



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes MNDC, MNR, PSF, RP, RR, FF

Introduction

This was the hearing of an application by the tenant as a result of a review decision dated December 3, 2013. The hearing was conducted by conference call on January 31, 2014. The tenant and the landlords called in and participated in the hearing. The tenant originally applied for a monetary award and for permission to change the locks to the rental unit. A hearing was conducted by conference call on November 13, 2013. The tenant attended the hearing. The landlords did not attend and did not submit documentary evidence in reply to the original application.

In original application for dispute resolution brought by the tenant and later amended by her, she claimed a monetary award in the amount of \$18,725.17 as well as a rent reduction, repair orders and permission to change the locks to the rental unit.

In the November 13, 2013 decision that is the subject of this review, the tenant was granted a monetary award in the amount of \$3,162.25. The arbitrator awarded her \$150.00 compensation for a "move in fee" charged by the landlord. He awarded her \$450.00 for cleaning that she performed after she moved in. The arbitrator denied the tenant's claim for loss of employment income for time she claimed to have taken from work to deal with tenancy issues. He also denied her claim for medications to treat stress and anxiety alleged to have been caused by the landlord; he found insufficient evidence that the landlord's conduct caused her to require the medications.

The arbitrator found that the landlord had breached the implied covenant of quiet enjoyment by failing to provide premises in a good and clean condition and with functioning appliances and fixtures and by failing to provide a storage unit until after October 5, 2013. He awarded the tenant $\frac{3}{4}$ of her rent for the first month of her tenancy in the amount of \$1,050.00 and half her rent for the second month in the amount of \$700.00. He found that there had been no significant breach after that point.

The arbitrator denied the tenant's claim for damages in the amount of \$12,000.00 said to be for stress and inconvenience suffered by the tenant. He found no medical evidence to support this contention and granted her a nominal award of \$100.00. He awarded her a further \$100.00 as compensation for a minor cut to her wrist that occurred when she was cut by a piece of glass that fell from a light fixture.

The arbitrator awarded the tenant the \$100.00 filing fee paid for her application and granted the tenant a monetary order in the amount of \$3,162.25. He authorized the tenant to withhold payment of rent to the landlord until the judgment amount had been satisfied.

Both the landlord and the tenant applied to review the original decision. The landlord applied on the basis that she was unable to attend and on the ground that she had new and relevant evidence not available at the time of the original hearing. The tenant also applied for review on the ground of new and relevant evidence. The landlord's review application was granted. Each party submitted new documentary evidence and the matter was scheduled to be heard by conference call on January 31, 2014. At the January 31, hearing I heard testimony from each of the parties and they were given the opportunity to ask questions and comment on the evidence presented by the other party.

Issue(s) to be Decided

Is the tenant entitled to a monetary award from the landlord?

Is it appropriate to authorize a change of locks to the premises?

Background and Evidence

In addition to the documentary evidence presented at the original hearing, the tenant submitted a letter from her physician dated November 21, 2013. She submitted a handwritten note from her chiropractor and a letter from her employer stating that she was absent from work in regards to her apartment on two days in October and two days in November. The tenant submitted records from Canada Post concerning delivery of documents, a receipt for payment of a \$150.00 move in fee and more photographs of the rental unit.

In the November 21, 2013 letter the tenant's doctor said that the tenant has been her patient since 1991. The tenant attended her office on October 4, 2013 with complaints of anxiety and insomnia as a result of conflict with her landlord. She said that the tenant: "did have an upcoming court date regarding this matter and was quite tearful

and distraught. As a result, she was prescribed Cipralex and Zopiclone to help decrease her anxiety and improve her sleep.” The doctor said that she saw the tenant again on November 13th and noted that there was a general improvement in her mood and sleep. She said the tenant was still quite emotional and had difficulty sleeping. She recommended that the tenant continue taking the prescribed drugs.

The doctor said that:

I do feel she will require these medications if she continues to live in her present residence. She states that her landlord has continued to be hostile and threatening.

In a handwritten note the tenant’s chiropractor said that he saw the tenant on October 3, October 12, and November 21st. He said that at each visit her symptoms were severe head pain with pressure & headaches with association to abnormal shoulder tension. And spasm He said the symptoms were not related to trauma and remarked that: “These symptoms were brought on by stress (physical & mental)”.

The landlord submitted a 41 page written submission together with supporting documents in response to the tenant’s claim. The landlord said that the rental unit is a seven year old strata title apartment. The rental unit was extensively damaged when it was sublet and used for illegal activities. In August the tenant was anxious to rent the unit, even though it was not yet ready for occupancy. The landlord agreed to rent the unit commencing September 1st. She said the tenant prepared the rental documents after she told the landlord that she was very good at document writing.

There was a move in inspection on August 18th and the stove was found to be broken. The landlord said that parts were ordered, but the tenant insisted upon being present when the technician came to fix the stove. She said that the tenant was not accommodating and several appointments had to be cancelled. The repair was finally completed on September 28th.

With respect to the tenant’s claim for reimbursement of a \$150.00 move in fee, the landlord said that this was a charge by the strata corporation and was not imposed by the landlord. The landlord said that the tenant was aware of the charge as confirmed in an earlier e-mail exchange. She noted that the tenant refused to sign the strata corporation Form K, although she was obliged to do so and the move in fee is a matter provided for in the strata corporation by-laws. The landlord said that she is being assessed fines because the tenant is refusing to sign the Form K.

The tenant complained about delays in getting a mail box key and having access to a storage locker. The landlord disputed the claim, but acknowledged that the key was not delivered at the commencement of the tenancy and the locker was not cleared out and empty for the tenant's use until October 4th.

The landlord referred to e-mail exchanges with the tenant in mid August before the tenancy began about painting the rental unit. The landlord denied that the rental unit was in need of re-painting or that she offered to pay the tenant to repaint. She said the unit needed only a minor paint touch up and the tenant was allowed to have possession of the rental unit without charge from August 18th onwards to do any cleaning she might want.

With respect to the tenants claims for anxiety, stress and medications, the landlord said that the tenant exhibited signs and symptoms of anxiety and overly emotional response before the tenancy even began. She said that the tenant was emotional crying and upset during discussion before the landlord agreed to rent the unit to her. The landlord noted that the tenant commenced her application to claim a substantial monetary claim on September 17th, barely two weeks into the tenancy.

The landlord disputed the tenant's claims with respect to the amount of cleaning needed after the tenant moved in. The landlord acknowledged that there was a crack on the glass cover on the bathroom lighting. She said the landlord purchased new lighting that was ready to install, but the work was delayed because the tenant wanted to install a new and larger bathroom mirror and wanted different lighting to match the mirror after the tenant changed her mind about the mirror and after the tenant canceled appointments with the electrician, the lighting was finally installed on October 4th.

The landlord delivered their own chronology of the tenancy in response to the chronology provided by the tenant.

Analysis

This is the review hearing of the tenant's claim. The review was ordered to be conducted by convening a new participatory hearing. Although I have conducted a new hearing and heard oral testimony and reviewed new documentary evidence, this matter is nonetheless a review of the original decision and that decision is the starting point for my consideration because, based on the evidence, I must determine whether to confirm, vary or set aside the original decision and order.

The tenant has submitted evidence from her doctor, chiropractor and from her employer in support of her claims for loss of employment income and for damages for stress and anxiety. The landlord has responded with her own evidence that the tenant has been difficult, demanding and emotionally overwrought from the very outset of her contact with the landlord, before the tenancy was even agreed upon. The tenant's evidence from her employer does not include any evidence of wage loss to support an award from the landlord related to her employment. With respect to the medical evidence the letter and note submitted is based upon information given to the practitioners by the tenant. It may provide confirmation that the tenant was anxious and feeling stressed as a result of her dealings with the landlord and with respect to the tenancy and the upcoming hearing, but it does not support a finding that the landlord's behaviour towards the tenant was untoward or that it constituted behaviour that could objectively be considered likely to produce acute anxiety and stress deserving of compensation. It is telling that the tenant's claim including the claim for stress was advanced so early in the relationship and then expanded to include later events. I agree with the finding and decision of the original arbitrator with respect to these matters and I find that the additional evidence submitted by the tenant does not cause me to reach a different conclusion. I confirm the original decision to deny the tenant's claims for loss of employment income and for stress and inconvenience save for the nominal award that granted in the sum of \$100.00 and a further \$100.00 for the minor wrist injury

With respect to the tenant's claims for cleaning and for loss of quiet enjoyment, I consider the awards to the tenant to be generous, but there was evidence to justify the amounts and after considering the landlord's evidence, I do not find that they should be varied. The tenant did not present evidence on the review to support a change to the original decision to deny the tenant's request for authorization to change the locks and I confirm the original decision on this point.

There is one matter that I find should be altered and that is the decision to award the tenant the sum of \$150.00 charged as a move in fee. The evidence provided by the landlord confirmed that this is a charge imposed by the strata corporation and disclosed in the by-laws of the strata corporation. The tenant knew that the rental unit is a strata title apartment and she is sophisticated as to rental and real estate matters. The tenant has thus far refused to sign the form K to acknowledge that she will abide by the by-laws of the strata corporation, but I find that she is nonetheless bound to adhere to them. There was no agreement by the landlord to pay this charge on the tenant's behalf and I find that she is not entitled to a refund of the \$150.00 fee that she paid. I therefore vary the original decision and order and dismiss her claim to recover this amount. In all other respects the original decision and order is confirmed.

Conclusion

The monetary order in favour of the tenant in the amount of \$3,162.25 and dated November 13, 2013 is set aside and it is no longer valid or enforceable. In place of the said order I grant the tenant a monetary order in the amount of \$3,012.25. Any sums paid to the tenant or deducted from rent by the tenant will be credited as payments made in satisfaction of this order. If the November 13th order has been fully satisfied, then the tenant must forthwith refund to the landlord the sum of \$150.00. If paid and not refunded the landlord may retain the said sum from the security deposit that it holds.

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: February 28, 2014

Residential Tenancy Branch

