



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in November 2005 and ended in May 2011. The tenant stated that she was seeking to recover all rents paid during that period as she was of the opinion that she had not been given quiet enjoyment of the premises and as the landlord had repeatedly violated his obligations under the *Residential Tenancy Act*.

The tenant testified that the landlord had imposed 2 illegal rent increases on her. She argued that the landlord had told her that she would never have a rent increase during her tenancy and stated that when her tenancy began in November 2005, she paid \$500.00 per month in rent. In November 2006 she began paying \$600.00 per month after the landlord gave her a copy of the tenancy agreement on which he had written, "Nov 1/06 increased to \$600.-/month". The tenant testified that in December 2009 her rent was raised to \$700.00 per month and stated that the landlord verbally informed her of the increase. The landlord testified that the tenant was in full agreement with the 2006 increase and that in 2009 the tenant asked permission for a friend to live with her in the residence. He testified that he gave her permission on the condition that she pay a higher rent, a condition with which she agreed. The tenant testified that her friend only stayed in the unit for a short time.

The tenant testified that the landlord deprived her of quiet enjoyment of the rental unit. She claimed he came to the property almost daily and would knock on the door or walk on the wrap around deck. She claimed he unreasonably disturbed her privacy on

numerous occasions, including once when he entered the unit while her daughter was home and told her to wash the dishes, speaking disrespectfully to her and once when he entered her bedroom while she was sleeping. She claimed that he rarely if ever gave her notice that he would be attending at the property and on one occasion she awoke to discover that he was working on the roof. She further claimed that before she moved into the unit, the landlord told her that he had installed cameras in the bathrooms.

The landlord testified that during the tenancy, the tenant at no time complained that he had violated her quiet enjoyment or privacy. He acknowledged that he had frequently attended at the property, but testified that the water and gas access on the first floor of the house was a common area to which he had unrestricted access and stated that he occasionally needed to access that area because it controlled the supply to the entire compound, on which he had a shop and other rental units. The landlord specifically denied ever having entered the rental unit without having been granted entry, he denied having told the tenant's daughter to wash dishes but acknowledged that on one occasion he asked her to remove dishes from the sink so he could inspect a reported plumbing problem, and denied having entered the tenant's bedroom while she was sleeping but claimed that her children had admitted him to the unit and told him to speak with the tenant who was in the bedroom. He stated that the bedroom door was locked and he made no further attempts to access the bedroom. The landlord strenuously denied having either told the tenant there were cameras in the bathroom or having installed cameras in the bathroom.

The tenant acknowledged that she was aware that the landlord had the right to freely access the common area in which the water and gas access were located.

The tenant claimed that the landlord failed to perform repairs in a timely manner or in some cases, at all. She testified that the carpets needed to be replaced as they were old and in her view unsanitary, her cupboards leaked when it rained, the extraction fan in the kitchen was extremely soiled and had no cover, the washer and dryer didn't function properly, the basement floor was uneven, part of the deck had no railing, at least one of the wooden beams supporting the deck was rotten and in the tenant's view unsafe, and the yard was muddy. The tenant claimed that she reported all of these issues to the landlord and that he failed to perform repairs.

The landlord testified that he had repaired those issues which required repair and argued that the tenant had accepted the house "as is", which included older carpets, an uneven basement floor and an extraction fan without a cover. The landlord testified that the allegedly rotten beam supporting the deck wasn't rotten at all but was discoloured

because it was a creosote railway tie. He stated that the portion of the deck without a railing was gated to prevent access and had been throughout the tenancy.

The tenant alleged that the landlord committed a fraud when he claimed there was another owner of the property and that he provided telephone numbers for the other purported owner which were not his. The tenant specified that she introduced evidence of the fraud in support of her claim for compensation, not to attack the landlord's credibility. The tenant was unable to identify a loss she had suffered as a result of the alleged fraud.

The tenant claimed that the landlord had sexually harassed her by asking her if she were naked when entering her bedroom uninvited, by taking a pair of her panties home with him and returning them to her the next day and by telling her about his troubled marriage and indicating that he could bury his wife in the yard of the rental unit. The landlord strenuously denied having harassed the tenant in any way and specifically stated that he did not ask the tenant if she was naked, did not take her lingerie home and did not discuss the state of his marriage with the tenant or suggest that he wanted to bury his wife. The landlord testified that when he was working on plumbing under one of the sinks in the unit, he found a pair of panties draped over the trap and flung them aside, but denied having taken them out of the rental unit.

The tenant also gave evidence about the landlord having told her that his acquaintance was stalking the tenant's co-worker and offering her a bribe to keep this a secret. The landlord denied these allegations and as they did not relate to the tenancy, I heard no further details on the issue.

Analysis

The tenant bears the burden of proving her claim on the balance of probabilities. Having reviewed the evidence before me, I find that the tenant has not proven her claim. The testimony of the parties on a number of points was in direct conflict. The tenant often did not provide evidence to corroborate her testimony and failed to tip the scales in her favour, which she is required to do to prove her claim. Further, I do not find the tenant to be credible.

The tenant claimed that prior to the tenancy, the landlord told her there were cameras in the bathroom, but she still chose to move into the rental unit despite that knowledge. It is beyond reason that any woman would knowingly choose to move into a unit in which she knew the landlord had installed spy cameras. I do not accept that the landlord made the representation to the tenant or that he installed cameras. Further, the tenant claimed that the landlord told her that his acquaintance was stalking the tenant's co-

worker and then allegedly offered her a substantial bribe to keep this information from the co-worker. Again, it does not make sense that the landlord would volunteer this information or that he would offer his own funds to protect his acquaintance. I also find it unlikely that the landlord would tell the tenant that he could bury his wife in the yard.

The landlord is required to provide 24 hours written notice prior to entry into the rental unit but the Act does not require him to provide notice to access common areas or the outside of the property. The tenant acknowledged that most of her complaints involved the landlord's presence outside the unit or in the common areas and I find that his attendance in those areas did not require notice. Regarding those allegations in which the tenant claims the landlord unlawfully accessed the rental unit, those allegations having been denied by the landlord, I prefer the evidence of the landlord over that of the tenant due to my reservations about the tenant's credibility.

Addressing the question of repairs, I find that the tenant has not proven that the landlord failed to perform repairs in a timely manner after issues were reported. While the carpet in the rental unit is old, I am not persuaded that it is not functional. The kitchen extraction fan appears to be operational without a cover and it is the tenant's responsibility to clean it. Because the yard area isn't completely paved and has not been throughout the tenancy, the tenant has to expect that there will be some mud when the ground is not completely dry. I am not satisfied on the evidence that the leak in the kitchen cupboards was to such a great degree and duration that it should attract compensation and as the tenant was aware from the outset of the tenancy that the area of the deck which was gated did not have a railing, I find that she should have known that this area was not safely accessible.

The tenant alleged that the landlord had acted fraudulently in claiming that the rental unit was co-owned with another party, but did not prove any loss resulting from that fraud. I find that in the absence of a quantifiable loss, no award can be made.

I do not find the tenant's claims of sexual harassment to be credible.

With respect to the claim for recovery of rent paid under alleged illegal rent increases, I accept that the November 2006 rent increase was illegal. The tenant received no additional benefit for her increased rent and did not agree in writing to the increase. However, I find that the equitable principle of *laches* operates to bar the tenant's claim. This is a legal doctrine based on the maxim that equity aids the vigilant and not those who slumber on their rights. I find that the tenant's inordinate delay in asserting this claim and the manifest prejudice to the landlord that has resulted from her failure to make a timely objection warrants the denial of this claim.

As for the 2009 rent increase, I find that the parties agreed that the rent increase was appropriate as the tenant was inviting a friend to share the rental unit with her. Regardless of whether the parties formalized this agreement, it is clear that the tenant benefitted from the agreement and it would be unfair for me to set aside the agreement as this would remove the benefit to the landlord. Although the tenant claimed that her friend only stayed for a short time, I find that it was open to her to renegotiate the rent at that time with the landlord. Her choice not to inform the landlord that the person to whom she was subletting was no longer residing in the unit should not result in a detriment to the landlord.

For these reasons, I dismiss the tenant's claim in its entirety.

Conclusion

The claim 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: August 30, 2011

Residential Tenancy Branch