



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC ERP RP PSF LAT

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to order the landlord to comply with the *Act*, regulation or tenancy agreement, to make emergency repairs for health or safety reasons, to make repairs to the unit, site or property, and to provide services or facilities required by law, to authorize the tenant to change the locks to the rental unit and other (install mail box).

The tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenant was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The landlord did not attend the hearing. As a result, service was considered. The tenant testified that the landlord was served with the Notice of a Dispute Resolution hearing by registered mail on June 16, 2012. The tenant provided a registered mail tracking number and confirmed the name and address matched the landlord's name and landlord's address on the application. Documents served by registered mail are deemed served five days after mailing under the *Act*. Therefore, I find the landlord has been duly served in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. I have considered all of the evidence before me in this Decision.

Preliminary Matter

The tenant was provided the opportunity to withdraw his application as his application includes a monetary claim of \$900.00, however, does not include details of the amount claimed. The tenant did not wish to withdraw his application and requested to proceed with the hearing.

Issues to be Decided

- Should the tenant be granted a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?
- Should the landlord be ordered to make emergency repairs for health or safety reasons?
- Should the landlord be ordered to repair the unit, site or property?
- Should the landlord be ordered to provide services or facilities required by law?
- Should the tenant be authorized to change the locks to the rental unit?
- Should the landlord be ordered to install a mail box?

Background and Evidence

The tenant provided pages 1,2,3 and 6 of a 6 page tenancy agreement, and a 1 page addendum to the tenancy agreement as evidence. The tenancy agreement indicates that a month to month tenancy began on November 1, 2010. The tenant testified that although the tenancy agreement states November 1, 2010 as the start of the tenancy, he moved in 9 days before the end of September, 2010. The tenant filed this application on June 14, 2012.

Rent in the amount of \$500.00 is due on the 1st day of each month. The tenant stated that he paid a security deposit of \$250.00 on October 1, 2010. According to the tenancy agreement provided, monthly rent includes water, electricity, heat, cable television and garbage collection.

The tenant was asked to provide oral details of his claim for \$900.00. The tenant stated that because rent includes heat, electricity and water, he felt the value of each represented 33.33% of the monthly rent. The tenant confirmed that he did not apply any other value to the rent such as occupancy of the rental unit or storage for example.

The tenant alleges that the landlord has turned off the heat to the rental unit during the following “periods” since the start of the tenancy:

Period 1 - October 1, 2010 to October 31, 2010

Period 2 - May 31, 2011 to October 6, 2011 inclusive

Period 3 - May 14 to May 24, 2012 and June 10 to July 5, 2012 inclusive

The tenant did not provide the number of days for Period 2 or Period 3. The tenant stated that his formula calculated the number of days without heat, worth 33.33% of the rent, which resulted in an amount \$900.00. I attempted to repeat the formula as described by the tenant without success. I advised the tenant that to simply specify a number of days and divide by 33.33%, does not result in a monetary value. The tenant was asked if he completed a monetary worksheet as stated in the dispute application. He responded by stating that the person he spoke to at the Residential Tenancy Branch did not ask him to fill out a monetary worksheet. The tenant was advised of the wording of the dispute application which indicated the need for a monetary worksheet when applying for a Monetary Order.

The tenant requested authorization to change the locks in the rental unit. The tenant alleges that the landlord has entered the rental unit without proper notice under the *Act*, on two occasions, and attempted to enter the rental unit a third time. The tenant was unable to provide specific dates of the alleged unauthorized entry when requested to do so.

The tenant described the two alleged unauthorized entries by the landlord as follows:

1. The first entry involved smoke coming from the oven in the rental unit, which set off the smoke detector in the rental unit that was connected to the other smoke detectors in the home. The tenant alleges that the landlord entered the rental unit and pulled out the smoke detector and left. The tenant installed his own battery powered smoke detector afterwards.
2. The second entry involved the landlord allegedly coming through the door without proper notice or knocking first.

The tenant stated a door behind the fridge in the rental unit, is not locked from the landlord's side of the door. The tenant requested that a lock be installed on that door.

The tenant stated that there has been continual violation of his quiet enjoyment. The tenant was asked to provide specific details and dates. The tenant was not able to provide specific dates but claims that the landlords children jump upstairs and wrestle which disturbs the tenant. The tenant also stated that the landlord has a home gym above the tenant's bedroom now, which he alleges was not there before he moved and includes a treadmill which he can hear them running on, which he states disturbs him.

The tenant testified that the landlord has not been providing receipts to him when paying the rent in cash. The tenant stated that he pays rent in cash, and does not wish to pay rent by cheque but would like the landlord to be ordered to provide a receipt when the rent is paid each month.

The tenant stated that the emergency repair he is seeking is to have the landlord turn on the heat. The tenant stated that when he asked the landlord to turn the heat on, the landlord laughed and said, "I will turn the heat on when my daughter is cold and asks me to."

The tenant testified that the repairs he is seeking from the landlord is to fix the bathtub faucet which he alleges currently is restricted from being set to the hot setting, and therefore, has not been able to have a hot shower. The tenant stated that sheet metal covering the hot water coils in the radiant heating system in the bathroom is causing a safety concern. The tenant is seeking to have a repair person repair the sheet metal in the bathroom.

The tenant requested a mail box be installed outside of the rental site so he has a place for his mail that is protected from the weather. The tenant also claims that garbage collection is included in the monthly rent, and alleges that the landlord is not taking the tenant's garbage from the rental unit to the curb. The tenant confirmed that the garbage is collected if the garbage is taken to the curb, however, believes it is the landlord's responsibility to carry the tenant's garbage from the house to the curb for garbage collection. The tenant requested that the landlord be ordered to bring the tenant's garbage to the curb for collection.

The tenant provided copies of three receipts as evidence for this proceeding.

Analysis

Based on the oral testimony and documentary evidence before me, and on a balance of probabilities, I find the following.

\$900 monetary claim - As the tenant failed to provide sufficient evidence of his monetary claim, **I dismiss** the tenant's claim of \$900.00 due to insufficient evidence, including the most basic details of how that amount was calculated. I find the tenant's calculation provided during his oral testimony was flawed. By taking the number of days without heat and dividing those days by 33.33%, without assigning a dollar value, results in no monetary amount. It is not the responsibility of the arbitrator to determine or develop a formula to justify the applicant's claim. The application itself states when

the dispute includes a request for a Monetary Order, include a detailed calculation and to attach a separate sheet if necessary. The onus is on the applicant to read the application and fill in the correct forms when applying for dispute resolution.

Section 7 of the *Act* states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the tenant did not minimize the loss by waiting until June 14, 2012 to submit a claim for dispute resolution. The tenant alleges that he has been without heat since October 2010 for a total of 3 periods, but did not apply for dispute resolution until June 14, 2012. The person who claims for compensation must do whatever is reasonable to minimize the loss under the *Act*. I find the tenant has permitted the loss to accumulate by waiting since October 2010 to submit a claim against the landlord in the amount of \$900.00 in June, 2012.

Request to change locks of the rental unit – The tenant was unable to provide specific dates of the two occasions where he alleges the landlord entered the rental unit without prior notice. As a result, **I do not grant** the tenant's request to change the locks of the rental unit due to insufficient evidence. The landlord may only enter the rental unit in accordance with the *Act*. Therefore, **I order** the landlord to comply with the requirements of section 29 of the Act which states:

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).

Regarding the door behind the fridge inside the rental unit, **I do not find** that a lock is required on that door as a fridge is blocking the door, according to the testimony provided.

Tenant's right to quiet enjoyment – Section 28 of the *Act*, states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from **unreasonable disturbance**;
- (c) 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*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that based on the testimony of the tenant, the tenant is aware that the landlord has children. By their very nature, children will play and there will be some noise due to that play. **I find** that the tenant has provided insufficient evidence to support a claim that his right to quiet enjoyment was violated under the *Act*. The tenant failed to prove that the noise from the landlord has been unreasonable or has significantly interfered with the tenant.

Receipts for cash rent payments – The tenant testified that the landlord does not provide receipts when the tenant pays his monthly rent in cash. Section 26 of the *Act*, requires that a landlord **must** provide a tenant with a receipt for rent paid in cash. Therefore, **I order** the landlord to comply with section 26 of the *Act*. **I order** the landlord to provide a receipt to the tenant within 24 hours of receiving the monthly rent in cash from the tenant.

Emergency and other repairs – The tenant testified that he has been without heat during three periods since October 2010. I note that some of these period are during the warmer summer months, however, I find that the tenancy agreement includes heat and must not be withheld by the landlord. As are result, **I order** the landlord to turn on the heat to the rental unit to room temperature (22 degrees Celsius) and to leave the thermostat at that temperature until the tenancy has ended in accordance with the *Act*.

The tenant stated that the tub faucet is restricted from being turned to the hot setting resulting in the inability to have a hot shower. The tenant also requested that sheet metal in the bathroom be repaired to correct a safety issue. Therefore, **I order** the landlord to hire a licensed plumber to repair the tub faucet enabling the faucet to provide hot water when set to the hot setting and to the repair the sheet metal in the bathroom to correct any safety issues that may be present. **These repairs must be completed within 30 days of the date of this Decision.**

Installation of mail box – The tenant testified that he does not have a mail box and is requesting one so that his mail can be delivered without being impacted by the weather. I find this request to be reasonable and pursuant to section 62 of the *Act*, **I order** the landlord to install a mail box outside the rental unit within 15 days of this Decision.

Garbage collection – The tenant stated that when the garbage is brought to the curb, it is being collected. The tenant stated that he feels the landlord is required to bring the tenant's garbage from the rental unit to the curb. I find this request to be unreasonable. **I find** that the tenant is responsible for bringing his own garbage to the curb for garbage collection on the date of garbage collection.

Conclusion

I dismiss the monetary application of the tenant due to insufficient evidence.

I find the tenant provided insufficient evidence to support that his right to quiet enjoyment was violated under the *Act*.

I do not grant the tenant authority to change the rental locks.

I order the landlord to comply with Section 29 of the *Act*. The landlord may only enter the rental unit in accordance with the *Act*.

I order the landlord to comply with section 26 of the *Act*. **I order** the landlord to provide a receipt to the tenant within 24 hours of receiving the monthly rent in cash from the tenant.

I order the landlord to turn on the heat to the rental unit to room temperature (22 degrees Celsius) and to leave the thermostat at that temperature until the tenancy has ended in accordance with the *Act*.

I order the landlord to install a mail box outside the rental unit within 15 days of this Decision.

I find that the tenant is responsible for bringing his own garbage to the curb for garbage collection on the date of garbage collection.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 10, 2012

Residential Tenancy Branch