Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP, PSF, LRE, LAT, RR, (MNDC), (MNSD), FF

Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord make repairs and provide services and facilities, for an Order permitting her to change the locks on the rental unit and restricting the Landlord's agents from entering the rental unit. The Tenant also applied for compensation for damage or loss under the Act or tenancy agreement, for a rent reduction, for the return of a security deposit and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Are repairs required?
2. Has the Tenant been deprived of services or facilities that were agreed to or that are required by law?
3. Is the Tenant entitled to change the locks on the rental unit?
4. Is the Tenant entitled to restrict the Landlord from entering the rental unit?
5. Is the Tenant entitled to a rent reduction?
6. Is the Tenant entitled to compensation?
7. Is the Tenant entitled to the return of a security deposit?

Background and Evidence

This month-to-month tenancy started on April 1, 2009 and the Tenant moved in on April 26, 2009. Rent was $750.00 at the beginning of the tenancy but was increased to $770.00 effective April 1, 2010 and increased to $790.00 effective April 1, 2011. Heat is included in the rent. The Tenant may also rent a parking stall on the rental property for an additional $15.00 per month.

1. Repairs:

The Tenant claimed that she asked the Landlord's building managers at the beginning of the tenancy on April 10, 2009 to change the front door lock but they failed refused to do so. The Tenant said the building managers also agreed to install a security chain but never did so and as a result she installed one herself. The Landlord's agent (K.N.) said the door lock had been changed before the Tenant moved in.

The Tenant also claimed that she also asked the Landlord's agents to repair a patio door in a letter dated December 14, 2009 (which was drafted by her lawyer) because there was a gap in the door which allowed cold air to enter. The Tenant said nothing was done about this so she resolved this problem and drafts around windows by adding weather stripping. The Tenant also claimed that the patio door's locking mechanism was missing and she sought an Order to have it installed. The Landlord's agents said they did not install locks on patio doors for all tenants and the Tenant never asked them to install one. The Landlord's agents said they were willing to install a locking mechanism on the Tenant's patio door and had done so by the 2nd day of hearing.

The Tenant also claimed that in May of 2009 she reported a leak under the kitchen sink to the building managers and that they repaired it but then it started leaking again. The Tenant said she sent the building managers a letter in June 2009 about this leak but nothing was done. The Tenant said the sink still leaks "periodically" or every few days. The Landlord's agents said they were unaware of the sink leak and it was repaired as of the 2nd day of hearing. The Tenant further claimed that in February of 2011 she advised the Landlords that water was dripping (and later pouring) out of the bathroom fan. The Tenant admitted that one of the Landlord's building managers advised her that he thought he knew where the water was coming from but to let him know if he had not resolved the problem. The Tenant also admitted that there had been no further leaks from the fan. The Landlord's agents said the source of the leak was found and repaired.

2. Provide Services and Facilities:

The Tenant said that since the beginning of the tenancy she has had no way to regulate the heat in the rental unit because there is no thermostat. The Tenant said she brought this to the Landlord's attention during their move in inspection and the Landlord advised her that they were switching over to a new heating system. The Tenant said she gave a letter to the building managers on June 29, 2009 asking them when the heating system would be repaired but they did not respond. The Tenant said she also made inquiries to the building managers by telephone once or twice in October of 2009. The Tenant said she purchased a portable heater in October 2009 at a cost to her of $69.99 but it was inadequate to heat the rental unit. The Tenant said the Landlord's building managers also supplied her with a portable heater and on November 14, 2009 turned up the heat setting on her baseboard heater.

The Tenant said she was told at the beginning of the tenancy by the building managers that there were special tools to turn on the heat at the baseboard and that if she did not have them water could leak out. The Tenant said one of the building managers finally turned the heat on in the rental unit by using pliers to turn a missing knob on a baseboard heater. However the Tenant said the heat was turned on "full blast" so that she had too much heat and had to open windows to try to cool down the rental unit down. The Tenant said this issue was also addressed in her lawyer's letter dated

December 14, 2009 to the building managers but nothing was done. The Tenant said she sent another letter to the building managers on February 8, 2010 about the heat and one of them came to the rental unit and showed her how to adjust the heat coming from the baseboard heaters. The Tenant said she has not raised this issue with the Landlord since that time.

The Landlord's agents said that the rental property is heated by a hot water boiler which is regulated by an outside thermostat. The Landlord's agents also said that the heating inside the building was controlled by zone valves but is currently being converted to an individual thermostat control system and that thermostats have been installed in approximately ½ of the suites. The Landlord's agents denied that the Tenant would have been without heat as they claimed that the zone valves worked properly and would not just shut off. The Landlord's agents also said that the heat can be manually turned off and on in each suite by a knob on the baseboard heaters and that they were turned on at the beginning of the tenancy but admitted that they may not have been turned on high enough. The Landlord's agents admitted that the rental property is old (and may not be insulated to current building codes) but argued that the problem was that the winter of 2009/2010 was unusually cold and that was why space heaters were provided to some building residents. The Landlord's agents said they were unaware that Tenant had purchased a space heater. A thermostat was installed in the rental unit on June 6, 2011.

The Tenant also claimed that she rented a parking stall since the beginning of the tenancy however on April 19, 2011 she found a note from one of the building managers on her windshield advising her that her car (a 1992 Chevrolet Cavalier) was leaking oil and would have to be removed or it would be towed. The Tenant said the building manager wanted proof that the leak had been repaired before she could again park on the rental property. The Tenant was reimbursed a proportional amount of her parking expenses for the balance of April. The Tenant said she had the oil leak repaired and left an invoice for the building manager but she would still not allow her to park on the rental property.

Following the first day of hearing the Tenant was assigned another parking stall, however, sometime later her vehicle again began to leak and the Landlord's building managers again demanded that the Tenant remove her vehicle. The Tenant said she has had her vehicle repaired and the mechanic guaranteed that it would not leak. The Tenant argued that there is little or restricted, on-street parking in the area and was advised by a municipal official that the Landlord is required to provide her with off street parking. The Tenant also argued that the Landlord's agents are unreasonably denying her a parking space as the parking lot has many oil stains likely caused by other occupants' vehicles.

The Landlord's agents said they are not willing to give the Tenant another parking stall because they believe her vehicle is not mechanically sound and will continue to leak oil and they argued that the Tenant's mechanic did not guarantee that it would not leak

again. The Landlord's agents also argued that there is on-street parking which many other residents of the rental property use.

3. Order Restricting the Landlord from entering the rental unit:

The Tenant claimed that she believes the Landlord's building managers, who reside next door to her, have been entering her suite without her knowledge and consent. The Tenant said she believes this because when she moved in the walls were painted a bright white and now some of them appear darker. The Tenant said she also believes that there are more drywall screws than there were at the beginning of the tenancy. The Tenant also claimed that some of her clothes have been altered, a place mat and towel appear to have been picked apart at the edges and she found a bottle of nail polish remover (that she seldom uses) half empty on August 3, 2010 and a smell of it in the rental unit. The Tenant further claimed that she returned from work one day to find one of the building managers standing in front of her door smiling at her. Consequently, the Tenant sought an Order that the lock on her door be changed and that the Landlord's building managers not be allowed to have keys to the rental unit.

The Landlord's agents denied that the rental unit was painted white at the beginning of the tenancy and claimed that they always use an off-white color for the walls called "Belmont Beige" and paint the window sills a white for contrast. The Landlord's agents argued that the Tenant was a heavy smoker and that any discolouration was likely the result of smoke residue. The Landlord's building managers denied that they have ever entered the rental unit without the Tenant present and denied her allegations that they altered the Tenant's clothes or the rental unit. The Tenant admitted that she has received 2 written notices from the Landlord for repairs in the past.

4. Compensation:

The Tenant sought compensation for repair expenses she said she incurred because the Landlord failed or refused to do them and in particular, she sought to recover $4.99 to reimburse her for the security chain, $17.98 for weather stripping and $69.99 for a portable heater. The Tenant also sought compensation for a lack of heat for 7 months and for too much heat for 3 months. The Tenant admitted that she would not have needed heat during the summer months but argued that she was still entitled to compensation during that time because heat was included in her rent. The Tenant also sought compensation for the loss of use of a parking space and for a loss of quiet enjoyment due to noise disturbances.

The Landlord's agents did not dispute the Tenant's claim for a security lock but argued that she never followed up with them on this. The Landlords agents also claimed that the Tenant did not advise them of a gap in the patio door that was letting in cold air and specifically deny receiving a registered letter from the Tenant's lawyer dated December

14, 2009 regarding this and heat fluctuations. The Tenant claimed that this letter was sent by her lawyer to the building managers and she provided a copy of her lawyer's account showing that she was charged for this service.

The Landlord's agents also claimed that they were unaware that the Tenant did not have sufficient heat until she brought it to their attention sometime in November 2009 and at that time they supplied her with a portable heater and turned the setting up on her baseboard heater. The Landlord's agents said they were unaware that the Tenant had installed weather stripping or that she had purchased a space heater. The Landlord's agents said they also responded to subsequent requests from the Tenant on one or two occasions to turn the heat down and showed her how to adjust it herself. The Landlords argued that it is difficult to deal with the Tenant because she has blocked their telephone calls and will not answer her door so they can only contact her in writing.

The Tenant claimed that the occupants of the suite above her have made an unreasonable amount of noise since the beginning of the tenancy. In particular, the Tenant said the noise coming from that unit sounds like hammering on a counter top, opening and closing dresser drawers as well as jumping up and down. The Tenant said the noise has been continuous since the beginning of the tenancy and at times went on for 24 hours. The Tenant said this has interfered with her right to quiet enjoyment and as a result, she sent approximately 12 letters to the Landlord's building managers and numerous phone calls asking them to do something about it. The Tenant said she also contacted the police but they could not hear anything by the time they arrived. The Tenant claimed that nothing has been done about the noise and that it still continues although not quite as bad as at the beginning of the tenancy. The Tenant admitted that no one else has witnessed this and that she has no other evidence of it (ie. such as sound recordings).

The Landlord's agents said they investigated the Tenant's noise complaints but either heard nothing or just the usual, everyday sounds of normal living. The Landlord's agents said there have been 3 different tenants occupy the suite above the tenant since the beginning of her tenancy however she complained about the exact same noises with each new tenant. The Landlord's agents said they received a letter from the Tenant in December 2009 in which she detailed days and times when she had allegedly heard noise coming from the upper suite, however the Landlord's agents claimed that the suite was unoccupied during those times. The Landlord's building manager said the police also viewed the unoccupied suite and recommended that she avoid the Tenant. The Landlord's building manager said approximately 2 days later, Mental Health also came to her suite and told her the same thing. The Landlord's agent said the Tenant has also claimed that the occupants of the upper suite have thrown things at her bedroom window which they claim is physically impossible.

The Tenant also claimed that the Landlord's building managers, who live next door to her disturb her by closing their front door loudly which she claimed shakes the pictures on her wall. The Tenant said she believes the Landlord's agents make this noise deliberately when she is home to retaliate for her complaints. The Tenant claimed that

on one day she counted 48 times when the building managers' door banged. The Tenant admitted that this does not occur every day and she has not brought this to the building mangers' attention. The Tenant also admitted that no one else has witnessed this and that she has no other evidence of it.

Analysis

The Tenant has the burden of proof on each of the issues she has raised in this matter and therefore she must show (on a balance of probabilities) that she is entitled under the Act or tenancy agreement to the relief she has sought. This means that if the Tenant's evidence is contradicted by the Landlord, the Tenant will need to provide additional, corroborating evidence to satisfy the burden of proof.

1. Repairs:

I find that there are no repairs required at this time to the sink, patio door lock and bathroom fan because they have already been dealt with by the Landlord and as a result, the Tenant's application for this relief is dismissed without leave to reapply.

2. Provide Services and Facilities:

I find that the Landlord installed a thermostat in the rental unit on June 6, 2011 and as a result, this part of the Tenant's application is dismissed without leave to reapply.

Section 27(1) of the Act says that a Landlord may not terminate a service or facility if it is essential to the tenant's use of the rental unit as living accommodation or a material term of the tenancy agreement. Section 27(2) of the Act says that a Landlord may terminate other services and facilities (if they are included in the rent) by reducing the tenant's rent accordingly.

The Tenant sought an Order that the Landlord provide her with a parking stall. I find that parking is not included in the Tenant's rent. Instead the Parties' tenancy agreement provides that the Tenant *may* rent a parking stall for an additional fee of $15.00 per month. The tenancy agreement also contains a clause (#7) wherein the landlord reserves the right to terminate parking where a tenant's vehicle is in a poor state of repair. Consequently, I find that parking is not a service or facility that was included in the Tenant's rent and there is no evidence that it was intended to be a material term of the tenancy agreement. I also find that there is no other authority under the Act or tenancy agreement that requires the Landlord to provide the Tenant with a parking stall.

The Tenant said she was advised by a municipal official that residential on-street parking was only for single family dwellings and that a landlord of a multi-dwelling

building was required to provide off-street parking however this is hearsay evidence and unreliable and the Tenant provided no statutory or regulatory authority in support of this assertion. Consequently this part of the Tenant's application is dismissed without leave to reapply.

3. Order Restricting the Landlord's agents from entering the rental unit:

Section 70 of the Act says that the Director may authorize a Tenant to change locks and prohibit a landlord from obtaining keys if satisfied that a landlord is likely to enter other a rental unit other than as authorized under s. 29 of the Act.

The Tenant said she believes that the Landlord's building managers (who reside next door to her) have been entering her suite without her consent when she is not there. The Tenant said she believes this because it appears that the walls in her suite have been painted darker and more nails added, some of her clothes have been altered and some of her possessions tampered with. The Tenant admitted that she has no evidence that it is the building managers who have done these things but argued that it would likely be them as they have keys to her unit. Consequently, the Tenant sought to change the locks on the rental unit and for an Order prohibiting the Landlord's agents from having a key. The Landlord's agents denied these allegations in their entirety and specifically denied entering the Tenant's suite when not authorized, interfering with her belongings or making alterations to the suite.

Given the contradictory evidence of the Parties on this issue and in the absence of any reliable evidence from the Tenant to resolve the contradiction, I find that there is insufficient evidence to conclude that the Landlord's building managers have been entering the Tenant's suite without her authorization and a result, the Tenant's application to change the locks and to prohibit the Landlord from having a key is dismissed without leave to reapply.

4. Rent Reduction / Compensation:

Section 28 of the Act says that a Tenant is entitled to quiet enjoyment which includes but is not limited to the right to exclusive possession of the rental unit and freedom from unreasonable interference. Section 27 of the Act says that if a landlord terminates or restricts a service or facility that is included in the rent, the landlord must reduce the Tenant's rent by an equivalent amount.

(a) Heat: The Tenant claimed that she asked the Landlord's agents at the beginning of the tenancy to keep her updated as to when she would have a thermostat installed so that she could regulate the heat in the rental unit but she got no response and one was not installed until June 6, 2011 after she filed her application. The Tenant

argued that due to her inability to regulate the heat, she was without heat from April 2010 until November 14, 2010 and then had too much heat until early February 2011. The Tenant said she brought the problem of the heat fluctuations to the Landlord's agents' attention by way of 2 telephone calls in October 2009, a letter dated December 14, 2009 and a further letter in February 2010.

The Landlord's agents claimed that the installation of thermostats was an ongoing matter in the rental property and that as of the date of the hearing only ½ of the suites in the rental property had received one. The Landlord's agents argued that the Tenant was never without heat but admitted that her baseboard heater may have not been turned up high enough at the beginning of the tenancy. In any event, the Landlord's agents argued that they responded to the Tenant's requests when they were first brought to their attention in November 2009 at which time they turned up the baseboard heater setting and supplied her with a portable heater. The Landlord's agents also claimed that they responded to the Tenant's requests to turn down the heat. The Landlord's agents denied receiving a letter from the Tenant's lawyer dated December 14, 2009.

The Tenant admitted that she did not move in until the end of April 2009 and that she would not have used the heat during the summer months however she argued that because it was included in the rent she was still entitled to a reduction for the loss of it. However, the Landlord's agents claim that the heat was turned on at this time but that it may not have been turned up high enough and this was not apparent until approximately November 2009 when the Tenant told them. Consequently, I find that there is insufficient evidence to conclude that the Tenant had **no** heat from April until November 2009 or that the temperature inside the rental unit during that period made it unfit for occupation. Furthermore, there is no evidence that the Tenant brought the issue of a lack of heat to the Landlord's agents' attention until November 2009 at which time the building managers promptly inspected her baseboard heater and adjusted the setting.

The Tenant also argued that after November 14, 2009 there was too much heat which made the rental unit uncomfortable and as a result she sent the Landlord's building managers a letter regarding this (and other matters) on December 14, 2009. The Landlord's building managers denied receiving this letter and the only evidence the Tenant provided in support of it was oral evidence that she was advised by her lawyer's office that it had been sent. I find on a balance of probabilities that the Landlord's building managers probably did receive this letter. However, I also find that the Landlord's agents acted within a reasonable period of time to re-adjust the heat settings on the baseboard heater and also showed the Tenant how to do so. Consequently, I find that there is little evidence that the Landlord's agents failed to take reasonable steps to address the Tenant's heating issues once they were aware of them and for that reason, this part of the Tenant's application for compensation is dismissed without leave to reapply.

(b) Noise: The Tenant claimed that there has been an unreasonable amount of noise coming from the suite above her since the beginning of the tenancy and that despite her numerous complaints, the Landlord has failed or refused to do anything about it. The Tenant also claimed that the building managers who reside next door to her make an unreasonable amount of noise but admitted that she has not brought this issue to their attention.

The Landlord's agents said they have investigated the Tenant's complaints regarding noise being made by occupants of the upper suite but did not find the complaints were warranted and specifically noted that the suite was unoccupied on at least one of those occasions in November and December of 2009 (which was also confirmed by the police). The Landlord's agents said they were unaware that they were making any noise that disturbed the Tenant because she never brought it to their attention. Given the contradictory evidence of the Parties on this issue and in the absence of any corroborating evidence from the Tenant to resolve the contradiction, I find that there is insufficient evidence to support this part of the Tenant's compensation claim and it is dismissed without leave to reapply.

(c) Repairs: The Tenant sought compensation for repair expenses to install a security chain, weather stripping and a portable heater. The Landlord's agents did not dispute the Tenant's claim for the security chain but argued that they had no knowledge of a gap in the patio door that needed to be repaired and therefore they argued that they could have made that repair if it was necessary. The Landlord's agents also argued that they were unaware that the Tenant had purchased a portable heater and provided her with one.

As there is no dispute about the security chain, I find that the Tenant is entitled to recover $4.99 for that item. As indicated above however, I find on a balance of probabilities that the building managers probably did receive the Tenant's letter of December 14, 2009, which stated that there was a gap in the patio door that was letting in cold air. I find that the Landlord did not take any steps to investigate this complaint and as a result, I find that the Tenant is entitled to recover expenses of $17.98 for weather stripping. However, I find that the Tenant is not entitled to recover the cost of a portable heater she purchased on October 28, 2009 as I find that there is insufficient evidence that she told the Landlord's agents prior to that time that she did not have sufficient heat. Had the Landlord's agents known, they likely would have had an opportunity to provide her with their space heater prior to her purchasing one. Consequently, I find that the Tenant is entitled to recover repair expenses of $22.97.

5. Return of a Security Deposit:

Section 38(1) of the Act says that a Landlord is not obligated to return a security deposit to a Tenant until 15 days after the end of the tenancy or the date he or she receives the Tenant's forwarding address in writing (whichever is later). As the tenancy has not

ended, I find that this part of the Tenant's application is premature and it is dismissed with leave to reapply.

6. Filing Fee:

The Tenant submitted approximately 1,000 pages of documentary evidence in support of her application, much of which was needlessly duplicated and unhelpful to the resolution of the issues raised matter. The hearing itself had to been convened over 2 days to hear 3 hours of oral evidence. Despite all of the evidence provided by the Tenant, it was inadequate to prove the majority of the allegations she raised. Consequently, I find this is not an appropriate case to order the Landlord bear the cost of the filing fee paid by the Tenant for her application and that part of her application is also dismissed without leave to reapply.

Conclusion

The Tenant is entitled to a monetary award of **$22.97**. I Order pursuant to s. 72(1) of the Act that the Tenant may deduct this amount from her next rent payment when it is due and payable to the Landlord. The Tenant's application for the return of her security deposit is dismissed with leave to reapply. The balance of the Tenant's application is dismissed 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: June 16, 2011.

Residential Tenancy Branch