



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, 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; a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and authorization to recover the 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, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and all attached evidence for this hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss?
Is the tenant entitled to a monetary order for the cost of emergency repairs?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This one year fixed term tenancy began on June 1, 2012 and ended on March 31, 2015 when the tenant vacated the rental unit. The rental amount was \$800.00 payable on the first of each month. As of the date of this hearing, the landlord has refunded the tenant's \$400.00 security deposit. The tenant sought a monetary award in the amount of \$25,000.00 claiming the cost of emergency repairs and loss of quiet enjoyment while residing in the rental unit.

The tenant testified that, on numerous occasions, the landlord entered her home in her absence. She testified that she was never provided with any notice before the landlord

entered the rental unit. The landlord testified, referring to evidentiary materials submitted, that he would email to discuss the provision of notice to enter the rental unit whenever he was required to do so. He also testified that each time he entered the rental unit he was doing so to make a repair that the tenant had requested.

The tenant submitted that the majority of her claim is premised on the landlord entering the rental unit when she resided there in an unauthorized manner. She submitted that “she did not have liberty to experience freedom from disturbance” and was often well aware that a stranger had been in her home. She testified that she could not enjoy her home because of the landlord’s intrusions. She testified that, on one occasion, she found footprints inside her unit and immediately called the landlord to ask if he had entered her rental unit.

The tenant also testified that she sought reimbursement for repairing a defective lock at the rental unit. Both parties testified that this residence is a multi-unit dwelling. The tenant described an incident where she came home in the late evening to find that she could not get the lock to work with her existing key. She testified that, after struggling for some time with the lock, she walked to a store where they were not able to assist her but she used their phone to call a locksmith. The tenant testified that, after more than an hour had passed, she placed a phone call to the landlord but that he did not answer. The landlord testified that, when he received the message and called back approximately 20 minutes, the tenant had changed the lock on the front of the building. The landlord candidly acknowledged that the lock seemed to have been broken but stated that he would have liked an opportunity to make the repair himself or call for his choice of repairperson.

The tenant acknowledged that she had locked herself out of the residential premises on several previous occasions and she would often telephone the landlord to help her get into her own unit. She testified that she suffers from mental illness and that the difficulties with her landlord exacerbated her depressed state, causing anxiousness. The tenant provided general research materials with respect to mental illness, submitting that she is more susceptible to stress as a result of conflict or interference within her home. The tenant testified that she should be entitled to a monetary award in accordance with the level of distress she endured.

The landlord testified that the tenant was very difficult and escalated easily if there was an issue related to the tenancy. He submitted that he should not have to pay for the repair to the residence door as; he was not given an opportunity to respond and address the matter for himself. The landlord testified that he was unaware that the tenant was mentally ill. However, he submits that this should not impact on a tenancy

situation. He also argued that the materials provided by the tenant about mental illness were generalized and that she provided little to no evidence of her own illness.

Analysis

The tenant submitted that the landlord has obligations in his role and is obliged to be cognizant of the standards that apply to him. The landlord testified that the tenant's claims are exaggerated and some are untrue.

In relation to section 28 of the *Act* (a tenant's right to quiet enjoyment) Residential Policy Guideline No. 6 explains quiet enjoyment,

At common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy.

The *Residential Tenancy Act* ... [establish] rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Examples of an interference with quiet enjoyment are given within Policy Guideline No. 6. They include but are not limited to "entering the rental premises frequently, or without notice or permission." When actions of the landlord are temporary resulting in discomfort or inconvenience, this does not constitute a breach of the tenant's right to quiet enjoyment. A tenant claiming loss of quiet enjoyment must show a course of repeatedly threatening or intimidating behaviour.

As the tenant has made an application and a claim that her landlord has caused her loss of quiet enjoyment, it is her burden to show that loss through evidence submitted to the arbitrator. The tenant has made a claim regarding the landlord's behaviour that is denied by the landlord. The tenant testified that the landlord has entered her unit often without authorization. She has not provided any further evidence to support her testimony. The tenant also testified that she was particularly vulnerable due to her

mental illness but has provided very limited proof with respect to her diagnosis and, most significant to her claim, she has provided no concrete testimony or evidence to determine the particulars of her loss. If the tenant were to establish on a balance of probabilities that the landlord acted in a manner that affected her quiet enjoyment, she has not explained or established the effect of the landlord's actions.

I note that, with respect to the tenant's claim as part of her original application that the landlord compensate her for replacement of the lock at the residential premises, both parties agreed that the landlord had compensated the tenant in the amount of \$274.40, the cost of the locksmith and lock.

Based on the evidence provided at this hearing, I accept the landlord's testimony that he acted reasonably and within the boundaries of the *Act* in entering the tenant's unit. I accept that the landlord did not enter the tenant's unit without receiving permission. I accept that the tenant has a medical illness but she has not shown on a balance of probabilities that she has suffered any loss as a result of any alleged actions of the landlord. I dismiss the tenant's application for a monetary award.

Conclusion

I dismiss the tenant's application for a monetary award 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 24, 2015

Residential Tenancy Branch

