Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 8868 Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, MNDC, OLC, PSF, RP, RR, FF

Introduction

This hearing dealt with an application by the tenant for an order compelling the landlord to perform repairs, an order compelling the landlord to comply with the Act and tenancy agreement, an order compelling the landlord to provide facilities and a monetary order. Both parties participated in the conference call hearing.

At the outset of the hearing, the tenant withdrew her claim for an order compelling the landlord to repair the kitchen tap as she said it was repaired on June 19.

Issues to be Decided

Is the tenant entitled to the orders outlined above?

Background and Evidence

The parties agreed that the tenancy in this unit began in February 2014 and that the tenant had previously occupied a different unit in the same building. They further agreed that this tenancy would end on September 30, 2015 as the landlord had accepted the tenant's notice to vacate the unit and agreed that she could end the fixed term tenancy agreement early. The tenant pays $1,425.00 per month in rent.

The tenant seeks an order compelling the landlord to repair the patio door. The tenant testified that the door does not shut completely and that in order to lock it, she has to exert considerable force and cannot maneuver it into position easily. She further testified that the door has a gap at the top which allows the wind to blow through freely during the winter. The landlord testified that she inspected the door in March and found that she was able to shut it tightly with little difficulty. However, she contacted a contractor about repairing it and the contractor, without having looked at the door, told

her that sliding doors in older buildings are often difficult to close and that a repair should not be required.

The tenant seeks compensation for having to tolerate wind blowing through the patio door from January – May. She seeks 10% of her rent paid for the 5 months in which it most significantly affected her. The landlord disputes the tenant's right to compensation as she believes nothing is wrong with the patio door.

The tenant seeks an award of 10% of the rent paid from February – May as the water pressure in her kitchen tap was significantly decreased after the landlord installed a new tap. She provided evidence that she complained to the landlord but the issue was not resolved until June 2015 at which time the landlord replaced the tap. The tenant testified that the replacement tap is functioning well and the water pressure issue has been fully resolved. The landlord did not comment on this claim.

The tenant seeks an award of 10% of the rent paid from February – May as she has been exposed to ongoing exposure to marijuana smoke each day. The tenant testified that at approximately 12:30 each night, marijuana smoke drifts into the unit from another unit and causes her to lose quiet enjoyment of her unit. She testified that she has complained repeatedly to the landlord, but the problem has not been resolved. The parties agreed that when the tenant moved into the building, she was told that it was a smoke free building and that signs are posted throughout the building advising that the building is smoke free. The tenant testified that when she moved into the building, no one told her that some tenants were allowed to smoke in their units and on their balconies because their tenancies had started before the smoke free policy was implemented and therefore they were "grandfathered" into the smoke free policy and were not bound by it. The landlord testified that she has tried to discover whether another tenant is smoking, but her investigations so far have not revealed a culprit despite having investigated as late as 11 pm. She theorized that the smoke may be drifting into the unit from elsewhere.

The tenant seeks an award of 10% of the rent paid from January – May as her access to the swimming pool has been removed because the pool has been closed. The tenant also seeks punitive damages. The tenant testified that she was in the practice of using the pool up to 12 times per month. The landlord acknowledged that the health department had ordered that the pool be closed and argued that the pool is not listed as an amenity in the tenancy agreement and its closure is beyond her control, so the tenant is therefore not entitled to compensation.

The tenant seeks an award of 10% of the rent paid from January - April as the landlord refuses to permit her to continue parking in the underground lot. The tenant testified

that when her tenancy began in another unit in 2012, the then resident manager told her she wouldn't be charged for parking. She signed a parking agreement which showed that $0 was payable each month for one year. The tenant testified that the manager had not told her what would happen when the year was up. When the tenant moved into the current rental unit, she retained the fob for the underground parking and continued parking in the same spot until October when the former manager was dismissed and the new management told her she could not park in the lot unless she paid $60.00 per month. The landlord testified that because parking was not included in the tenancy agreement, the tenant is not entitled to park in the lot without entering into an agreement to pay for parking.

The tenant seeks an award of 10% of the rent paid from February – May as the landlord no longer has a resident manager but now manages the building off-site.

The tenant also seeks to recover the $50.00 filing fee paid to bring her application.

Analysis

First addressing the tenant's claim for an order compelling the landlord to repair the patio door, I find it more likely than not that the patio door is not operating as efficiently as it should. Although the landlord claims that there is nothing wrong with the door, the tenant provided photographs showing a distinct gap and the landlord herself initially contacted her contractors about repairs, which I find she would not have done if the door had been functioning well. **I therefore order the landlord to repair the door so as to close the cap and allow the tenant to easily slide the door open and closed and easily secure it. I order the landlord to complete this repair no later than August 31, 2015.** If the landlord fails to perform the repair by this date, the tenant may file another application for dispute resolution and seek compensation.

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

I find that in each of the claims made by the tenant, there was nothing the tenant could have done to minimize her losses and have therefore not applied that part of the test.

Section 32 of the Act requires the landlords to provide and maintain the property in a state of 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, makes it suitable for occupation by a tenant. I have already found that the patio door was not properly maintained and I find that the fact that the door had a gap allowing wind to freely enter and the added problem of being difficult to secure, constitutes a breach of the landlord's obligation to ensure a safe residence that's suitable for occupation. I find that the tenant is entitled to compensation for the period of time she's identified, but I find that her claim for a return of 10% of her rent is excessive. I find that she will be adequately compensated by an award of $125.00 which represents $25.00 for each of the affected months. I award the tenant $125.00.

I also find that the landlord's failure to respond quickly and reasonably to the tenant's complaint of a malfunctioning tap led to the tenant experiencing abnormally low water pressure for more than 4 months, although the tenant has only claimed compensation for 4 months. Although the landlord believed the problem was attributable to the tap having been changed to a water saving tap, the evidence shows that the tap was actually malfunctioning and had the landlord responded to the tenant's complaints earlier, the tenant would not have had to tolerate low water pressure for such an extended period of time. I find that the tenant suffered a compensable loss, but again, I find that her claim for a return of 10% of her rent is excessive. I find that an award of $25.00 for each of the affected months will adequately compensate her and I award the tenant $100.00.

Section 28 of the Act guarantees the tenant the right to quiet enjoyment, free from unreasonable disturbance. I find that the landlord represented to the tenant that the building was a smoke free building when in fact it was not as there are tenants who are still allowed to smoke in their units. The landlord created the expectation that the tenant would not have to endure the odour of smoke from neighbours. I find it very unlikely that smoke is drifting into the unit from a place other than this building as the rental unit is on the 22nd floor of the building. When the tenant reported the issue, the landlord had the obligation to investigate and unfortunately, undertook her investigations at a time when the smoking was not underway, which made it almost impossible for her to discover the source of the smoke. Although the landlord tries to maintain regular office hours for her staff, when a tenant reports issues that occur outside those office hours, the landlord's obligation to investigate continues. I find that the tenant has been disturbed every night as a result of the landlord's failure to investigate and correct the issue and I find that the tenant is entitled to compensation. I find that an award of $50.00 per month will adequately compensate the tenant and I award her $200.00.

Section 27(2) of the Act states that a landlord may terminate a non-essential facility if they give the tenant 30 days notice and reduce the rent to reflect the reduced value of the tenancy. I do not accept the landlord's argument that the swimming pool is not an amenity included in the tenancy because it is not specifically listed on the tenancy agreement. If an amenity is in place at the outset of the tenancy and the tenant is given unrestricted access to that amenity, particularly if it is part of the marketability of the rental unit, the tenant has a legal right to continue to enjoy the amenity throughout the tenancy. While I appreciate that the landlord had no control over the closure of the pool, the fact still remains that the tenant has lost an amenity. I find that the landlord is obligated to reduce the tenant's rent to compensate for the loss of the swimming pool. The tenant claimed that she used the pool approximately 12 times each month. Although the landlord claimed that the tenant did not use the pool, she provided to evidence to corroborate this claim and given the size of the apartment building, I find it unlikely that the landlord is aware of all of activities of each tenant. I find that a rent reduction of $15.00 per month will adequately compensate the tenant. The tenant's rent beginning in the month of August will be $1,410.00 per month. I award the tenant $150.00 which represents a rent reduction of $15.00 per month for each of the months from October 2014 – July 2015.

The tenant seeks compensation for her parking spot having been removed. While I appreciate that the tenant was permitted to park in the lot for free, there is nothing in the Act or tenancy agreement which obligates the landlord to continue to provide free parking. I consider this to be a different arrangement than is the case with the swimming pool. The tenant signed a specific rental agreement for the parking space which indicated that no rent for the parking space was payable for a period of 1 year. Had the landlord attempted to terminate the tenant's right to park in that space during the period in which that parking rental agreement was effective, the tenant would have been entitled to compensation. But after the rental agreement expired, the tenant no longer had a statutory or contractual right to parking. I therefore dismiss the tenant's claim for compensation for loss of parking.

I dismiss the tenant's claim for compensation because the landlord no longer has a resident manager as there is nothing in the Act or tenancy agreement compelling the landlord to maintain a resident manager.

As the tenant has been substantially successful in her claim, I find she should recover the $50.00 filing fee.

In summary, the tenant has been successful as follows:

Patio door	$125.00
Low water pressure	$100.00
Smoke disturbance	$200.00
Loss of use of the pool	$150.00
Filing fee	$ 50.00
Total:	**$625.00**

Conclusion

The tenant has been awarded $625.00 and her rent is reduced from $1,425.00 per month to $1,410.00 per month. The landlord is ordered to repair the patio door before August 31, 2015. The tenant may reduce a future rental payment by $625.00 in order to realize the monetary award.

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: July 06, 2015

Residential Tenancy Branch