



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC O OLC RP

Introduction

This Hearing was convened in response to the Tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement; for an order the Landlords to comply with the Act, regulation, or tenancy agreement; and for an order that the Landlords make repairs to the rental unit.

Both parties attended the Hearing and provided affirmed testimony.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?
- Should the Landlords be ordered to comply with Sections 26(2), 30(1) and 28 of the Act?
- Should the Landlords be ordered to make repairs pursuant to the provisions of Section 32(1) of the Act?

Background and Evidence

The rental unit is a basement suite in a house. The Landlords live in the upper suite of the house. The Tenant and her two young sons moved into the rental unit on February 25, 2012. The Tenant paid prorated rent in the amount of \$135.00 for the remainder of February. A copy of the tenancy agreement was provided in evidence. Monthly rent is \$780.00, due on the first day of each month, and includes utilities and the use of laundry facilities one day a week. The Tenant paid a security deposit in the amount of \$350.00 on March 1, 2012.

The Tenant gave the following testimony:

The Tenant testified that she paid March rent and the security deposit on February 24, 2012 and that the Landlord did not give her a receipt for the security deposit and first month's rent until March 1, 2012.

She testified that she did not sign a tenancy agreement until March 1, 2012, and that there were clauses in the Addendum that she did not agree with and had not been made clear when she agreed to rent the rental unit. She stated that she signed it anyway because she felt she had to.

The Tenant testified that she and the Landlords had agreed that use of the laundry facilities was worth \$80.00 per month. She stated that her laundry day was Sunday, but that the Landlord had limited her use of the laundry facilities to between 9:00 a.m. and 1:00 p.m. She stated that the Landlord locked the door to the laundry after 1:00 p.m. and therefore she did not have one day's use of the facilities as allowed in the tenancy agreement. The Tenant testified that she stopped using the laundry facilities and started paying \$700.00 rent after March, 2012.

The Tenant testified that the male Landlord yells at her children and on one occasion banged loudly on the door to the rental unit, demanding that they stop playing with a nerf gun.

The Tenant testified that the Landlords have restricted her access to the yard, saying that her boys were not allowed to play there. She testified that the male Landlord yells at her boys and intimidates them.

She stated that the Landlords told her she could not have visitors after 10:00 p.m. at night and that it was cause to give her a notice to end the tenancy. The Tenant testified that she works shift work and that her sons' Dad takes care of their sons when she is working.

The Tenant testified that there was no condition inspection report completed at the beginning of the tenancy and that shortly after moving in, she noticed the socket behind the fridge was broken. The Tenant testified that she was concerned for her safety and that on April 1, 2012, she provided the Landlords a letter of demand to fix the socket. She testified that she taped the demand letter to the Landlords' door.

The Tenant stated that the Landlords fixed the socket on April 9, 2012. She stated that the Landlords wanted to access the rental unit between 5:00 and 7:00 p.m. on April 7, 2012, to fix the socket, but that she would not agree to allow access at that time because her 11 and 12 year old sons were in the rental unit and were not comfortable being there with the male Landlord.

The Tenant testified that she and her boys are always stressed out and nervous because of the Landlords' harassment and that they want to move. The Tenant claims compensation in the amount of \$1,050.00 to cover moving costs.

The male Landlord gave the following testimony:

The Landlord testified that the Tenant was provided with a receipt for the security deposit and March's rent at the time that she paid cash for the deposit and rent. He stated that April's rent was paid by cheque, and that she was provided a receipt on April 4, 2012.

The Landlord stated that all of the conditions of the tenancy were explained to the Tenant when she provided the security deposit and that she agreed to them. He denied putting anything in the agreement or the addendum that was not discussed prior to accepting the security deposit.

The Landlord testified that the agreement was that the laundry facilities would be available to the Tenant for four hours, one day a week. He concurred that the parties had agreed that the Tenant would pay \$700.00 per month rent if she did not use the laundry facilities.

The Landlord denied yelling at the Tenant's children or telling them they could not play in the yard. He stated he told them they could not shoot their bb guns in the back yard because they were leaving plastic pellets in the lawn. The Landlord testified that he knocked on the Tenant's door to ask her to stop the boys from shooting their bb guns in their room after 9:30 at night, but she refused to come to the door.

The Landlord testified that there were supposed to be only three people living in the rental unit by that the Tenant's sons' Dad was often staying there, especially on the weekends. He denied telling the Tenant that she could not have visitors after 10:00 p.m. He stated that he told the Tenant that her sons' Dad was not welcome to be there during an inspection of the rental unit.

The Landlord testified that he carried out an inspection of the smoke detector and that the batteries had been removed. He replaced the batteries. The Landlord testified that the Tenant's sons' Dad smokes in the rental unit, which is against the terms of the tenancy agreement.

The Landlord stated that he received the Tenant's demand letter about the broken socket on April 5 or 6 and that he tried to fix it on the 7th, but the Tenant would not let him in.

The Landlord testified that the Tenant was given a Notice to End Tenancy on April 13, 2012.

Analysis

The Landlord mentioned that the Tenant was provided with a Notice to End Tenancy. The Landlord has not filed an application with respect to the Notice and therefore it is not before me today. At the outset of the Hearing, the parties attempted to come to an agreement with respect to an end of the tenancy, but were not successful.

This is the Tenant's claim for damage or loss under the Act and therefore she has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Landlords pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met.

Section 26(2) of the Act requires a landlord to provide receipts for rent paid in cash. Based on the testimony of both parties, I find that the Landlords did provide receipts and therefore I decline to order the Landlords to comply with Section 26(2) of the Act.

In the section of the tenancy agreement that lists what is included in the rent, there is provision for laundry "one day a week". The parties agreed that the Tenant would do her laundry on Sundays. By limiting the Tenant to a 4 hour period on Sundays, I find that the Landlord did not provide her with "one day a week", and that the Tenant is entitled to compensation. The parties agreed that the monthly value of the use of laundry one day a week was \$80.00. I find that the Landlord provided the Tenant with only 1/3rd (4 hours) of one day a week for the month of March, 2012, and award the Tenant the amount of **\$53.00** for the restriction of this service or facility.

I dismiss the Tenant's application for compensation in the amount of \$1,050.00. I find insufficient evidence that the male Landlord harassed the Tenant or her sons. I also

dismiss the Tenant's application for an order that the Landlords comply with Section 28 of the Act (protection of the Tenant's right to quiet enjoyment).

The Landlord denied telling the Tenant that she was not allowed visitors after 10:00 p.m., but testified that he refused to allow the Tenant's sons' Dad to stay in the rental unit during an inspection. Section 30(1) of the Act provides that a landlord must not unreasonably restrict access to the rental unit by a tenant's guests. The rental unit is the Tenant's home for the period of the tenancy and she is entitled to invite guests without unreasonable restriction. I find that the Landlord is not entitled to refuse to allow her guest or an agent to attend an inspection. **The Landlord is hereby ordered to comply with Section 30(1) of the Act.** The Tenant is also cautioned that she is responsible for the actions and conduct of her invited guests.

I find that the Tenant has not submitted sufficient evidence to prove, on a balance of probabilities, that the Landlords were not reasonably diligent in fixing the broken socket in a timely manner. There was insufficient evidence that the broken socket created an emergency situation and in any event, the Tenant refused to allow the Landlord access on April 7th in order to fix the socket.

The parties were advised that a landlord has a right to access the rental unit for a reasonable purpose as long as he provides due notice in accordance with the provisions of Section 29 of the Act. If due notice is given, the Tenant is not required, nor is she entitled, to be in the unit at the time of access. In other words, the Tenant has no right under the Act to refuse access to the Landlords if proper notice is given.

The Tenant provided insufficient evidence that any repairs to the rental unit were required and therefore I decline to order the Landlords to comply with Section 32(1) of the Act (Landlord obligation to repair and maintain).

Conclusion

The Landlord is hereby ordered to comply with Section 30(1) of the Act.

I find that the Tenant is entitled to compensation for restriction of laundry facilities for the month of March, 2012, in the amount of **\$53.00**. This amount may be deducted from rent due to the Landlord.

The remainder of the Tenant's application is dismissed.

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: April 25, 2012.

Residential Tenancy Branch