



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC MNDC LRE O MT

Preliminary Issues

At the outset of the hearing a review was conducted of the Tenant's application for dispute resolution. The Tenant confirmed she erred in completing her application when she requested more time to have a notice to end tenancy cancelled and she requested to withdraw this request.

The Tenant has named two individuals as the respondent Landlords to her dispute. After careful review of the documentary evidence I note that the Landlord is listed on the tenancy agreement as an incorporated company for which the named respondents act as agents for. Section 64(3)(c) of the Act provides that subject to the rules of procedure established under section 9 (3) [*director's powers and duties*], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended. Accordingly the style of cause for this application was amended to include the incorporation which is listed as the landlord on the tenancy agreement.

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, to obtain an order to allow her to end her fixed term tenancy agreement early, to suspend or set conditions on the landlord's right to enter the rental unit, and to order the Landlords to comply with the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Landlord's breached the *Residential Tenancy Act* (the Act), regulation, and or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain monetary compensation as a result of that breach and obtain orders to allow her to end her fixed term tenancy agreement early, and to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

The parties agreed they entered into a fixed term tenancy agreement that began on April 1, 2011 and was set to switch to a month to month tenancy after July 31, 2012. Rent is payable on the first of each month in the amount of \$860.00 and on July 9, 2011 the Tenant paid \$430.00 as the security deposit.

The Tenant affirmed that her tenancy has become very stressful because she does not have any privacy and feels the Landlords are constantly listening in on her and watching her. She stated that she has now become paranoid, feeling like she is constantly walking around on egg shells, which is starting to affect her ability to sleep. She has had to go to the doctor and take prescription medication to be able to cope. She said that this concern for her invasion of privacy on the part of the Landlords has caused her to change her living style so much so that she has had to provide her 1 month written notice on November 30, 2011, to end this tenancy and she will be vacating as of December 31, 2011.

The Tenant made reference to her documentary evidence which included written statements from various guests who were witness to the Landlords' behaviour of yelling up to be quiet and coming into her rental unit without proper notice. She stated that in October the male Landlord had suspected a water leak was coming down from her apartment and when he came to check he knocked as he was opening the door and found her guest was in her rental unit. She said the Landlord began harassing her guest questioning if he was living there and looking inside her closets and asking him guest questions about the rollerblades she had in one of her closets.

The Tenant stated the Landlords continue to call her to tell her that either her or her guests are walking too loudly, telling her she should not be walking around, and

accusing her of dragging furniture around the kitchen late one night when all she was doing was taking a frozen pizza out of the freezer and putting it in the oven. Then when she contacted the residential tenancy branch for advice and she informed the Landlords they could not enter her suite without posting proper notice they posted a notice of inspection on November 7, 2011 claiming it was a regular inspection when no other tenants she had spoken too had to undergo an inspection. She is of the opinion that they wanted to go through her possessions again to try and determine if her guest was living there, even though they have been told her guest has his own residence.

The Landlords confirmed receipt of the Tenant's notice to end tenancy as of November 30, 2011.

The Landlords affirmed the rental building is more than fifty years old and is of a wood frame construction. It has older kitchens and hardwood floors in the twenty three units of the building. The Tenant's rental unit is directly above the Landlords' bedroom and they had agreed to rent it to this Tenant because she was a small framed person who spoke very quietly when they met her. They explained to her at the beginning of the tenancy how noise travels in this building and they said that she should not wear shoes in the apartment as they would be able to hear her walking. They also explained how the kitchen cabinets and drawers did not close quietly.

The Landlords confirmed that they have called the Tenant on several occasions and had conversations such as: they asked if she had guests over; they told her it sounds like her guest is walking inside with shoes on; informed her that her guest was heavy on his feet and requested that he walk more lightly. They claim they have never called to complain about hearing voices and never complained about her cooking however they did call late one evening and said it sounded like she was moving furniture around, which the Tenant later admitted to cooking pizza so it could have been the cabinets they were hearing.

In response to some of the Tenant's evidence the Landlords claim they have never yelled up to ask her or her guests to keep it down and have never placed notes on her father's car windshield. They suggest that given that this is a wooden building that maybe other tenants were complaining about the noise she was making.

The Landlords confirmed they posted notice of a routine inspection and went inside the unit November 7, 2011. They are of the opinion that as Landlords they were well within their right to inspect the unit. They confirmed that they very rarely do this type of inspection and they did this inspection to check that there were no water leaks and to determine if the Tenant's male guest was living there or not. When asked how they

would determine if the Tenant's guest was residing there during an inspection the Landlords changed their testimony and claimed they were only there to conduct a "vi" check, which he later explained to be a visual check and because there are no doors on the closet he could see what was in the closets as he passed. The Landlord said that even though he could see in the closets he was there to simply check that the plumbing was working properly as they had had problems with a water leak in October 2011 which was later found to be coming from the unit next door to the Tenant.

I asked the Landlords why they had the impression that the Tenant's guest was residing there. The male Landlord stated that when he went in the Tenant's unit mid day to check for a water leak back in October 2011 her guest was there. The female Landlord then explained that she has now been documenting the times the male guest is there based on the loud footsteps she can hear. This will help her to determine if he is staying there more than fourteen days, as per the breach letter she issued the Tenant. The female Landlord stated that it was because of these loud footsteps that "we phone her or holler at her". She went on to explain that they have called her as late as 12:00 midnight to tell her she was making noise and thumping sounds.

The male Landlord confirmed that they are willing to let the Tenant out of her fixed term tenancy agreement early. They are giving the Tenant a way out, a compromise on their part, even though they have not yet been able to re-rent the unit.

In closing the Tenant argued that no other tenants she spoke to, had a routine inspection recently. She also stated that the Landlords' testimony is proof that they are tracking her activities, when she has guests, and as an adult she should not have to explain why she has guests to her landlords. She said this also shows she does not have any peace or quiet.

Analysis

The issues before me is to determine whether the tenant has suffered unreasonable disturbance or significant interference of her quiet enjoyment by the Landlords, in breach of the Act, regulation, and or tenancy agreement; if this meets the test for monetary compensation; and if the Tenant should be able to end her fixed term tenancy agreement early.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; 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*];

and use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the Act stipulates that a landlord's right to enter the rental unit is restricted as follows:

- (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**;[emphasis added]
 - (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.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

After careful consideration of the evidence before me, I find, based on a balance of probabilities that the Landlords' purpose for entering the rental unit on November 07, 2011 was not simply for a regular monthly inspection to check the plumbing as they have asserted. I came to this finding based on the evidence that the Landlords' provided where they stated they very rarely conduct these type of inspections and considering that they were in the rental unit October 21, 2011, inspecting for a water leak and speaking to the Tenant's guest. I find the November 7, 2011 inspection does not meet the requirements of the Act as being reasonable; rather, I find it to be an intrusion on the

Tenant's privacy intended to determine if her male guest had possessions inside the rental unit so the Landlords' could support their allegations that he was residing in the unit, which is a breach of sections 28 and 29 of the Act.

I note that the Landlords' testified that they have attempted to restrict the amount of time the Tenant's has guests, listening to heavy footsteps and tracking how many days her guest is there which is a breach of sections 28 and 30 of the Act. Accordingly, I direct the Landlords to review their obligations as provided in section 30 of the Act and # 9 of the regulations as listed below:

Section 30 (1) of the Act provides that a landlord must not unreasonably restrict access to residential property by (a) the tenant of a rental unit that is part of the residential property, or (b) a person permitted on the residential property by that tenant.

#9 of the Schedule of the Residential Tenancy Regulation provides the following:

- (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

Section 32 (1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) **having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.** [Emphasis added]

In addition to the aforementioned breaches, and based on the evidence before me I further find the Landlords have failed to comply with section 32(1)(b) of the Act as they have failed to maintain the building in a manner that makes it suitable for occupation which can accommodate noise associated with regular day to day living.

Landlord and tenant common law provides the covenant of quiet enjoyment which provides:

At common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences

*with his or her tenancy." **A landlord does not have a reciprocal right to quiet enjoyment** [emphasis added].*

Based on the aforementioned, I do not accept the Landlord's argument that the Tenant was breaching term # 17 of their tenancy agreement of conduct. Rather I find the Landlords' actions of calling the Tenant to ask if her guests are wearing shoes or to tell her that her guests are heavy footed, to be a breach of section 28 of Act, is unconscionable and nothing short of harassing. Accordingly I award the Tenant aggravated damages in the amount of **\$860.00**, an amount equal to one month's rent, pursuant to section 62 and 67 of the Act.

I accept the Landlords' testimony that they are willing to allow the Tenant out of her fixed term tenancy agreement, without holding her to the remaining months of the agreement, effective December 31, 2011 in accordance with the Tenant's notice to end tenancy. Therefore, in accordance with Section 44 of the Act, I find the parties have mutually agreed to end this fixed term tenancy agreement as of **December 31, 2011**.

The parties are hereby ordered to comply with section 35 of the Act when scheduling and conducting a move out inspection once this tenancy has ended. The Tenant is instructed to comply with the Act and provide the Landlords with a forwarding service address, in writing, in order that the Landlords may disburse the security deposit in accordance with Section 38 of the Act.

The Landlords are cautioned to expect that given lack of sound insulation between their suite and the Tenant's suite that they can expect noises during the period when she is packing to move, such as the sound of boxes being moved and possessions being shuffled around and packed. That being said, the Tenant is instructed to complete her packing between the hours of 8:00 am and 11:00 p.m. The Landlords are further Ordered to refrain from contacting or harassing the Tenant about noise issues relating to her packing and moving.

During the teleconference hearing the Landlords were given the following order:

The Landlords are hereby ordered not to enter the Tenant's rental unit until the scheduled move out inspection, except in the case of an emergency as defined by section 29 (1)(f) where entry is necessary to protect life or property.

Conclusion

The Tenant's decision will be accompanied by a monetary order in the amount of **\$860.00**. This Order is legally binding and must be served upon the Landlords.

The Landlords are HEREBY ORDERED to comply with the *Residential Tenancy Act*, regulation, tenancy agreement, and my Orders as listed above, pursuant to section 62 of the Act.

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: December 12, 2011.

Residential Tenancy Branch