



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC LRE FF

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, and to recover the cost of the filing fee from the Landlord, and to obtain Orders to have the landlord comply with the Act, regulation, or tenancy agreement, and to suspend or set conditions on the landlord's right to enter the rental unit.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, confirmed that no evidence was submitted by either party, 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 monetary compensation as a result of the breach?
3. Has the Tenant met the burden of proof to have Orders issued to the Landlord to comply with the *Residential Tenancy Act*, regulation or tenancy agreement, and to set conditions on the Landlord's right to enter the rental property, as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement that began on April 1, 2010 and switched to a month to month tenancy after April 1, 2011. Rent is payable on the first of each month in the amount of \$700.00 and

on March 26, 2010 the Tenant paid \$350.00 as the security deposit and \$350.00 as the pet deposit. The rental property has two buildings consisting of 48 units, each having their own exterior entrance.

The Tenant testified that he received a call from the Landlord's plumbing contractor on the evening of Tuesday May 3, 2011 to advise they needed access to the Tenant's unit the next day. The Tenant informed the plumber that he had to work the next day so the plumber needed to get a hold of the building manager or Landlord to gain entry of his unit. When he returned home the evening of Wednesday May 4, 2011 he found that the door to his rental unit had been left unlocked and the plumber closed the utility room door which prevented his cat from having access the litter box. He called the Landlord that evening and told him that the plumbers had left his unit unlocked and closed the utility room door. He advised the Landlord that from that point onward they could not access his rental unit unless they provided him with proper, written, 24 hour notice.

The next day the Landlord left a message on his cell phone stating he was at the Tenant's jobsite wanting to drop off notice of entry of May 6, 2011. The Tenant did not hear his phone ringing at the time, as he operates noisy equipment, so he was not able to meet up with the Landlord. When he returned home that evening, at approximately 5:00 p.m., he found a Notice posted to his door dated May 4, 2011 that stated the plumber needed to gain entry into his unit the next day, Friday May 6, 2011 to finish the plumbing work. He does not remember if the Notice had a time of entry on it. He confirmed with the Tenancy Branch that this was not proper 24 hour notice because it was posted to his door so he went to work as usual on Friday May 6, 2011.

Then just after 9:30 the Tenant received a phone call from a guest who was staying at his rental unit to advise the plumber was banging on the door trying to gain entry. The guest informed the plumbers that they could not gain entry as proper notice was not provided by the Landlord. The plumbers called the Landlord and he advised them to tell the Tenant's guest that the repair was an emergency so they are allowed entry.

The Tenant said he left work and went home to deal with the situation. He spoke with the Landlord who tried to say the issue was an emergency so they could gain entry however there was no emergency. He explained to the plumbers that proper notice was not provided and that they could arrange to come back on Monday May 9, 2011, at 10:00 a.m. and he would arrange to have someone at the unit to let them in.

He is seeking \$150.00 as compensation for lost wages for Friday May 6, 2011 when he had to leave work to deal with the plumbers. He is also seeking Orders to have the Landlord comply with the Act, and also to Order the Landlord not to attempt entry of his

rental unit without proper notice so the Tenant can arrange to have someone there at all times. In the case of an emergency he still wants the Landlord to call him immediately so he can attempt to get there or have someone there to monitor his property.

The Landlord testified there was water leaking from the overflow drain in the Tenant's bathtub down into the lower rental unit. When I asked how this could be an emergency if the work was scheduled to be performed over several days. He advised that they had undergone a full building inspection whereby it was determined there needed to be some plumbing maintenance and upgrades completed which included things like caulking around the tubs, installation of pans under the hot water tanks, and repair the taps on the tub in the Tenant's unit. This work was initiated based on that inspection and there was no emergency or water leaking initially. However, later on Thursday May 5, 2011 he received a call from the lower tenant advising there was water leaking into their unit from upstairs, which made this an emergency repair.

He confirmed he attempted to serve the Tenant, in person at his place of employment, with the notice of entry, however when the Tenant refused to answer his phone he went to the rental unit to post it to his door. While getting out of his car in the parking lot he noticed someone enter the Tenant's rental unit, however when he knocked at the door no one answered so he left the Notice posted on the door. He could not say for certain who this person was but thought it may have been the Tenant's guest.

The Landlord confirmed the Tenant had called him on Wednesday May 4, 2011 upset that the plumbers had left his door unlocked and had closed the utility room door. The plumbers were granted unsupervised access to the rental unit and needed to access the unit again to finish the job. The Landlord wrote the notice of entry that evening, May 4th and attempted to hand deliver it to the Tenant the next morning as stated above.

In closing, the Tenant advised there was never any emergency. The water leaking from his tub over flow had been going on for some time. He never takes a bath so it could not have been caused by him. He saw the ceiling in the lower unit and this damage was not due to a sudden water leak or from anything the plumbers had done on Wednesday.

In response, the Landlord confirmed that at first they thought it was an emergency when the lower tenants saw water coming in. They later found out that the building maintenance superintendent had hosed down the exterior of the building the day before, which caused water to leak into the lower suite. He confirmed that tenants usually call him when they have an issue as the maintenance superintendent does not reside at the rental property and is only there a few days per week.

Analysis

I have carefully considered all of the testimony before me.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Landlord.

Section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: (a) reasonable privacy; (b) freedom from unreasonable disturbance; (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*]; (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the *Act* provides (1) a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

29 (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Section 90(c) of the Act provides that a document served by posting on a door is deemed received on the third day after it is attached. However, this is a rebuttable presumption. Because the Tenant testified having received the Notice of entry on the evening of May 5, 2011 when he returned home at approximately 5:00 p.m., I find that the presumption has been rebutted and May 5, 2011 at 5:00 p.m. is the date and time from which the Notice of entry must be calculated. Therefore the Landlord or his agent would not be entitled entry into the rental unit until after 5:00 p.m. on May 6, 2011.

In the absence of supporting evidence, I do not accept the Landlord's testimony that there was an emergency situation which warranted immediate entry by the plumber. If that was truly the case the Landlord would have made more of an effort to have the plumber gain access to the unit prior to three days later when they were scheduled to return on the Monday.

The evidence supports the Landlord allowed a contractor unsupervised entry into the Tenant's rental property on May 4, 2011 which resulted in the Tenant's unit being left unsecured and at risk. Furthermore the Tenant's cat was not able to access the litter box as the Landlord's contractor closed the door to the utility room. Furthermore the evidence supports the Landlord instructed his contractor to access the rental unit in breach of section 29 of the Act.

Based on the aforementioned, I find the Tenant has met the burden of proof and I approve his application for a monetary order and orders to have the Landlord comply.

The Tenant has been successful therefore I award recovery of the \$50.00 filing fee.

Conclusion

The Tenant may reduce his July 1, 2011 rent payment for the one time monetary award in the amount of **\$200.00** which consists of \$150.00 for lost wages plus the \$50.00 filing fee, pursuant to section 67 of the *Residential Tenancy Act*.

The Landlord is Hereby Ordered to comply with the *Residential Tenancy Act*, regulation and tenancy agreement, pursuant to section 62 of the *Residential Tenancy Act*.

The Landlord is HEREBY ORDERED NOT to enter the Tenant's rental unit unless 24 hours notice is provided to the Tenant in writing, in accordance with section 29 of the Act, taking into account service requirements under section 88 and 89 of the Act, so that the Tenant may arrange to attend the entry or have an agent attend on his behalf during the Landlord's or their agent's entry.

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 07, 2011.

Residential Tenancy Branch