



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KINGSFORD COURT LTD.
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

On July 30, 2013 the landlord was provided an Order of Possession for unpaid rent and a Monetary Order for unpaid and loss of rent for the months of June and July 2013. Pursuant to an Application for Review Consideration filed by the tenant, a review hearing was ordered by way of decision issued September 9, 2013. In the review consideration decision the tenant was ordered to serve the landlord with the Notice of Review Hearing and the review consideration decision. The landlord was ordered to serve the tenant with a copy of the landlord's Application for Dispute Resolution and all evidence submitted by the landlord for the original hearing.

The review hearing commenced on October 23, 2013 and both parties appeared. The landlord confirmed receiving from the tenant the Notice of the Review Hearing, the review consideration decision, and the tenant's evidence package. I was satisfied the landlord served the tenant with an evidence package in early October 2013 that was the same as the package served upon the Branch by the landlord in early October 2013; however, I determined that the landlord had not served the tenant with the landlord's Application for Dispute Resolution and all of the landlord's original evidence as the landlord was ordered to do in the review consideration decision.

Despite the insufficient service of documents upon her, the tenant indicated she understood the nature of the landlord's claims against her from reading the decision issued July 30, 2013 and was prepared and would prefer to proceed with the review hearing as scheduled.

As I was satisfied the tenant was aware of the nature of the claims made against her and in consideration of the tenant's wish to deal with this dispute as scheduled, I continued with the review hearing. However, as I informed the parties, I would not consider the landlord's original evidence package in making my decision as it had not been served upon the tenant. Rather, I would accept and consider the evidence

packages served by the parties since the review consideration decision was issued as both parties confirmed receiving such packages from the other party. I also considered the verbal testimony provided to me during the review hearing, and as recorded in the original hearing decision of July 30, 2013, in making this decision.

Issue(s) to be Decided

Should the decision and Orders issued July 30, 2013 be confirmed, varied, or set aside?

Background and Evidence

I was provided the following undisputed facts:

- The one-year fixed term tenancy commenced January 1, 2013 and the tenant paid a security deposit of \$590.00.
- The tenant was required to pay rent of \$1,180.00 on the 1st day of every month.
- On May 30, 2013 the parties mutually agreed to end the tenancy as of July 31, 2013.
- The tenant's rent cheque for June 2013 was returned for insufficient funds.
- The landlord entered the tenant's unit for an inspection on June 11, 2013.
- The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on June 13, 2013 with a stated effective vacancy date of June 23, 2013.

The landlord testified during the review hearing that the 10 Day Notice was posted on the door of the rental unit; however, for the July 30, 2013 hearing the landlord had provided evidence that the 10 Day Notice was served by registered mail sent to the rental unit on June 13, 2013.

The landlord seeks compensation for unpaid and/or loss of rent for the months of June and July 2013 as the parties had agreed to end the tenancy effective July 31, 2013.

The tenant objected to paying rent for the latter part of June 2013 or the month of July 2013 as the landlord had illegally locked the tenant out of the rental unit in June 2013.

The landlord acknowledged that the landlord changed the locks to the rental unit in June 2013 but could not recall with any certainty the date this was done. The landlord had indicated in an email dated June 12, 2013 that the locks would be changed if keys were not returned to the landlord by June 13, 2013. During the review hearing, the general manager testified that the locks were changed June 20, 2013. Then he changed his

testimony to indicate the locks were changed "sometime around the effective date of the 10 Day Notice".

The landlord testified that the landlord determined the rental unit was abandoned by the tenant on June 11, 2013 when the landlord performed the inspection. The landlord stated that the tenant's vacuum, microwave, and some food were left in the unit.

The tenant testified that she had not abandoned the unit. The tenant submitted that she had moved the majority of her possessions out of the rental unit on June 8, 2013. She left town between June 14 through 17, 2013 to attend a wedding and returned to the property on June 20, 2013 for the intended purpose of cleaning the unit and removing the remainder of her belongings. When the tenant arrived at the property on June 20, 2013 the tenant found the locks to her unit were changed but she was able to access her mail box and found the 10 Day Notice. The tenant contacted the landlord via email on June 21, 2013 and advised the landlord she had been illegally locked out and that the landlord had her possessions.

On June 26, 2013 the landlord applied for an Order of Possession and Monetary Order and mailed the hearing documents to the tenant via registered mail using the rental unit address. Although the landlord was claiming the tenant had abandoned the rental unit as of June 11, 2013 in the decision of July 30, 2013 the Arbitrator recorded the landlord's testimony as follows: "The landlord's agent testified that the tenant failed to also pay rent for the month of July 2013 as far as she is aware the tenant still resides in the rental unit."

I noted that there is no mention in the landlord's Application for Dispute Resolution or in the July 30, 2013 decision that the landlord considered the unit abandoned or that the landlord had already changed the locks to the rental unit. The landlord responded that the tenant had not returned the keys so the landlord considered the tenant to be in possession of the rental unit.

As the landlord was of the position the tenant had abandoned the rental unit as of June 11, 2013, I enquired as to when the landlord started to advertise the unit for rent. The landlord testified that the unit was not advertised for rent until September 2013 as the landlord had not received the keys from the tenant and had to first obtain an Order of Possession.

The other part of the landlord's monetary claim related to damage to the walls in the common hallway. The landlord asserted that the tenant deliberately vandalized the walls. The landlord had applied for compensation of \$450.00 and originally provided a

“quote” to repair and paint the walls in the amount of \$450.00. Upon enquiry, the landlord testified that she was in possession of an invoice from the painter dated June 26, 2013 for \$472.00 including GST and that the work was completed June 26, 2013. The landlord could not provide an explanation as to why a “quote” was supplied for the original hearing when the landlord claims to have been in possession of an invoice.

The tenant acknowledged that some scuffs may have been caused running her hand along the wall with her keys in her hands and that she may be responsible for a portion of repainting costs. However, the tenant submitted that the walls in the common hallway are subject to scuffs by other people using the hallway and she should not be held responsible for the entire cost of repainting the walls. The tenant also pointed out that the landlord’s evidence regarding the cost to paint the walls was inconsistent and always changing. For example: the email communication from the landlord to the tenant indicated the cost for repairs was \$500.00; in the decision dated July 30, 2013 the Arbitrator referred to an “quote” for \$450.00 dated in 2011; and, then verbal testimony during the review hearing was that the landlord has an invoice for \$472.00 dated June 26, 2013.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to the landlord’s claims for unpaid and/or loss of rent and damage to the walls in the common hallway.

Under the Act, a tenant is required to pay rent when due under their tenancy agreement and I find the tenant was required to pay the monthly rent of \$1,180.00 on June 1, 2013. Since her rent cheque was returned the tenant violated her obligation under the tenancy agreement and the Act. Nevertheless, failure to pay rent does not automatically entitle a landlord to change the locks and seize a tenant’s possessions. The Act provides a remedy for landlord to regain possession of the rental unit when a tenant fails to pay rent.

The Act provides that a landlord may not seize a tenant’s possessions or change the locks while the tenant still is in possession of a rental unit without a court order (Writ of Possession). However, if a tenant has vacated or abandoned the rental unit possession of the unit automatically reverts back to the landlord and a court order is not required.

Based upon the evidence presented to me, I find the landlord changed the locks and removed the tenant’s possessions from the rental unit after June 12, 2013 (as indicated in the landlord’s email of June 12, 2013) and before June 20, 2013 when the tenant

returned to the property and found the locks changed; yet, the landlord did not have an Order of Possession or Writ of Possession at that time. Thus, the only legal basis for changing the locks would be if the tenant had already abandoned the rental unit, as submitted by the landlord during the review hearing.

Where abandonment of a unit comes into question, the landlord bears the burden to prove that it had a reasonable basis to conclude and did conclude that the rental unit had been abandoned by the tenant. Upon consideration of everything before me, I reject the landlord's submission that they had determined the rental unit was abandoned as I find the landlord's actions were inconsistent with that determination. I find the following actions taken by the landlord are inconsistent with a determination of abandonment on June 11, 2013 as the following actions would be moot, ineffective, or unnecessary if in fact the landlord thought the unit was abandoned:

- The landlord sent the 10 Day Notice to the tenant via registered mail using the rental unit address on June 13, 2013;
- The landlord applied for an Order of Possession on June 26, 2013 and sent the Application to the tenant via registered mail at the rental unit; and,
- During the hearing of July 30, 2013 the landlord gave affirmed testimony that she was of the belief the tenant was still residing in the rental unit.

Where a landlord chooses to serve a tenant by sending documents via registered mail, as did this landlord on June 13, 2013 and June 26, 2013, the Act requires that the registered mail must be sent to the tenant's address of residence at the time of mailing or the tenant's forwarding address. By sending the tenant documents via registered mail on the above dates; applying for an Order of Possession on June 26, 2013; and, making statements that the tenant was still residing in the rental unit as of July 30, 2013 I find the landlord had not acted in a manner that is consistent with determining the unit was abandoned as of June 11, 2013. Rather, I find it more likely the landlord argued abandonment at the review hearing only as the tenant submitted evidence pointing to an illegal lock out in June 2013.

I also find the tenant's actions inconsistent with abandonment as she returned to the property on June 20, 2013 for the purpose of removing the remainder her belongings and cleaning the unit. The tenant's attempts to enter the unit on June 20, 2013 and statements concerning the landlord's illegal actions were communicated to the landlord on June 21, 2013 via email; yet, the landlord proceeded at with a dispute resolution hearing without mention that possession had already been taken from the tenant.

Pursuant to the provisions of the Act, I find the tenant was legally entitled to possess the rental unit until the effective date of the 10 Day Notice, which should have read June 28, 2013 since it was mailed to the tenant. If the tenant remained in possession of the unit after June 28, 2013 the landlord would have to obtain the court order in order to remove her possessions and change the locks.

In light of all of the above, I find the landlord illegally changed the locks to the rental unit as the tenant had not abandoned the unit and the landlord did not have a court order. As such, I find the landlord not entitled to collect rent from the tenant after locking her out of the unit illegally. I find the best evidence of the date the landlord likely changed the locks is June 13, 2013 as evidence by the landlord's email of June 12, 2013 which states, in part:

...if I don't receive your keys return tomorrow at my office at [landlord's office address] tomorrow by 10:00am June 13, 2013. We will change the lock and further actions will be taken.

[reproduced as written]

Based on my findings above, I calculate that the landlord entitled to unpaid rent for the days of June 1 – 12, 2013 or \$472.00 [calculated as \$1,180.00 x 12/30 days].

Upon hearing from both parties, I accept that the tenant likely caused some damage to the common hallway walls although I am uncertain as to the extent of the damage. I accept the tenant's position that the landlord's submissions regarding the cost of repairing the wall was inconsistent. Further, the landlord's claim does not take into account depreciation due to wear and tear by other tenants and the natural aging process. Thus, I deny the landlord's request to recover the cost of repairing and repainting but in recognition of the tenant's actions that caused damage, I award the balance of the tenant's security deposit, or \$118.00.

In summary, the landlord has been awarded \$472.00 for unpaid rent and \$118.00 for wall damage and these awards are completely offset by the tenant's security deposit of \$590.00. By way of this decision, I authorize the landlord to retain the security deposit and I do not provide a Monetary Order to the landlord as I find the landlord has been sufficiently compensated for losses for which the tenant is responsible by way of the security deposit.

As provided by section 81(3) of the Act, following the review, the director may confirm, vary or set aside the original decision or order. As delegated by the director, I set aside the decision and Orders issued July 30, 2013. In particular, the Monetary Order issued July 30, 2013 is no longer enforceable and the landlord must not make any further attempt to enforce the Monetary Order.

Conclusion

The decision and Orders of July 2013 are set aside. The landlord is authorized to retain the security deposit in full satisfaction of unpaid rent and wall damage by way of this decision.

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 22, 2013

Residential Tenancy Branch

