



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, the landlord and the landlord's witness.

I note these same parties attended a hearing on March 9, 2015 based on the landlord's Application for Dispute Resolution seeking a monetary order for unpaid rent or utilities; compensation for damage to the rental unit and other losses or damages; and to retain the security deposit.

A decision was written by the Arbitrator conducting that hearing on March 9, 2015 in which she determined the tenant was responsible for the payment of rent for the month of August 2014 (\$800.00); compensation for carpet cleaning and window repair (\$269.55); and to recover the filing fee (\$50.00). The Arbitrator ordered the landlord was entitled to retain the security deposit of \$400.00 and issued a monetary order for the remaining balance owed in the amount of \$719.55.

As a result and despite the tenant's claim for return of the security deposit and seeking "cancellation of Aug rent" in his Application for Dispute Resolution I find these matters to be *res judicata*. *Res judicata* is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgment on the merits has been made; and the involvement of the same parties. Therefore, I amend the tenant's Application to exclude these matters.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or losses suffered by the tenant as a result of the tenancy and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 28, 29, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenant moved into the rental unit in June 2013 under an 8 month fixed term tenancy agreement. The tenant submitted into evidence a copy of the subsequent tenancy

agreement signed by the parties on February 28, 2014 for a 6 month fixed term tenancy beginning on March 1, 2014 for a monthly rent of \$800.00 due on the 1st of each month. The tenancy ended when the tenant vacated the rental unit in August 2014.

The tenant submits that on June 25, 2014 he first saw a notice attached to the door of the laundry room indicating that no one was to enter the room and that the room was under construction. The tenant submits that with the exception of July 23, 2014 when he was given specific instruction that he could use the laundry room the notice remained on the door until he vacated the rental unit on August 11, 2015.

The landlord and his witness submit that the construction only took a few days after which the washer and dryer were hooked up and the tenant was verbally told that he could use the laundry room. The witness testified that she had left the do not enter sign up so that the tenant's children and/or guests would not go into the laundry room.

The parties agree that in late April or early May 2014 there was a leak from the hot water tank that resulted in the tenant not having hot water for several days. The landlord submits the hot water was not available from May 1, 2014 to May 5, 2014, and it was only this long because the plumber was not available on Saturday and Sunday.

The tenant submits that his cable had not worked properly and that he indicated as much to the landlord's witness when she completed an inspection of the rental unit and that she noted it on her report but that nothing was ever done about it. The landlord and his witness do not recall ever being informed of any problems with the cable and indicate the current tenant has not complained about any problems with cable.

The tenant also submits that the landlord had conducted several inspections that were uncalled for and were in excess of the amount allowed. The tenant did not provide specific dates but recalled that the first inspection was prior to the end of his third month in the tenancy; that there was a follow up inspection a couple of weeks later; another inspection in January 2014 with a follow up in February.

The landlord submits that his practice is to have an inspection at least every 3 months and that a follow up may have been required to ensure the tenant had followed through on concerns raised by the landlord as a result of an inspection.

The tenant seeks compensation in the amount of \$400.00 for these issues.

Analysis

As the tenant did not provide a specific breakdown of the how much compensation he sought for each of the alleged infractions and the tenant has identified 4 distinct alleged infractions I have considered that the tenant is seeking equivalent compensation for each alleged infraction or \$100.00 for each one.

Section 27 of the *Act* states a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement. The section goes on to state that the landlord may restrict or terminate a service or facility that is not essential or a material term if the landlord gives 30 days' written notice of the termination or restriction, and

reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Based on the evidence and testimony of both parties I find that the landlord did restrict the laundry services without adequate notice. While I accept that the landlord may have provided access to the tenant on July 23, 2014 to complete some laundry, I find the landlord has failed to establish that the tenant was informed that he could again use the laundry facility after work was completed.

Even if I were to accept that the landlord had verbally informed the tenant that he could use the laundry again, I find that by leaving the sign on the laundry room door, as confirmed by the landlord's witness, the tenant would have received conflicting information about whether or not he could use the laundry.

As such, I find the landlord did not sufficiently reinstate the use of the laundry service and the tenant was deprived of this service for a period of 6 weeks. As such, I find the tenant is entitled to compensation in the amount of \$100.00.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of entry; at least 24 hours and not more than 30 days before the entry the landlord gives the tenant written notice that includes the purpose for entering, which must be reasonable and the date and time of entry; the landlord has an order from the director authorizing the entry; the tenant has abandoned the rental unit; or an emergency exists and the entry is necessary to protect life or property. Section 29(2) stipulates that the landlord may inspect a rental unit monthly.

Despite the tenant's claim that the landlord had complete inspections in excess of those allowed I note that Section 29 allows a landlord to inspect a rental unit monthly. While Section 29 does not speak specifically to a follow up inspection, I find that it is reasonable for a landlord who finds something during an inspection that requires the tenant to deal with a follow up inspection at a later date is reasonable.

From the testimony and evidence of both parties I find the tenant has failed to provide sufficient evidence that the landlord contravened the *Act* or the tenancy agreement in relation to entry into the rental unit for inspections. I dismiss this portion of the tenant's claim for compensation.

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

As to the issue of the hot water tank, I accept that it is the landlord's responsibility to ensure the rental unit complies with all requirements by law that make the unit suitable for occupation, which would include the provision of hot water.

However, as the landlord took reasonable steps, in a timely manner, to repair the hot water tank and the tenant has provided no evidence that the period without hot water or from the resulting flooding caused any losses or damages for the tenant I dismiss this portion of the tenant's claim.

Finally in regard to the tenant's claim for failure of the landlord to provide cable service I find the tenant has failed to provide any evidence that he informed the landlord of a problem. When two parties provide equally plausible accounts of events, the party making the financial claim has the burden of proof to provide sufficient additional evidence to corroborate their version of events. As such, I dismiss this portion of the tenant's claim.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$125.00** comprised of \$100.00 for loss of laundry services and \$25.00 of the \$50.00 fee paid by the tenant for this application, as he was only partially successful.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: March 12, 2015

Residential Tenancy Branch

