



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, RP, RR, PSF, LRE, OLC, FF

Introduction

This hearing was convened in response to an application filed by the tenant on June 05, 2012 seeking Orders under the Residential Tenancy Act (the Act) as follows:

- A Monetary Order for compensation for damage or loss under the Act, regulation or Tenancy Agreement - Section 67
- An Order for the landlord to make repairs to the unit – Section 62
- An Order for the landlord to comply with the Act – Section 62
- An Order for the landlord to provide services or facilities required by law – section 65.
- An order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided – Section 65
- Suspend or set conditions on the landlord's right to enter the rental unit – Section 70.

Both parties participated in the hearing and provided relevant sworn testimony. As well, both parties forwarded evidence / submissions prior to the hearing and were provided an opportunity to settle their dispute. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

- Should the landlord be ordered to make repairs to the unit?
- Is the tenant entitled to the monetary amounts claimed?
- Should the landlord be ordered to provide services or facilities required by law?
- Should the tenant be allowed to reduce rent?
- Should the landlord be ordered to comply with the Act, regulation or tenancy agreement?
- Should the landlord's right to enter the rental unit be suspended or made conditional?

The burden of proving their claims rests on the claimant.

Background and Evidence

The relevant evidence in this matter is as follows. This tenancy started September 01, 2011. The rental unit is a house. There is no written tenancy agreement. The monthly rent is \$1100, payable in advance on the 1st of each month.

The tenant seeks a quantum in compensation in the amount of \$2150.00 for damage or loss as well as \$1100.00 compensation for a Section 49 notice to end tenancy for landlord's use of property. The tenant has not provided evidence itemizing their claim for damage and loss. None the less, the tenant provided the following testimony in support of their monetary claims.

The tenant testified they asked the landlord to fix the (2) electrical outlets in the living room area. The tenant claims the plugs smoke when used. The tenant provided 2 photographs of the plugs; one appears to have a smoke mark beside it. The landlord replaced one plug, but not the other. The landlord testified they replaced one of the plugs because it had suffered some smoking, but the other plug tested as working properly. The landlord claims that the tenant's appliance – a vacuum- is causing the plugs to arc and smoke. The tenant claims they have not used the receptacles since the outset of the tenancy.

The tenant testified they asked the landlord to replace the furnace filter and clean out the ducting (maintain the furnace). The landlord responded that it was the responsibility of the tenant. The landlord confirms they advised the tenant to replace the furnace filter. They also claim that the ducting was cleaned less than 5 years ago and does not require cleaning so soon thereafter. The tenant purchased a new filter at the cost of about \$10.00 and replaced it themselves. The tenant provided a photograph of the dirty filter.

The tenant claims that they have a verbal tenancy agreement with the landlord that the landlord will provide the lawn care and snow clearing of the driveway in the winter. The landlord disagrees, and testified that the verbal agreement calls for the tenant to provide their own lawn care, other than the bottom portion of the property – the orchard. The landlord disagrees that the verbal agreement calls for the landlord to be responsible for snow clearing in the winter. The tenant provided testimony that on occasion the landlord has provided some lawn care.

The tenant testified that their verbal tenancy agreement includes use of the garage on the residential property, in the payable rent, and that they have not been able to use the garage since the outset of the tenancy. The landlord testified that the garage is not included in the tenancy agreement. The parties agree that the tenant has been paying a quantum of electrical utility to service the garage, as the garage is connected to the tenant's meter.

The tenant testified that there is a wasp nest situated on the exterior of the house and that wasps find their way inside the house and that their daughter has been stung twice as a result. The wasp nest remains as of this date. The tenant claims they have asked

the landlord to remove the wasp nest, but they have refused – saying for the tenant to remove it themselves, but the tenant is unable to access the wasp nest, and that access requires structural alterations. The landlord agrees they advised the tenant to deal with the wasp nest themselves.

The tenant testified that in April of 2012 the landlord told them they had gone inside the house looking for paint in the tenant's absence and without their permission or notice to enter the rental unit. The landlord acknowledged this occurred and was apologetic for it. The landlord claims that it was a brief intrusion, the rental unit was unlocked and that the landlord thought the tenant was home at the time. The tenant was disturbed that the landlord subsequently also pointed out conditions, they found while in the house, were not acceptable to the landlord. The landlord testified they did this because of their concern of a potential pest problem. The tenant testified that on another occasion they saw the landlord looking into their rental unit windows from the back yard – which the landlord disputed doing.

The tenant testified that the landlord gave them a written letter to end the tenancy – for which the tenant seeks the compensation associated with receiving a 2 month notice to end tenancy for landlord's use. The landlord testified they did not provide the tenant with a 2 month notice to end tenancy as required by the Act. In the absence of such a Notice to End, the parties discussed ending the tenancy with compensation by agreement, but did not arrive at agreement. The tenant acknowledged their understanding that they are not required to act on the landlord's written letter to vacate.

Analysis

On preponderance of the evidence and on the balance of probabilities, I have arrived at the following findings.

When making a claim for damages or loss under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages or loss requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In making my decision I considered Residential Tenancy Branch Policy which suggests a Dispute Resolution officer may award damages when it is not possible to place an actual value on the loss. I have considered the value of the tenant's claims and assigned what I find to be reasonable value for any loss.

I accept the evidence that the landlord complied with the tenant's request to fix an electrical receptacle, but declined to fix a second such receptacle as they did not find a problem with it. The tenant has not proven on a balance of probabilities that the second receptacle required repair, as (and) has not used the receptacles since they

were assessed or repaired. As a result, **I dismiss** this portion of the tenant's claim for compensation, or to make an order for the landlord to make this repair.

Residential Tenancy Policy Guideline #1 (RTPG 1) refers to the obligations and responsibilities of the parties. Specifically, I find that RTPG 1 states:

FURNACES

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

As a result, I find that the landlord is responsible to replace the furnace filter, and would be responsible to clean the heating ducts, if necessary. I find the tenant has not proven the heating ducts required cleaning; however, I accept that the tenant paid for a new furnace filter and that they are entitled to be compensated for it. I grant the tenant **\$10.00** in this regard, without leave to reapply.

I find that the tenant has not provided sufficient evidence to support their claim that the tenancy agreement (verbal) holds the landlord responsible for the care of the lawns or snow clearing of the driveway.

Residential Tenancy Policy Guideline #1 (RTPG 1) refers to the obligations and responsibilities of the parties. Specifically, I find that RTPG 1 states:

PROPERTY MAINTENANCE

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

In the absence of a written tenancy agreement confirming the parties' obligations in respect to the maintenance of the property, **I dismiss** this portion of the tenant's claim without leave to reapply.

I find that the tenant has not provided sufficient evidence to support their claim that the tenancy agreement (verbal) includes use of the garage. In the absence of a written tenancy agreement confirming the tenant's claim in respect to the garage, **I dismiss** this portion of the tenant's claim without leave to reapply. None the less, I find that the parties agree that the electric utility to the garage is governed by the electric meter for which the tenant is responsible. As a result, I grant the tenant \$10 per month from the outset of the tenancy in the sum of **\$100.00** (\$10 per month for 10 months), with leave to reapply, unless the landlord and tenant come to agreement as to this utility for the garage. **I dismiss** the tenant's request for the landlord to be ordered to provide a service or facility required by law, without leave to reapply.

I find that **Section 32** of the Act states that the landlord is responsible to maintain residential property in a state of repair that makes it suitable for occupation by a tenant. I find the presence of a wasp nest near the bedrooms of the rental unit, where they may enter the rental unit and cause concern or injury to the tenant does not make it compatible for ongoing occupation. I find it reasonable that the landlord is responsible for the control of the wasp nest. Therefore, **I order** that the landlord take necessary steps and remove the wasp nest, forthwith. If the landlord does not do so by July 13, 2012, the tenant is at liberty to apply for monetary compensation.

Section 29 of the Act states as follows,

Landlord's right to enter rental unit restricted

29 (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;
 - (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).

I find that the landlord breached their right to enter the rental unit, as afforded by **Section 29** of the Act, when they entered the tenant's rental unit in April 2012, without the tenant's permission or proper written notice to do so. I do not accept that the landlord breached the Act if they looked toward the rental unit windows from the back yard. I do not find it necessary to suspend the landlord's right to enter the rental unit in accordance with section 29 of the Act. However, I find that the tenant is entitled to compensation for the breach of the tenant's right to quiet enjoyment for the intrusion in April 2012. As a result, I grant the tenant **\$50.00** in this regard, without leave to reapply.

I find the landlord's letter to vacate is not a valid Notice to End. As a result, the tenant is not entitled to compensation equivalent to the rent payable for one month and is not required to vacate. **I dismiss** the tenant's portion of their claim for \$1100.00, without leave to reapply.

I have not found it necessary to order the landlord to comply with the Act, regulation or tenancy agreement. **I dismiss** this portion of the tenant's claim, with leave to reapply.

As a result of all the above, the tenant is hereby entitled to a monetary award in the sum of \$160.00. The tenant is also entitled to recover their filing fee in the amount of \$50.00 for a total Monetary Order of **\$210.00**.

Conclusion

The landlord has been **Ordered** to take the necessary steps and remove the wasp nest on the exterior of the rental unit by **July 13, 2012**.

I Order that the tenant may deduct **\$210.00** from a future rent, in satisfaction of their monetary award.

This decision is final and binding on both parties.

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: June 25, 2012

Residential Tenancy Branch