Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JUNIPER APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, LAT, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord company was represented by three employees. The female landlord LM (the landlord) confirmed that the landlord company received a copy of the tenant's dispute resolution hearing package including his amended application for dispute resolution sent by the tenant by registered mail on May 25, 2015. The landlord also confirmed that the landlord company received a copy of the tenant's written evidence. The tenant confirmed receiving a copy of the landlord's written evidence package. I find that all of the above documents were duly served to one another by the parties in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses or damages arising out of this tenancy? Should any orders be issued to the landlord company with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord company?

Background and Evidence

The tenant signed a fixed term tenancy agreement with a previous owner of this property on January 8, 2004, for a tenancy that began that month. Once the initial fixed

term ended, the tenancy continued as a periodic tenancy. Although the tenant was employed as a resident manager at one point during this tenancy, that relationship has ended. As per my previous May 26, 2015 decision on an application from the tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, I ordered that the correct monthly rent for this tenancy is $700.00.

The tenant amended his application for a monetary award of $1,200.00 to $1,470.00 on June 5, 2015. While it remains uncertain as to whether the tenant officially notified the landlord of his amended application, the landlord said that she was aware that the tenant was now seeking a monetary award of $1,470.00, plus the recovery of his filing fee. On this basis, I have considered the tenant's amended application for a monetary award. The tenant's amended Monetary Order Worksheet summarized his application for a monetary award of $1,470.00 as follows:

Item	**Amount**
Leave Without Pay from Work – May 22, 2015	$200.00
Stress Leave from Work – May 25-29, 2015	1,000.00
Reimbursement for Psychologist Visit – May 29, 2015	270.00
Total of Above Items	**$1,470.00**

The tenant also requested the issuance of an order against the landlord preventing the landlord from entering his rental unit. The tenant requested authorization to change the locks on his rental unit so as to prevent the landlord from entering his rental unit.

The tenant gave sworn testimony regarding three separate incidents, which he offered as "evidence" of the need for the issuance of an order requiring the landlord to refrain from entering his rental unit and to allow the tenant to change his locks.

The tenant said that the first incident occurred five or six years ago when the male landlord called him and entered his rental unit. The male landlord had no recollection of this event. The tenant's recollection was so incomplete that it added little to the tenant's application.

The second incident cited by the tenant involved a series of three separate times when the male landlord enlisted the tenant's assistance in acting as a witness when the male landlord wished to enter a rental unit while a tenant was not present. The tenant said that this occurred while he was a resident manager and demonstrated that the male

landlord was comfortable with entering rental units in this building without providing the required 24 hours of written notice to tenants in this building. The male landlord confirmed that he did enlist the service of the tenant to act as a witness when he entered rental units when the tenant was a resident manager. The male landlord emphasized that he only did so when there was an emergency, usually involving water damage or suspected water damage.

The third incident occurred on May 22, 2015. The tenant said that the male landlord knocked on his door at 2:46 a.m. with the building manager, Landlord EC, in attendance. The male landlord insisted on entering the tenant's rental unit because the tenant who lives below the tenant had contacted the building manager to report water leaking into his rental unit from the tenant's rental unit. When the tenant refused to allow the male landlord and the building manager access to his rental unit, the male landlord asked him to check for water leaks in the pipes in the bathroom and in the kitchen. The tenant said that he told the male landlord and building manager that there was "some water" on the kitchen floor. The tenant said that there was approximately the equivalent of two glasses of water on the floor of his kitchen. The male landlord and the building manager did not enter the rental unit as the tenant told them that he was calling the police because this was not an emergency situation. The tenant told the male landlord that he had no right to enter his rental unit at that time of night and without providing 24 hours written notice.

The building manager testified that she received a text message at 12:32 a.m. from the tenant living in the rental unit below the tenant. This tenant advised her that there was water dripping and leaking into his rental unit from the tenant's rental unit above him. The building manager said that she attended the rental unit of the tenant who reported the leaking. She entered that rental unit to discover that there was water leaking into the ceiling of that rental unit from above. She testified that she called the male landlord, who attended the rental property and went upstairs with her to look into the source of the water damage. The male landlord said that he pursued this matter immediately because he believed that this was an emergency situation which could not wait until morning if it were a leaking pipe. When the tenant refused entry to his rental unit and told him that there was some water on the kitchen floor, the male landlord abandoned his attempt to enter the tenant's rental unit. The male landlord said that he has a contracting background and is comfortable with undertaking plumbing repairs. He did not pursue this matter the following morning after checking with the resident below the tenant and confirming that there was no more water damage to that rental unit. He said that he believed that the tenant had not properly closed the dishwasher when he ran it that evening.

The tenant testified that this third incident was by no means an emergency, as evidenced by the landlord's failure to follow up on this matter the following day. He said that he undertook minimal repairs to a hose on the dishwasher himself that day and used plumber's tape to prevent the spraying that had developed leading to a small amount of water on the kitchen floor the previous night.

The tenant entered into written evidence some written evidence, documenting that he did not work during the week of May 25 – 29, 2015. He also provided a May 24, 2015 note from his doctor stating that he should be excused from work due to his current stresses. There was no further detail on this note. The tenant also provided a $270.00 receipt from his psychologist for a May 29, 2015 session with the tenant. Although the tenant said that his psychologist was familiar with his situation and how the May 22, 2015 incident triggered his ongoing conditions, he provided nothing in writing from her, nor had he advised her of any intent to call her as a witness in support of his monetary claim.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord's actions caused the damages or losses.

The following portions of section 29 of the *Act* are critical to my consideration of the tenant's application for a monetary award and for the issuance of the orders the tenant has requested:

> ***29*** *(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*
>
> > *(b) at least 24 hours and not more than 30 days 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;…*
>
> *(f) an emergency exists and the entry is necessary to protect life or property…*

In this case, there is conflicting evidence as to whether the incident of May 22, 2015 warranted the male landlord's attempted entry into the rental unit without first issuing a 24-hour written request. The tenant maintained that the incident of May 22, 2015, as well as the earlier incidents he referred to during his testimony, were not true emergencies. As such, the tenant alleged that the male landlord's attempts to enter rental units, including his own, were unjustified. The male landlord said that he had legitimate reasons to be concerned regarding flooding, originating in the rental units he was attempting to access. In this case, the building manager also viewed the water damage that was occurring in the rental unit below the tenant in the early morning hours of May 22, 2015, and thought this damage had the potential to present a serious risk to the rental property and alerted the male landlord who attended to this matter immediately.

I understand why the tenant was upset at being awakened unexpectedly in the early morning hours by the male landlord's knocks on his door on May 22, 2015. From his side of the rental unit door, the tenant could confidently assess the cause of the water damage that had leaked into the rental unit below him. Based on the water damage that the building manager viewed in the lower rental unit that night and without access to the tenant's rental unit, I find that the landlord's concerns about flooding damage were justified. I find that an emergency existed such that the landlord was not required to abide by the customary 24-hour notice provisions of paragraph 29(1)(b) of the *Act*. I note that the male landlord and building manager did not actually enter the rental unit on May 22, 2015. I find that their actions in responding to the lower level tenant's complaint and wakening the tenant to check the source of the damage originating in his rental unit were justified. Flooding in a multi-tenanted rental building can become a very serious and potentially expensive risk which can cause major damage to a property. Catching such flooding problems as early as possible is a prudent measure for any landlord interested in protecting a rental property and minimizing the tenant's exposure to costly repairs.

I find that the landlord had reason to invoke the provisions of paragraph 29(1)(f) of the *Ac*t during the most recent incident of May 22, 2015. I have also considered the tenant's assertion that the male landlord has demonstrated an ongoing pattern of failing

to abide by the terms of the *Act* with respect to accessing rental units without tenant authorization in this building. In this regard, I find that the tenant's recollection of the first alleged incident was so vague that he could not even recall the year of this occurrence. I give little weight to such evidence. The second set of incidents described by the tenant did not involve any alleged access of his own rental unit but involved his participation in the landlord's activities to access other rental units in this building. The male landlord gave sworn testimony that these incidents also involved emergencies, for the most part, flooding concerns, which would also legitimately fall within the landlord's rights of access pursuant to section 29(1)(f) of the *Act*. Again, the tenant provided very few details, which added little weight to his claim that there was a need to issue orders to the landlord requiring him to abide by the access provisions of the *Act*.

At the hearing, the male landlord assured me that he understood that 24 hours written notice had to be provided to tenants in the rental property unless there was an emergency situation. Out of an abundance of caution, I remind the landlord that the landlords are required to comply with the provisions of section 29 of the *Act*, particularly paragraph 29(1)(b) unless there is an emergency situation as described above in paragraph 29(1(f) of the *Act*.

In this case, I find that the tenant has neither demonstrated that the landlord failed to abide by the terms of section 29(1) of the *Act*, nor has the tenant demonstrated any entitlement to a monetary award for damages or losses arising out of this tenancy. The landlord's representatives were taking actions to protect the rental property from the significant risk of flooding. While this turned out to be a relatively minor case of water damage, this situation needed checking once the tenant in the rental unit living below the tenant raised concerns with the landlord's building manager. Before the male landlord and the building manager checked with the tenant, they had no idea as to whether the water leakage would develop into a major flood. I find that the landlord would have been justified in exercising the full provisions of section 29(1)(f) of the *Act* and entered the rental unit had the landlord's representatives been unable to communicate with the tenant on May 22, 2015. I also find the male landlord and building manager exercised proper discretion in checking with the tenant but deciding not to let themselves into the rental unit once the tenant confirmed that he was looking after the problem inside the rental unit and there was no continuing risk to the rental property.

It is important to note that the landlord's representatives did not actually access the rental unit on the night of May 22, 2015. The landlord's actions in awakening the tenant under these circumstances were justified and may very well have saved the tenant costly repairs for damage to his rental unit and those below him.

I find no merit to the tenant's claim that the landlord was somehow responsible for his loss of wages the following day or for the period from May 25-29, 2015, nor any fees paid to his psychologist to deal with the aftermath of this incident. I note that the tenant's evidence and receipts were very limited, provided little indication of whether he was in fact scheduled for work on any of these dates, and whether the appointment with the psychologist had anything to do with this particular incident or ongoing treatment. I also note that the tenant's May 25, 2015 Monetary Order Worksheet cited stress leave extending from that day until May 29, 2015, four days later. I find the tenant's written evidence was seriously deficient in meeting the threshold established by section 67 of the *Act* for demonstrating his entitlement to any monetary award arising out of this tenancy

Since the tenant has been unsuccessful in his application, he bears the cost of his filing fee.

Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

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: June 17, 2015

Residential Tenancy Branch