



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, MNDC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order of possession for the rental unit and a monetary order for compensation for damage or loss under the Act.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

This is the second proceeding regarding this tenancy. The rental unit is a room in a hotel. The Tenant applied on August 27, 2012, for an order that the Act applied to this tenancy. The Decision rendered August 27, 2012, found that this rental unit and tenancy were under the jurisdiction of the Act. The Landlord did not apply for a Review of this first Decision. As I explained to both parties during the hearing, I am bound under the prior Decision as to issues of jurisdiction.

Regarding the evidence of the Landlord; the Agent for the Landlord testified he served the Tenant in person with the Landlord's documents to be used in evidence for the hearing. He testified that the Tenant left these documents in the lobby of the property where the rental unit was located. When the Agent attempted to serve the Tenant in the rental unit with these same documents she threw them out of the room. The Agent for the Landlord also provided the Tenant with their evidence during the course of the face to face hearing. The Tenant again refused to accept the documents and slid them back to the Landlord across the table. I explained to the Tenant that this was the Landlord's evidence and the Tenant should have copies of these. The Tenant reluctantly took the

documents. I find that, although the Tenant displays a tendency to avoid service, she has been duly served in accordance with the Act with the Landlord's evidence.

The Tenant is still in the rental unit and therefore, an order of possession is not necessary. The Landlord was cautioned about trying to evict the Tenant without following the Act and providing a valid Notice to End Tenancy.

The Tenant provided a note from a Doctor advising that the Tenant needs to see an audiologist to have a hearing test and could not use a phone to attend the hearing. For this reason the Tenant was granted a face to face hearing. I also note the Tenant has limited facility speaking English.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

The Tenant moved into the rental unit in May of 2012 and paid a month of rent in the amount of \$800.00, and a security deposit of \$400.00. The parties entered into a written tenancy agreement. I note the Landlord collected an energy surcharge of 3% and room tax of 2%, totalling \$40.60 on top of the \$800.00 paid in rent.

The Tenant vacated the rental unit on June 4, 2012, giving up vacant possession to the Landlord.

After being away for most of June of 2012, the Tenant moved back into the subject rental unit in July and the parties signed a monthly agreement at a rate of rent of \$999.90 per month, and the Landlord collected taxes of \$50.60.

The Tenant alleges that the Landlord illegally increased the rent for the rental unit.

The Tenant alleges that the bathroom fan in her rental unit runs constantly and there is no way to turn it off. She alleges she asked the manager in May of 2012 to repair the fan, but nothing has been done.

The Tenant alleges that on or about August 24, 2012, the bathroom fan in the rental unit next door to the subject unit was making so much noise it was disturbing her. The Tenant testified she complained to the onsite property manager about this. When it appeared to the Tenant that the property manager was not going to do anything about

the fan next door, the Tenant testified she went to the next door unit and complained to the occupants of that rental unit that their bathroom fan was making too much noise.

The Tenant also alleges that the rental unit is only being cleaned once a week. The Tenant alleges she is supposed to have cleanings four times or more a week. She alleges the rental unit is very dirty and the Landlord is not cleaning it as required.

The Tenant further alleges that someone has entered the rental unit and used the microwave oven and then left it dirty.

The Tenant also alleges that the bath water in the rental unit is often green in colour and this indicates it is dirty.

The Tenant also alleges the Landlord has arranged for the police to follow her around town.

The Tenant requests \$2,000.00 in compensation for these allegations.

In reply, the Agent for the Landlord testified that the rental agreement with the Tenant requires the Landlord to provide housekeeping services once per week, although they will empty the garbage for each unit daily. Towels are changed twice per week. The Agent testified he has explained this to the Tenant many times, however, she continues to expect daily cleanings.

The Agent alleges that the Tenant hovers over the Landlord's staff when they are cleaning the unit and directs them on their work and complains to them if she feels they are not doing it right.

The Agent says the Tenant has exhibited very poor behaviour towards the Landlord's staff. For example, the Agent alleges the Tenant has asked one staff member "when are you going back to Africa" and has made other inappropriate and derogatory comments towards staff. The Agent testified that the Landlord's staff have expressed that they feel threatened by the Tenant. The Agent explained many of the staff are refusing to clean the rental unit due to the Tenant's behaviour, however, the Landlord has made sure the room is being cleaned in accordance with the tenancy agreement.

The Agent for the Landlord testified that the Tenant was seen taking toilet paper off of the housekeeping cart without authority to do so.

The Agent testified that in August 2012, the calls to the front desk by the Tenant increased substantially.

In particular, the Agent testified that on August 21, 2012, the Tenant called the front desk to complain about the bathroom fan in the room next door to her. When the Tenant was not satisfied with the response from the front desk, the Tenant went to the next door rental unit and banged on their door. The occupants of the room explained to the Tenant they did not know what noise she was complaining about. The occupants alerted the front desk to the Tenant knocking on their door.

The front desk called the Tenant and requested that she not disturb other occupants in the building.

Following this request, the Tenant called 911, the police emergency line, to complain about the noise from the bathroom fan in the rental unit next to the subject rental unit.

The Agent for the Landlord testified that he has listened to both bathroom fans and they are functioning normally and each emits the normal hum for such a fan.

Following the incident with the police, the Agent informed the Tenant she could not stay in the rental unit if she was going to call the police emergency line for these types of complaints. Apparently the Landlord cut off the telephone line to the subject rental unit for a period of time, but this has been restored.

Lastly, the Agent testified that the Tenant had not paid rent for the month of September 2012.

In reply, the Tenant alleged the Landlord is having the police follow her because she took toilet paper from the housekeeping cart. The Tenant produced photographs of RCMP vehicles around the municipality where the rental unit is located. She again alleges these cars are following her at the Landlord's request.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities I find as follows:

I do not find there has been an illegal rent increase in this tenancy. When the Tenant left the rental unit giving up vacant possession to the Landlord in early June, the first tenancy ended. When the Tenant returned a month later, the parties entered into a new

tenancy agreement, and therefore, the Landlord could charge a different rate of rent for the same rental unit.

However, I do find that under the Act the Tenant is only required to pay rent and not taxes on the rent. I order the Landlord to cease charging the Tenant taxes over and above the monthly rent rate of \$999.90. I also order the Landlord to return to the Tenant the sum of **\$141.80**, for the amounts collected in May, July and August of 2012, over and above the monthly rent. I grant and issue the Tenant a monetary order in these terms. If the Tenant has paid rent for September and these taxes were collected, I order these be returned to the Tenant as well.

As to the other claims of the Tenant, in making a claim for damage or loss under the Act or tenancy agreement, the Tenant must provide evidence sufficient to prove:

1. That the damage or loss exists;
2. That the damage or loss occurred due to the action or neglect of the respondent in breach of the Act or tenancy agreement;
3. Verification that the amount claimed for the damage or loss is the actual amount required for compensation; and
4. That the Applicant mitigated, or minimized, the loss or damage in accordance with section 7 of the Act.

In this instance, I find the Tenant had insufficient evidence to prove the bathroom fan in the subject rental unit or in the next door rental unit had made so much noise that it disturbed her quiet enjoyment. I also note that the Tenant supplied a note from a Doctor indicating she had some sort of issue with her hearing. This would tend to bring the reliability of the Tenant's evidence regarding what she heard into question. Nevertheless, the Tenant failed to prove this noise or damage or loss existed, and I dismiss this portion of the claim.

I find the Tenant has failed to prove the Landlord is required to clean the rental unit more than once per week under the Act or tenancy agreement.

I also note that under section 32 of the Act, the Tenant herself is required to maintain reasonable health, cleanliness and sanitary standards in the rental unit.

This requires the Tenant to keep the rental unit clean and not rely solely on the Landlord for cleaning the unit. As the Tenant failed to prove a breach of the Act or tenancy agreement on this issue, I dismiss this portion of the claim.

I find the Tenant has provided insufficient evidence to prove any of the other claims made such as someone entering her room to use the microwave, or the Landlord having the police following her, and therefore, I dismiss these claims as well.

I strongly caution the Tenant that she must not withhold rent from the Landlord. The Tenant has no authority under the Act to not pay rent and the Landlord may end the tenancy when rent goes unpaid, by issuing the correct Notice to End Tenancy.

I also strongly caution the Tenant to treat the Landlord, the Landlord's Agents and staff, and the other occupants of the building, with courtesy and respect. The Tenant is not to interfere with their work and must cease making derogatory comments to them. The Tenant should be aware that disturbing the staff or other occupants is another cause for which the Landlord might end the tenancy.

Furthermore, the Tenant has no authority over the staff of the Landlord and must not interfere with them or their work.

Conclusion

The Tenant has failed to prove most of her claims and these are dismissed without leave to reapply.

The Landlord has charged the Tenant taxes on rent, and the Tenant is not required to pay taxes on rent under the Act. I award the Tenant **\$141.80** for the return of taxes paid and order the Landlord to cease charging the Tenant for these taxes. I also note that the parties may agree to deduct this sum from one month of rent.

Both parties are advised to adhere to the Act, regulations and policy guidelines.

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 Act.

Dated: September 14, 2012.

Residential Tenancy Branch