



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

The tenant applied for monetary compensation for damage or loss under the Act, regulation or tenancy agreement and served the landlord with the application on July 30, 2011. The tenant's application was originally joined with the landlord's application for an early end to tenancy that was scheduled for August 4, 2011. On August 4, 2011 I determined that this application and the landlord's application for an early end of tenancy were not sufficiently related matters and this application was rescheduled for September 13, 2011 in order to provide the parties sufficient time to prepare for this proceeding.

At the reconvened hearing of September 13, 2011 both parties appeared and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

As a preliminary issue I determined it was clarify and limit the matters under dispute. The tenant had requested a Monetary Order for \$5,618.40 on the application; however, in the details of dispute the tenant indicated she was seeking compensation ranging from \$400.00 to \$5,618.40. Also, in the details of dispute the tenant identified the issues as being related a "3 hr annual deep clean" and "10 months housekeeping". In a subsequent written submission the tenant raised various other issues; however, the highlighted portions of that submission pertained to cleaning and housekeeping.

In light of the above, I determined that with this application the tenant had clearly identified issues pertaining to cleaning and housekeeping as the issues under dispute but that other matters were not clearly identified as issues under dispute for which the tenant was seeking compensation. Therefore, I informed the parties that I would accept evidence as it pertained to cleaning and housekeeping services only and that the tenant is at liberty to file another Application for Dispute Resolution for other tenancy related matters if she wishes to pursue those other matters.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation for loss of housekeeping services?

Background and Evidence

The landlord is a non-profit housing organization that provides housing for seniors and persons with disabilities. The written tenancy agreement indicates that the tenancy commenced June 1, 2010 on a month-to-month basis for a monthly rent of \$444.67. In an Addendum to the tenancy agreement the tenant agreed to purchase certain support services from the landlord and the landlord agreed to provide those support services to the tenant. The Addendum also indicates that the monthly rent of \$444.67 includes the cost the support services. The support serves agreed upon were identified in the Addendum as:

Housekeeping:	approximately 1.5 hour(s) per week
Laundry:	bed linen and towels only (once per week)
Meal:	one nutritional meal per day
Personal Security:	24 hour monitoring service

Tenant's position

The tenant submitted that the rental unit was not sufficiently clean at the beginning of the tenancy and that the move-in inspection report does not accurately reflect the need for additional cleaning. The landlord sent a housecleaner for 3 hours to provide extra cleaning services in addition to the weekly cleaning; however, the additional cleaning was not satisfactory to the tenant. The tenant also complained to the landlord that the housecleaner had damaged and disturbed items in her unit. The tenant submitted that September 30, 2010 was the last time the tenant received her weekly housecleaning service.

The tenant later acknowledged that the landlord had sent a housecleaner to the tenant's unit in the first two weeks of October 2010; however, the tenant turned the housecleaner away. When a housecleaner did not arrive in the latter part of October 2010 the tenant did not make any enquiry with the landlord about this lack of service. The tenant claimed that she did not approach the landlord about the termination of housecleaning service because of an allegation by one of the landlord's agents that the tenant had been trespassing.

Although the tenant had complained of the housekeeper she had in September 2010 the tenant thought it was reasonable to expect that housecleaning services would be offered to her again in the spring when a different housekeeper was hired. Upon termination of the housekeeping services, the tenant did her own housecleaning.

Landlord's response

The landlord explained that the tenant's monthly rent of \$444.67 is the maximum rent payable based on the tenants income and that the rent included \$44.67 for the cost of support services during the first year of tenancy. Starting June 2011 the tenant's contribution towards support services decreased to \$35.47. The charge for support services includes all four services provided under the support program. The tenant was provided all services up until November 2010 and after that the tenant's housecleaning services ceased due to the tenant's request.

During the hearing, the landlord pointed to a letter written by the housekeeper on September 30, 2010 as evidence the tenant had requested the housecleaning services be suspended or cancelled. The landlord was of the position that housekeeping serves would have resumed for the tenant if the tenant made such a request.

I noted that the letter to which the landlord pointed to during the hearing did not mention that the tenant requested the housecleaning services be terminated. The landlord responded by stating that it is not uncommon for tenants to verbally request that a housekeeper not be sent to their unit and that the tenant may have made such a request.

The landlord also provided alternative positions. The landlord submitted that the tenant was unreasonable in her requests of the housekeepers, was not satisfied with the housekeeping services provided to her, and was abusive to housekeepers. The landlord's workplace policy is such that staff persons do not have to work under abusive circumstances.

The landlord was also of the position that the tenant's monetary claim would cause great hardship upon the non-profit landlord as the landlord had not invoiced the appropriate agency for funding for housecleaning services when the services were terminated for the tenant.

Tenant's rebuttal

The tenant denied ever asking the landlord or housekeeper to terminate housecleaning services.

Analysis

Part 10 of the tenancy agreement provides:

“(d) the landlord must not take away or make the tenant pay extra for a service or facility that is already included in rent, unless a reduction is made under section 27(2) of the RTA.”

The Act defines a “service or facility” to include housekeeping services. Section 27(2) of the Act provides that a landlord may terminate or restrict a service or facility if the landlord:

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In the tenant's details of dispute she states, “After the housekeeper [name] blew up at me last October 2010, I never saw her again.” However, the tenant acknowledged during the hearing that for the first two weeks of October 2010 she turned the housekeeper away by way of a note and then housekeeping services ceased. The landlord's housekeeper wrote a statement dated September 30, 2011 outlining her version of a dispute between her and the tenant. I accept that there was a dispute between the tenant and the housekeeper on September 30, 2011 and not in October 2010 as indicated by the tenant. Since a housekeeper continued to be sent to the tenant's unit in the first two weeks of October 2010 I do find it unlikely that the housekeeping services were terminated because of the dispute of September 30, 2010.

I find the disputed testimony that the tenant requested the housekeeping services to be terminated to be insufficient to conclude that to be the case. Rather, I find the more likely reason for the termination of housekeeping services is because the tenant began turning away the housekeeping services in the first two weeks of October 2010. This is consistent with the landlord's statement in their written submission: “The weekly cleaning schedule had to be changed since it was not feasible for the Society to schedule a 1.5 hour cleaning for unit 65 not knowing whether or not the housekeeper would have work to do.”

It keeping with my finding above, since it is the landlord that scheduled the housecleaners, I find it was the landlord's decision to terminate housecleaning services for the tenant. Since a service was terminated, the landlord was obligated to give the tenant 30 days of written notice of the termination and reduce the rent by the value of the service pursuant to the requirements of section 27(2). I find there is no documentary evidence before me to indicate the landlord provided 30 days of written notice to the tenant. It is also undisputed that the tenant's rent was not reduced to reflect the termination of housekeeping services. Therefore, I find the landlord violated section 27(2) of the Act and the tenancy agreement.

Where a party violates the Act, regulations or tenancy agreement, section 7 of the Act provides that the other party may make an application for damages or loss that resulted from the violation. However, section 7(2) also provides that the party making the application must do whatever is reasonable to minimize the damage or loss.

I find it reasonable to expect that when a service or facility is terminated the tenant would make enquiry or request the service resume by contacting the landlord. Failing an adequate response to the landlord, the tenant's remedy would be to file an Application for Dispute Resolution. In this case, the tenant did not make any enquiry with the landlord about termination of her housekeeping services and waited until her tenancy was ending to file an Application for Dispute Resolution. I find the tenant's inaction a failure to take reasonable steps to minimize her loss.

Although the tenant explained during the hearing that she did not make any enquiries with the landlord due to the "trespass issue" I do not accept this explanation in light of the following factors. I was provided evidence the tenant had volunteered for a certain committee and there was correspondence between the landlord and tenant October 8, 2010; October 18, 2010 and October 28, 2010 about the "trespass issue". Clearly, the parties were able to communicate with each other about other issues.

Considering the landlord has breached the tenancy agreement and the tenant's inaction to minimize her losses I find a reasonable award to the tenant is $\frac{1}{4}$ of the amount she paid for support services for the period of mid-October 2010 through July 2011. I have applied $\frac{1}{4}$ to the cost of support services since the tenant continued to receive other support services during her tenancy. I calculate the tenant's award as follows:

7.5 months x \$44.67 x $\frac{1}{4}$ =	\$ 83.76
2 months x \$35.47 x $\frac{1}{4}$ =	<u>17.74</u>
Total	\$ 101.50

With this decision the tenant is provided a Monetary Order in the amount of \$101.50 to serve upon the landlord. The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$101.50 to serve upon the landlord.

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: September 30, 2011.

Residential Tenancy Branch