



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

This hearing dealt with an application by the tenant for return of the security deposit, money owed or compensation for damage or loss, an order for the landlord to comply with the Act and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

Matters related to this tenancy regarding the use of the gas fireplace in the tenant's rental unit were heard under file 704065 on October 15, 2007. The Dispute Resolution Officer ruled that:

Based on the evidence of the landlord, I agree with the tenants. The value of their gas fireplace operating fully is equal to an amount of \$40.00 per month. If the landlord wants to turn off the gas effective on October 1, 2007 as set out in his Notice, then commencing on October 1, 2007 the tenants are entitled to a rent reduction of \$40.00 per month or part thereof. I thought I heard the landlord say that he would not turn off the gas in light of this decision. If that is the case, the tenants are therefore not entitled to the rent reduction.

Matters related to this tenancy regarding the loss of the tenant's peace and quiet enjoyment were heard under file 767087 on April 13, 2011. The Dispute Resolution Officer ruled that:

With respect to the tenant's application for a monetary order for loss of quiet enjoyment, I have the evidence of the parties about notes being left on the tenant's door, but I do not have any evidence of who actually put the notes on the door, other than one by the landlord. Although I find this practice to be unprofessional, I do not find that the tenant has suffered any damages as a result. The tenant's application states that the landlord defamed her, however has not provided any evidence of how that may have affected her.

Matters related to this tenancy regarding the use of the gas fireplace in the tenant's rental unit and loss of the tenant's peace and quiet enjoyment were heard under file 779481 on October 25, 2011. The Dispute Resolution Officer ruled that:

1. *The tenant will have a rent reduction in the amount of \$45.00 commencing November 1, 2011 for the loss of use of the natural gas fireplace;*
2. *Rent is set at \$640.00 per month (exclusive of parking fees) effective November 1, 2011;*
3. *Any rent increases will be based on the monthly rent of \$640.00;*
4. *If the tenant learns that other tenants pay a monthly fee for the use of a natural gas fireplace in their rental units within the complex, the tenant will be at liberty to apply for dispute resolution for a further rent reduction and the landlord's good faith intentions will be an issue.*
- 5.

The tenant stated that on September 15, 2011 the landlord sent her a notice stating that the tenant's gas fireplace will be turned off effective November 1, 2011 and that the tenant's rent will be deducted \$40.00 per the October 2007 decision. The landlord in his letter goes on to state that the tenant's rent will then be adjusted to \$645.00 effective November 1, 2011 plus \$30.00 for parking.

The tenant referred to other tenants in the building being able to pay \$50.00 per month for use of the gas fireplace and that by no longer having use of her fireplace that she had lost a large portion of useable space in her apartment. The tenant spoke to the \$45.00 monthly deduction and that her rent should have been reduced by \$58.00. After much discussion regarding other tenants paying \$50.00 for use of the gas fireplace, it became apparent that the tenant wished to have this opportunity also.

The landlord stated that new tenants moving into the building along with some established tenants were being allowed use of the gas fireplace at a cost of \$50.00 per month for each month of use. The months that tenants did not want to use the fireplace the tenant's rent went back to the base amount plus parking if applicable. The landlord stated that the tenant was welcome to partake of this same arrangement and that he would take responsibility for the cost of having the gas reconnected in the tenant's fireplace.

The parties agreed in this hearing that the tenant's current rent is \$685.00 per month and that effective December 1, 2011 the tenant will pay an additional \$50.00 for use of the gas fireplace in her rental unit for a total of \$735.00. Any month that the tenant does not want to use the gas fireplace the tenant's rent will be \$385.00 and the tenant will need to provide the landlord notice of any change in the use of the gas fireplace.

The tenant stated that throughout this past year the resident caretaker has disturbed the tenant's peace and quiet enjoyment through the spread of malicious gossip about the tenant and by leaving threatening, vulgar notes and graffiti on the tenant's door. The

resident caretaker also removed the tenant's name from the intercom and refused to replace it until directed by the landlord to do so. The tenant also claimed that the resident caretaker called her disability worker however the tenant did not have concrete proof that the call was in fact made by the resident caretaker.

The tenant acknowledged that she had brought up the concerns regarding the loss of her peace and quiet enjoyment in previous hearing and that she had not been able to substantiate her claims due to lack of evidence.

The tenant, part way through the hearing referred to a summons request that had been submitted into the file and this request was for the landlord to produce documents related to the tenancy and use of the gas fireplace. The tenant stated that she does not have a copy of her tenancy agreement and that the landlord refuses to provide her one.

The landlord testified that there had been issues in the past between the resident caretaker and tenant but that the landlord as of September 15, 2011 had removed the resident caretaker from dealing with tenants on dispute resolution matters. The landlord also stated that as soon as the tenant called him regarding her name being removed from the intercom that he contacted the resident caretaker and had it immediately put it back. The landlord stated that he had a very old copy of the tenant's tenancy agreement that was not very legible.

The landlord requested to make a statement at the end of the hearing regarding an action being taken in reference to file 779481 heard October 25, 2011, this request was granted.

Analysis

In regards to the tenant's summons request, this request was not processed as a summons as it was received as and processed as evidence and placed into the file. Should the tenant wish to proceed in obtaining the documents noted in the summons, the tenant will need to submit a new application. **Residential Tenancy Policy Guideline 15: Summons to Testify** and **Residential Tenancy Branch Rules of Procedure Rule 7 Summons** speak to the steps to take regarding this process.

With respect to the tenant's application for a monetary order for loss of quiet enjoyment, it must be noted that this matter was included as an aspect of the tenant's application which was previously heard and decided in the decision of April 2011 which reads:

With respect to the tenant's application for a monetary order for loss of quiet enjoyment, I have the evidence of the parties about notes being left on the tenant's door, but I do not have any evidence of who actually put the notes on the door, other than one by the landlord. Although I find this practice to be unprofessional, I do not find that the tenant has suffered any damages as a result. The tenant's application

states that the landlord defamed her, however has not provided any evidence of how that may have affected her.

This matter was also included as an aspect of the tenant's application which was previously heard and decided in the decision of October 2011 which reads:

During the course of the hearing the parties agreed to settle this dispute on the following conditions:

As no further action is required on this file, the file is closed.

Following from the above, I refer to the rule of res judicata, defined in Black's Law Dictionary, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Therefore any matters related to the tenant's monetary claim for loss of her peace and quiet enjoyment that have not taken place since completion of the October 25, 2011 hearing were not considered in today's hearing as they have already been heard.

As there have not been any incidents related to the tenant's peace and quiet enjoyment being disturbed since the October 2011 hearing, the tenant's monetary claim for 'money owed or compensation for damage or loss' is hereby dismissed without leave to reapply.

The parties agreed in this hearing that the tenant's current rent is \$685.00 per month and that effective December 1, 2011 the tenant will pay an additional \$50.00 for use of the gas fireplace in her rental unit for a total of \$735.00.

As an agreement was reached between the tenant and landlord regarding use of the gas fireplace, the tenant's monetary claim for 'money owed or compensation for damage or loss' for losing a portion of the useable space in her rental unit is hereby dismissed without leave to reapply.

In regards to the tenant's application for an order for the landlord to comply with the Act, I hereby Order that the landlord provide the tenant with a copy of the tenancy agreement that the landlord has no file for this tenancy. This tenancy agreement is to be provided to the tenant no later than December 15, 2011.

Conclusion

The tenant's current rent is \$685.00 per month and effective December 1, 2011, or any month the tenant requests use of the gas fireplace, the tenant will pay an additional \$50.00 for use of the gas fireplace in her rental unit for a total of \$735.00.

The landlord is hereby Ordered to provide the tenant a copy of the tenancy agreement for her rental unit no later than December 15, 2011.

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: November 22, 2011.
