



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AKM PROPERTY INVESTMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation in the form of a retro-active rent abatement. The tenant is claiming \$5,000.00 in damages for loss of quiet enjoyment.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation under section 67 of the Act for damages or loss?

Background and Evidence

The tenancy began in September 2011 with rent set at \$500.00. No security deposit was paid. The tenancy ended on April 2, 2013.

The tenant testified that in March 2011, the landlord took it upon herself to contact the tenant's daughter to discuss the tenant's tenancy. According to the tenant, the landlord harassed the tenant's daughter and, after trying to get the rent paid, suggested that the daughter obtain power of attorney. The tenant testified that the landlord accused her daughter of not caring properly for her mother and upset her daughter to the point of tears.

The tenant considers this action by the landlord to be unreasonable interference and feels that the landlord violated the tenant's right to quiet enjoyment.

In addition to the above, the tenant alleges that the landlord entered the tenant's rental unit without notice in March of 2013 and took some photos to use at the previous dispute resolution hearing to end the tenancy. Despite the date on the photos, indicating

that they were taken on March 4, 2013, the tenant's position is that the pictures were taken closer to the end of the tenancy when the tenant was already packed, as verified by the green garbage bags shown in the photos.

The tenant is seeking a 100% rent abatement for 10 months totaling \$5,000.00 for the violation of her right to quiet enjoyment under the Act.

The landlord acknowledged that she did call the tenant's daughter out of concern for her tenant's well being, because the tenant had recently had a stroke and was clearly struggling. The landlord testified that, at no time did she imply that the tenant's daughter was neglecting her mother, nor did she demand any rent money from the tenant's daughter. The landlord testified that there was only a single phone call and she has already apologized for the perceived intrusion. The landlord pointed out that this incident occurred over a year ago.

In regard to the accusation that the landlord had entered the rental unit in the tenant's absence and without written Notice, the landlord categorically denied that this occurred. According to the landlord, the photos were taken by the maintenance man when he was in the unit doing some repair work in March 2013.

The landlord disagrees with the tenant's claims and does not believe that any compensation is warranted.

Analysis

Section 7 of the Act states that if a party fails to comply with the Act, or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and to order payment under such circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove a violation of the Act or agreement and a corresponding loss.

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that 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, lawful purposes, free from interference.

I find that both parties testified that the landlord made a phone call to the tenant's daughter to discuss the tenant's situation and her health. I note that the tenant had apparently willingly provided her daughter's phone number to the landlord and that the daughter is considered to be the tenant's next of kin.

I find that the landlord's action in calling the tenant's relative to give, what was perceived as unwelcomed, advice, may have compromised the tenant's privacy and caused emotional stress that disturbed the tenant.

That being said, I accept the landlord's testimony that she had no intention of upsetting the tenant or the tenant's daughter.

I find that, although the tenancy was not devalued or disrupted by this incident for any significant duration, the tenant did suffer a total loss of quiet enjoyment of the rental suite for a period of one full day, and I grant a pro-rated rent abatement to the tenant in the amount of \$16.44.

With respect to the tenant's allegation that the landlord entered the suite without proper written Notice, I find that Section 29 of the Act states that a landlord must not enter a rental unit for any purpose unless the tenant gives permission at the time of the entry or at least 24 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;

or an emergency exists and the entry is necessary to protect life or property.

Section 29 (2) of the Act states that a landlord may inspect a rental unit monthly, in accordance with the Act.

I find that the burden of proof is on the tenant to prove that the landlord violated the Act by not giving 24 hours written notice before entering the suite and also to prove that the tenant suffered a tangible loss as a result of this lapse.

I find that the tenant's evidence consisted of disputed verbal testimony and that this does not suffice to meet the tenant's burden of proof to show that the landlord committed the transgression. In any case, even if I accepted that the landlord entered the suite without notice, I find that the tenant did not sufficiently prove that she suffered significant damage or loss, given the fact that the landlord could have entered the suite anytime, with proper notice and taken the same photos.

For this reason, I find that the tenant's claim for compensation with respect to the landlord entering the rental unit without notice or permission, must be dismissed.

Based on the testimony and evidence discussed above, I hereby grant a monetary order to the tenant for \$16.44, comprised of a rent abatement of one day for loss of value to the tenancy. The tenant must serve this on the landlord and the order may be enforced through an application to Small Claims Court if it remains unpaid.

Conclusion

The tenant is partially successful in the application and is granted a monetary order for a retro-active rent abatement due to devalued tenancy.

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: July 22, 2013

Residential Tenancy Branch