates the tenancy agreement. However, in order to succeed in establishing an entitlement to compensation I must also be satisfied the tenant suffered a loss as a result of the landlords' violation. From the evidence provided to me I find the tenant had not made an enquiry with Shaw or with the landlords about these services until October 23, 2010 which leads me to accept the landlords' version of events that the tenant had communicated to them that her computer was not available for use at the beginning of the tenancy and the tenant's TV was broken. The tenancy agreement does not specify whether the internet would be provided by cable or a wireless signal and I find the widespread use of wireless signal to be sufficient to meet the landlords' obligations. Further, I find that upon receiving notification from the tenant the landlords reacted reasonably and sufficiently to provide these services to the tenant. Therefore, I find the tenant did not suffer more than a temporary loss of services or facilities and I do not award the tenant compensation for this loss.

The tenant was provided portable heater on October 8, 2010; however, subsequent correspondence about the lack of heat does not start until the latter part of October 2010. From the evidence provided to me I conclude that the landlords had programmed the thermostat so that the temperature was set to 62 degrees or 72 degrees, depending on the time of day. I find a setting of 62 degrees to be significantly below room temperature. I also find the tenant's submission that she did not want to leave the portable space heater on while she was away to be a reasonable one. Accordingly, it is reasonable that upon returning home the rental unit would be very cold and would take considerable time to heat up the entire unit with the portable space heater. Therefore, I

find the tenant has established an entitlement to compensation for lack of a service or facility. However, the amount sought by the tenant relates to a monthly cost of heating. Given the lack of written communication about heat until much later in the month I reduce the tenant's claim for compensation from \$87.00 to \$46.67 being the amount awarded to the landlords for loss of rent.

With respect to the loss of quiet enjoyment I find as follows. The Act requires that a landlord repair and maintain a rental unit so that "having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant". I accept that the landlords' child had bouts of screaming; however, I attribute the majority of the noise heard by the tenant to the age, character and location of the rental unit. The rental unit was constructed several years ago as a single family dwelling and the tenant was fully aware that the landlords had a young child. The tenant must ensure a rental unit will meet her needs before agreeing to enter into a tenancy agreement. Further, I do not find sufficient evidence that the tenant had communicated the extent of the disruption she experienced until she gave her written notice on October 29, 2010. Therefore, I do not find the tenant entitled to compensation for loss of quiet enjoyment.

As the tenancy has ended I make no award for a rent reduction.

Monetary Order

As both parties were marginally successful in their applications, I make no award for the filing fees. Pursuant to section 72 of the Act I offset the awards granted to each party.

As the landlords have not established an entitlement to retain the security deposit, the landlords are ordered to return the security deposit to the tenant forthwith. The tenant is provided a Monetary Order in the amount of \$700.00 to serve upon the landlords and enforce in Provincial Court as an Order of the court if necessary.

Conclusion

Each of the parties was marginally successful in their applications. The tenant has been provided a Monetary Order in the amount of \$700.00 to serve upon the landlords.

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

