



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC RP LRE LAT RR O

Introduction

This hearing dealt with two applications by the tenant. The teleconference hearing was first convened on October 29, 2013, pursuant to the first application by the tenant. In this application, the tenant applied for monetary compensation and a reduction in rent; an order for the landlord to comply with the Act, regulation or tenancy agreement; an order for repairs; and orders suspending or setting conditions on the landlord's right to enter the rental unit and an order authorizing the tenant to change the locks to the rental unit. The tenant and the landlord attended the teleconference hearing. At that time, the tenant requested an adjournment as she had a necessary medical appointment. Additionally, I noted that another hearing was scheduled to be heard the following week, pursuant to the landlord's application to end the tenancy early. Based on the tenant's request, as well as the fact that several of the items that the tenant applied for were related to whether the tenancy would continue or not, I determined it was appropriate to adjourn the tenant's application.

The landlord's application to end the tenancy early was not successful. The tenant's application was scheduled to reconvene on December 9, 2013. The tenant filed a second application, which I was scheduled to hear on December 2, 2013. As the tenant's second application dealt with essentially the identical issues as the first application, I ordered the two applications joined. The parties were sent notification that the tenant's two applications would be heard on December 2, 2013.

At the outset of the reconvened hearing, which was attended by the tenant, the landlord and counsel for the landlord, the tenant stated that she had not received notice that the two files had been joined. I explained to the tenant that I joined the two files because they dealt with the same matters, and I told her that if she felt she could not properly address her second application in this hearing, I would adjourn after dealing with the first application. It was not necessary to adjourn the hearing, as the parties were able to give full testimony regarding all issues in both applications. It was not necessary for me to hear from the tenant's witness, as the tenant verified that the witness would only be confirming the tenant's evidence.

The landlord stated that he did not receive the tenant's photographs, which the tenant sent to the landlord by regular mail. I did not admit the photographs as evidence;

however, the tenant described the alleged damage in the photographs and the landlord was given the opportunity to provide testimony in response. I have reviewed all testimony and other admissible evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issues

At the outset of the reconvened hearing, I asked the tenant to clarify two issues. The first issue was whether the tenant was growing medicinal marijuana in the rental unit, and the tenant confirmed that she was. The tenant also confirmed that she did not obtain the landlord's written permission to do so, but stated that she did everything legally, and that she was not required to obtain the landlord's written consent.

The second issue was whether the tenant's friend was keeping two guns in the rental unit. The tenant also confirmed this fact, and stated that the guns were being stored legally.

I told the parties that I was not making a determination in this hearing regarding the legality of the marijuana or the guns, but I warned the tenant that the landlord may seek to pursue those issues through a notice to end tenancy for cause, and the legality or other impact of these issues may then need to be determined in a future hearing.

At the outset of the hearing I also informed the tenant that a handwritten clause in the tenancy agreement, which denied the landlord entry to the rental unit without the tenant present or approved by the tenant, was not an enforceable clause as it was contrary to section 29 of the Act.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation or a reduction in rent?

Should I order for the landlord to comply with the Act, regulation or tenancy agreement?

Should I order the landlord to carry out repairs?

Should I grant orders suspending or setting conditions on the landlord's right to enter the rental unit and/or authorizing the tenant to change the locks to the rental unit?

Background and Evidence

The tenancy began on September 15, 2013 as a fixed-term tenancy to end on September 30, 2014. The monthly rent is \$925. The rental unit is an apartment in a six-unit dwelling.

Tenant's Evidence

The tenant stated that she has had problems with the rental unit and the landlord since she moved into the unit, on September 30, 2013. She stated that the rental unit was not clean when she moved in, and the landlord agreed to pay the tenant \$200 to do cleaning. The tenant stated that the hot water tank is too small for the unit, as she only has enough hot water for a very short shower and not enough for a bath; the tenant requested that the landlord replace it with a larger tank. The tenant also made written requests for repairs including deck repairs, as almost all of the nails are sticking up about one inch from the surface and the wood is bowed; repairing the kitchen countertops and plumbing, as the countertops are rotting and the plumbing and shutoffs need repairs; and replacing the breakers in the fuse box or doing other electrical repairs, as the tenant still loses power once or twice a week. The tenant stated that every day she gets up and she is covered in bugs, and because of the mould in the suite, she has gotten physically sick, throwing up every day, and she can't work. The tenant stated that the landlord has not carried out the requested repairs, and refuses to do so until ordered. The tenant seeks repair orders; \$200 for cleaning; a reduction in rent and return of all rent from September 15, 2013 to November 30, 2013.

The tenant stated that, her motorcycle was damaged while it was parked in the building's parkade. The tenant stated that on October 20, 2013 she went to the parkade to put a new lock on her motorcycle, and saw that the landlord was doing some work on the parkade door. When the tenant returned later in the day, she discovered that her motorcycle was "absolutely trashed." The tenant holds the landlord responsible for the damage to her motorcycle, and seeks \$5,000 in compensation for this damage.

The tenant stated that the landlord has been coming into the tenant's unit without notice or permission, and he has made comments about wanting to see her bras and panties in her drawers. The tenant stated that the landlord would not issue rent receipts until the tenant requested them. The tenant stated that on three occasions the landlord illegally disclosed the tenant's personal health information. The tenant stated that she becomes very anxious when people come into her personal space, and she feels like the whole world is crashing down on her. In her first application the tenant claimed \$1,000 for fear and stress, and the inability to safely use the parkade. She also applied for orders allowing her to change the rental unit lock and suspending or setting conditions on the landlord's right to enter the rental unit. In her second application the tenant claimed \$5,000 for the landlord harassing and sexually harassing her, and for releasing her personal health information.

Landlord's Response

The landlord stated that when the tenant viewed the rental unit and then signed the tenancy agreement in August 2013, she did not have any complaints about the cleanliness of the unit or the carpets. The landlord submitted a written statement from the previous tenants, who resided in the unit until May 31, 2013, and they indicated that they had no issues with the electrical system, the hot water or any mould during their tenancy. The landlord repainted the unit and got the cabinets cleaned on July 27, 2013. The landlord stated that when the tenant complained about missing shelves in the fridge the landlord purchased new ones, and when the tenant complained about the kitchen sink, the landlord agreed to reimburse the tenant for the new tap as well as for her cleaning costs, after the tenant provided receipts. In regard to the tenant's motorcycle, the landlord stated that he did not see anyone other than tenants going into the parkade on the day in question.

The landlord stated that when the tenant informed the landlord on October 2, 2013 that there was a problem with the power, the landlord attended the rental unit with an electrician on October 3, 2013, but the tenant would not let the landlord in. The electrician flipped the breaker and then asked the tenant if he could do a full inspection to diagnose the problem, but the tenant refused to allow the electrician to go upstairs. On October 5, 2013 the tenant complained about the kitchen cabinet, and the landlord arranged for repairs on October 6, 2013. As there were all of a sudden problems with the unit's electricity and plumbing, the landlord gave the tenant a 24-hour notice of inspection. The landlord stated that he was informed that the tenant had altered the electrical panel and the kitchen plumbing, without the landlord's authorization. When the landlord attended the unit to inspect, the tenant had changed the locks. The landlord stated that he has never entered the rental unit since giving the keys to the tenant on September 10, 2013.

Analysis

Upon consideration of the evidence, I find as follows.

I find that the tenant is entitled to reimbursement of her cleaning costs and the cost of the new kitchen tap, up to a maximum of \$200, after the tenant gives the landlord the receipts.

I accept the tenant's evidence that she has insufficient hot water in her unit, and she is entitled to compensation and a reduction in rent of \$75 per month, from October 1, 2013 until such time as the landlord takes steps to remedy the lack of hot water for the unit. If the landlord does take those steps and seeks to have the rent reduction ended, he must apply for such an order and provide evidence that he has done so.

I accept the tenant's evidence that the rental unit requires repairs, particularly in regard to the nails sticking up on the deck and the kitchen countertops and plumbing. I find that the tenant notified the landlord of these issues, but the landlord was unable to address any problems with the unit because the tenant would not allow the landlord access to the rental unit. I therefore deny the tenant monetary compensation for these issues, but I order the landlord to carry out repairs to the nails sticking out on the deck and kitchen countertops and plumbing. These repairs must be completed by January 31, 2013. If the repairs are not completed by this date, the tenant may deduct \$25 from her rent for the nails on the deck and \$100 per month for the kitchen countertops and plumbing, until such time as the landlord satisfactorily completes these repairs.

In regard to the bowed boards on the deck and the electrical issues, I find that the tenant has not provided sufficient clear evidence for me to grant compensation. The tenant has not quantified how the bowed boards on the deck have impacted her use of the deck. Further, it is not sufficiently clear to me that the tenant's grow-op equipment is not having an impact on the electrical system. I find it is necessary to order the landlord to carry out a full inspection of the rental unit's electrical system by a certified electrician. This inspection must be done before January 15, 2013, and the landlord must serve the tenant with a copy of the inspection report. If the inspection shows that the problems are being caused by the system itself, rather than the tenant's grow-op equipment, I order the landlord to carry out necessary repairs to the electrical system by January 31, 2013. If the landlord fails to do so, the tenant may deduct \$100 per month from her rent until such time as the landlord satisfactorily completes these repairs.

I find that the tenant is not entitled to compensation for her motorcycle. The tenant did not provide sufficient evidence to show that the landlord failed to keep the parkade reasonably secure to prevent the damage to the motorcycle. The landlord has no further obligation under the Act or the tenancy agreement to safeguard the tenant's property in common areas from damage caused by other parties. I therefore dismiss this portion of the tenant's claim.

In regard to the tenant's monetary claims for stress and harassment, and for orders limiting the landlord's access to the unit and allowing the tenant to change the locks, I find that the tenant has been at least in part responsible for the conflict between the landlord and the tenant. The tenant did not have the authority to forbid the landlord from entering the rental unit for a reasonable purpose after receiving the landlord's written notice, and the tenant did not have authority to change the locks. The tenant has apparently also been carrying out some electrical and plumbing repairs or modifications without the landlord's consent. I therefore do not find the tenant is entitled to monetary compensation for stress and harassment, and I do not find it necessary to make orders

further limiting the landlord's access to the unit or allowing the tenant to change the locks.

As the tenant's second application was not successful, I find that she is not entitled to recovery of the filing fee for that application.

Conclusion

The tenant is entitled to \$300 for insufficient hot water from October 2013 to January 2014 inclusive. The tenant is also entitled to deduct \$75 from each month's future rent until such time as the landlord applies for cancellation of this deduction based on sufficient repairs to the hot water in the rental unit.

I grant the tenant a monetary order for \$300. The tenant may either serve this order on the landlord and enforce it in Small Claims Court, or she may satisfy the order by deducting \$300, in addition to any other authorized deductions, from her next month's rent.

I order the landlord to carry out repairs to the nails in the deck and the kitchen countertops and plumbing and to properly inspect the electrical system, by the dates indicated above. If the landlord does not complete these repairs within the deadlines, the tenant is entitled to deduct rent, as indicated above, until such time as the repairs are completed.

The remainder of the tenant's application is dismissed.

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: December 27, 2013

Residential Tenancy Branch