



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MNDC OLC LRE LAT RR

Introduction

This hearing convened to deal with an Application for Dispute Resolution filed on November 27, 2012, by the Tenant, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and for Orders to: have the Landlord comply with the Act; to suspend or set conditions on the Landlord's right to enter the rental unit; to authorize the Tenant to change the locks to the rental unit; and to all the Tenant reduced rent for services or facilities agreed upon but not provided.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Tenant be awarded an additional reduction to her rent?
2. Is the Tenant entitled to monetary compensation in addition to the rent reduction?
3. Should the Landlord be Ordered to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: Previous dispute resolution decisions, a municipal order; letters to the

Landlord requesting written notice of entry; and a notice of entry issued by the owner on October 18, 2012. The Landlord did not submit documentary evidence.

The parties had attended dispute resolution proceedings on December 14, 2011, January 18, 2012, May 24, 2012, and July 5, 2012, regarding four separate applications filed by the Tenant for requests to cancel notices to end tenancy for cause and landlord's use of the property; to have the Landlord comply with the Act, regulation, or tenancy agreement, and for reduced rent.

During the current proceeding held January 8, 2013, the parties confirmed the following facts:

- The Tenant had entered into a written agreement with the previous owner to rent a bedroom with access to common areas beginning in June 2009.
- The current owner has not entered into a written agreement with the Tenant.
- The Tenant's rent was payable on the first of each month in the amount of \$450.00 and on May 7, 2009 she paid \$250.00 to the previous owner as the security deposit.
- On April 23, 2012, the municipality issued the Owners orders to stop operating the house as a rooming house and to make changes to the property which included, among other things, changes to the locks on each individual bedroom.
- It was determined in the May 24, 2012 hearing that the Landlord shut off the heat and discontinued services for the oven, TV/DVD and cable. The Tenant was awarded a rent reduction of \$35.00 for loss of TV/DVD & Cable and \$25.00 for the loss of the oven, reducing her rent from \$450.00 to \$390.00. The Tenant was also granted a onetime award of \$150.00 for loss of heat.
- The Tenant's rent remains at \$390.00 as the TV/DVD and Cable services have not been restored.

The Tenant submits that all other tenants have vacated the property leaving her the sole occupant of the house. The house has ten bedrooms, five upstairs and five downstairs, with one functioning kitchen located on the upper floor. She still occupies the same bedroom she had originally rented which is located in the lower level. Her bedroom is built around the lower exterior back door so she has a door leading to the outside and one leading into the inside common areas.

The Tenant advised that the Landlord has not turned the natural gas heat back on and the only thing heating the house is one electric baseboard heater located in the upper kitchen and a small portable heater she has in her bedroom. All common areas, other than the upstairs kitchen, have been without heat since May 2012.

The Tenant stated that the Owners and their Agent are regularly at the rental property, unannounced, and if she attempts to utilize any of common areas while they are there they yell at her in a different language. Specifically, every time she turns on the kitchen heater, a light, or attempts to use the kitchen or other common areas they begin to scream at her. She is of the opinion that no one should be attending the rental property without giving her proper notice posted to the exterior of the main entrance. She confirmed that they have been giving her notices; however, these notices have been posted to her bedroom door which she believes is against the Act. She is fearful because she has seen people looking into the yard, approaching the house, and has found the Agent in the common area when she has come out of the common area shower.

The Tenant is seeking permission to change the locks, at the Landlord's cost. She is also seeking reduced rent and compensation for loss of her peaceful and quiet enjoyment.

The Landlord submitted that the Tenant's tenancy involves rental of one bedroom and access to common areas, which is represented by the minimal amount of rent she is being charged. They argued that her tenancy has not converted to possession and private use of the entire house simply because other tenants have vacated.

The Landlord confirmed that the agents, owners, and contractors have been attending the property and that they have full access to common areas, and not the Tenant's bedroom. No one has entered the Tenant's bedroom. They confirmed that the owners have attended the property and cleaned the common areas. They have also attended the property with guests and contractors.

The Landlord stated that they are under scrutiny from the municipal building inspectors who attend the property on a regular basis, without notice, to see if the owners are complying with their orders. They were given two choices: rebuild, or demolish. The owners have engaged the services of contractors to begin the work to rebuild, as ordered, and have posted notices on the Tenant's bedroom door to inform her of their attendance at the property. They are involved in pre-construction inspections, and then will have to complete permit applications and construction. They were not required to obtain preliminary permits for the planning stages.

In closing, the Tenant confirmed that her rental agreement provides rental of a bedroom with access to common areas located on both levels. She noted that because she is the only remaining Tenant occupying the building she is not comfortable with people accessing the common areas unannounced, and she is not comfortable with the current latch lock on her bedroom door. In light of her concerns, I asked the Tenant why she chooses to remain. She stated that she was going to "ride this out until the end" and was not going to move until the Landlord met the requirements to have her evicted.

Prior to the expiry of the hearing time I issued the Landlord the following Order:

The Landlord is ordered to have the natural gas heat turned back on no later than close of business on January 8, 2013. The Landlord is further ordered to ensure that all common areas and the Tenants bedroom have adequate heat which complies with health and safety standards, pursuant to section 32 of the Act.

The Tenant was ordered to cease all payments of rent until this hearing is reconvened to review evidence submitted by the Landlord which proves the heat has been turned back on and until a decision is rendered which confirms they have complied with this order.

The parties were advised that when this hearing is reconvened we will only be discussing the above mentioned order. No other matters will be discussed or determined and the only evidence that will be accepted will be evidence proving that the natural gas heat has been turned on and heat has been restored to the common areas.

Analysis

I have carefully considered the aforementioned and on a balance of probabilities I find as follows:

The evidence supports the Tenant entered into an agreement for a single room occupancy unit which included possession and occupation of a bedroom with access to common areas. Notwithstanding repair or change orders issued by the municipality, I find the tenancy continues to be for possession of a single room with access to common areas.

The *Residential Tenancy Act* defines "**common area**" as any part of residential property the use of which is shared by tenants or by a landlord and one or more tenants.

The *Residential Tenancy Act* defines **landlord**", in relation to a rental unit, to include any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this.

After consideration of the foregoing I find the Landlord, owner, or agents have full unobstructed access to the common areas of the rental property. That being said, they are not to be restricting the Tenant's access or intimidating her while using the common areas.

The Landlords are required to comply with section 29 of the Act and provide the Tenant proper notice of any pending attendance of contractors or of any work being scheduled at the property. That notice may be posted to the Tenant's bedroom door and must include:

at least 24 hours notice (if posted to the door you must allow three days for receipt so would be 96 hours notice) 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.*

In response to the Tenant's request for additional reduced rent for services or facilities agreed upon and not provided I have issued interim orders to stop paying rent until I have seen proof that heat has been restored to common areas and have issued orders to resume payment of rent.

In regards to issues of intimidation, loss of quiet enjoyment or entry into the Tenant's bedroom, I find there is evidence that the Landlords provided written notice of contractors attending the property. The Landlord disputed the Tenant's allegations of intimidation or entry into her bedroom.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. Therefore, I find there to be insufficient evidence to meet the burden of proof for monetary compensation or for reduced rent and I dismiss those claims.

Conclusion

Notices of reconvened hearing have been sent to the participants. The Landlord is required to provide documentary evidence to the *Residential Tenancy Branch* and the Tenant no later than **February 4, 2013**, to prove that the natural gas heat has been turned back on, as ordered above.

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: January 18, 2013

Residential Tenancy Branch