



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to an Order of Possession for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this month to month tenancy started on February 15, 2009 and ended on October 01, 2012. The rent decreased over the term of the tenancy from \$875.00 to \$800.00. Rent was due on the first day of each month.

The tenant testifies that In August, 2012 she wanted to end the tenancy for September 01, 2012 however the landlord would not allow this without one month's written notice. The tenant testifies that she paid rent for September and gave written notice effective for October 01, 2012.

The tenant testifies that the landlord has entered her unit illegally without proper notice during the tenancy. The tenant testifies that she sent the landlord an email in April, 2012 about entry into her unit by the landlord while the tenant was not at home. The tenant testifies that she found the landlord had entered her unit because the thermostat had been tampered with on two separate occasions. The first time the tenant had been away in May, 2011. The tenant testifies that she had left the door unlocked so the landlord could do some work to the flooring between the units. When the tenant came back to her unit the tenant found an object had been inserted into the thermostat to prevent the tenant turning the heat up. The tenant testifies that she removed this object and the plate it was attached to in the thermostat.

The tenant testifies that the second time this happened was when the tenant was away in March, 2012. The tenant testifies when she returned to her unit she found the landlords had entered the unit and inserted toothpicks and tape to prevent the tenant turning the heat up. The tenant testifies that neither of these objects was in the thermostat prior to her trips away and on the second occasion the tenant had locked her door. The tenant testifies that she knows the landlord must have entered the unit because no one else had access to the unit and prior to her trips the tenant could turn the heat up above 20 degrees.

The tenant testifies that there was another incident when repairs had to be made to her unit after a flood occurred. The landlord had told the tenant that a repair man was coming to her unit on a Monday and the tenant agreed to this; however, the repair man turned up on a Friday without the tenants permission or knowledge and the landlord did not try to contact the tenant to gain permission but rather just let this repair man into the tenants unit. The tenant testifies that when she returned to her unit on the Friday she

found some of her belongings had been moved around. The tenant testifies that this was not an emergency repair as the flood had happened a week ago.

The tenant seeks to recover the sum of \$800.00 because the tenant feels the landlord broke the terms of the tenancy agreement by these three illegal entries and therefore the tenant should have been able to end the tenancy for September 01, 2012. Consequently the tenant seeks to recover Septembers rent in compensation.

The tenant has provided copies of e-mails between the tenant and landlord in evidence and photographic evidence showing objects in a thermostat.

The landlord disputes the tenants claim. The landlord testifies that they have never entered the tenants unit without permission and the landlord is surprised that the tenant did not mention this at the end of the tenancy. The landlord testifies that the tenancy ended on good terms and they returned the security deposit to the tenant.

The landlord testifies that the tenant did send an email in April concerning the tenants concerns about the landlord entering her unit however the landlord had replied to this and stated that they had not entered the tenants unit and would not do so without either a notice or the tenant's permission. The landlord testifies that the tenant did agree to leave her door open on one occasion so a flooring trim could be put between the units but the landlord denies tampering with the tenant's thermostat.

The landlord testifies that her daughter had lived in the rental unit prior to this tenant and the landlord agrees that at the time her daughter lived in the unit the landlord had fixed some toothpicks and tape in the thermostat to prevent her daughter turning the heat up. The landlord also testifies that the thermostat could still be turned up to 25 degrees. The landlord testifies that they have looked at the tenant's picture of an object taken from the thermostat and they have no idea what this is or if it is something to do with a thermostat.

The landlord testifies with regard to the tenants claim about a repair man going into her unit and states this was an emergency repair. The landlord testifies that they were away on holiday the week before when a flood occurred and when they returned they had to set up appointments for the restoration and insurance company to look at the damage and make repairs to prevent further damage. Some of this work had to take place in the tenants unit. The tenant was given a free month's rent for August due to the flood and the fact the tenant had to leave her unit for a few weeks. The landlord testifies that the tenant has happy with this arrangement as she had planned to go away for a few weeks.

Analysis

With regard to the tenants claim that she is entitled to compensation equal to Septembers rent of \$800.00 because the landlord had breached the tenancy agreement by entering the tenants unit on three occasions without permission; I have considered the parties testimony and documentary evidence of the tenant. When a person's testimony and evidence is contradicted by the testimony of the other party the person making the claim must provide corroborating evidence to meet the burden of proof.

The tenant has provided two photographs showing objects in what the tenant describes as her thermostat. However the first photograph is not evident as to what this object is and the landlord disputes that she put anything in the thermostat and does not recognize what this is a picture of. The second picture does show some toothpicks and tape in what is clearly a thermostat however the landlord argues that this was put in prior to this tenant's tenancy. The tenant has also provided some e-mail correspondence between the parties but this again does not prove the landlord did enter the tenants unit to tamper with the thermostat. Consequently, I am not satisfied that the tenant has met the burden of proof that the landlord entered the tenants unit in May, 2011 and March, 2012.

With regard to the tenants claim that the landlord allowed a repair man to enter the tenants unit at an unscheduled time; I refer the parties to s. 33 (1) of the *Act* which refers to emergency repairs and when a landlord may enter a rental unit:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

When a flood has occurred a landlord is entitled to ensure the property is preserved and that the issue surrounding the flood is contained and any damage repaired.

Consequently, even though the tenant argues that the flood happened a week before the repairman entered. A landlord is still entitled to enter a tenants unit to make repairs to preserve the property and the health and safety of the occupants as the landlord was away from home when the flooding occurred.

Consequently, I find the tenant has not met the burden of proof in this matter concerning compensation and has provided no proof the landlord entered her unit without proper notice or permission. If the tenant had concerns in May, 2011 and March, 2012 that the landlord was entering her unit without permission or proper notice the tenant should have filed an application at that time to suspend or set conditions on the landlord's right to enter the rental unit.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: November 09, 2012.

Residential Tenancy Branch