



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order permitting her to reduce her rent until repairs are completed. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?
Should the tenant be authorized to reduce her rent?

Background and Evidence

The parties agreed that the tenancy began in May 2015 and that the rental unit consists of a bedroom over which the tenant has exclusive occupancy and common areas such as a kitchen, bathroom and living area which the tenant shares with several other occupants.

The tenant testified that she has been deprived of quiet enjoyment of the rental unit during the tenancy. The parties were previously in a dispute resolution hearing in which the tenant disputed a notice to end tenancy for cause. In the August 12 decision resulting from that hearing (the "First Decision"), the arbitrator determined that the tenant had not significantly interfered with or unreasonably disturbed other occupants or the landlord and also made the following statements:

- A finding that the tenant's use of common areas between 10:00 p.m. and midnight was not unreasonable;
- An encouragement to the parties to communicate in writing; and
- An award of \$100.00 to compensate the tenant for a malfunctioning toilet.

The tenant argued that the landlord has failed to communicate exclusively in writing, despite the tenant having insisted on this. She further complained that the landlord has accessed common areas of the property without having first obtained the tenant's permission and while in the common areas, has attempted to speak with the tenant.

The tenant testified that in the late evening of August 20, the tenant returned to the home and at approximately 11:00 p.m., she turned on the fan and used the kitchen. Another occupant, MJ, spoke to the tenant and told her she was sleeping, which the tenant took to mean that the noise of the fan bothered her, so the tenant turned off the fan. Shortly thereafter, the landlord entered the unit presumably in response to a complaint by MJ and told the tenant not to make noise in the kitchen after 10:00 p.m., pointing to a sign she had posted in the rental unit. The tenant argued that this demonstrated the landlord's unwillingness to abide by the direction of the First Decision.

The tenant also testified that the unit is inadequately heated. She testified that there is just one vent in the basement where she lives and that the oil heater in the common area does not adequately heat the common area nor is it the type of heat which she expected to be provided. The tenant acknowledged that after she complained to the landlord about a lack of heat in her room, the landlord provided her with a portable heater.

The landlord testified that other tenants have complained to her about the actions of the tenant and that on August 20, MJ telephoned her to complain about noise in the kitchen as well as odours emanating from the tenant's cooking. The landlord testified that she responded to MJ's complaint by going to the kitchen and telling the tenant that she should not be making noise in the kitchen after 10:00. The landlord testified that she provided a heater to the tenant for her bedroom shortly after the tenant complained about a lack of heat and argued that the reason the tenant found the common area to be cold is because she insists that the windows remain open at all times.

MJ testified at the hearing and confirmed that the tenant left the windows open in the common areas. MJ was unwilling to testify as to the events of August 20 but insisted that she did not complain to the landlord.

SD, another occupant of the residential property, testified that the tenant continually left windows open and that he had given up closing them because the tenant complained when they were closed. SD testified that he did not otherwise find the premises to be cold.

The tenant testified that the reason she opened the windows was because she smelled the natural gas when the oven and stove were used. SD testified that gas could not be

detected if the oven and stove were used properly and MJ testified that she was unaware of ever having smelled natural gas in the premises.

Analysis

The tenant bears the burden of proving her claim on the balance of probabilities. 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.

With respect to her claim for compensation and a future reduction of rent for lack of heat, I find that the tenant has failed to prove that the landlord has in some way breached their legal obligations. The fact that the rental unit has just one heating vent does not in and of itself entitle the tenant to compensation. The landlord is not obligated to heat the home by a specific means unless she is contractually obligated to do so and in this case there is no evidence that she is so obligated. I find that if the landlord provides an adequate source of heat, she has discharged her obligation to provide heat. The tenant acknowledged that she leaves windows open in the unit and the other occupants have confirmed that she does so. The other occupants do not find the premises to be cold apart from the cold air coming in from the open windows and I therefore find that the portable heaters provided by the landlord are an adequate source of heat. I find that the landlord responded to the tenant’s complaints within a reasonable time and I therefore find that the tenant is not entitled to compensation for lack of heat as she has not proven the first element of the test outlined above.

Turning to the tenant’s claim for loss of quiet enjoyment, in the First Decision, the arbitrator suggested that the parties communicate with each other in writing, but did not require this. There is nothing in the Act which requires this means of communication and although the tenant may consider written communication preferable in all circumstances, the landlord is not obligated to communicate solely in writing. I find that the landlord has not breached the Act, Regulations or agreement with respect to her verbal communication with the tenant.

The tenant is entitled to exclusive possession of her bedroom, but as she shares common areas with other occupants, the landlord is not obligated to provide the tenant

notice or ask her permission to enter those areas. Further, the landlord is entitled to knock on the door of the tenant's bedroom to speak with her as long as she does not do so with such frequency that the tenant is unreasonably disturbed and I find no evidence to show that the landlord approached that level of frequency. I find that the landlord has not breached the Act, Regulations or agreement with respect to her entry into the residential property.

The First Decision found that on the evidence before the arbitrator at that time, the landlord had not proven that the tenant had *unreasonably* disturbed or *significantly* interfered with other tenants. She did, however, find that the tenant had on occasion disturbed the other occupants; just not to a degree which could be characterized as unreasonable or significant. The arbitrator found that the use of the common areas between the hours of 10:00 p.m. and midnight was not in and itself unreasonable, but she did not say that the tenant could make any amount of noise at that time with impunity. Although MJ was unwilling to testify about the events of August 20, I find it more likely than not that she complained to the landlord about the noise made by the tenant as both the tenant and the landlord testified that this was the case. The landlord had an obligation to investigate this complaint and did so. I agree with the tenant that it was inappropriate for the landlord to indicate to the tenant that she was not permitted to make any noise in the kitchen after 10:00 p.m. in accordance with her posted notice, but I am not persuaded that this action was so egregious that it would attract compensation. I therefore find that the tenant has not established the second element of the test outlined above.

However, I would caution the landlord that she should not tell the tenant that the tenant is not permitted to make any noise. The residential property is the tenant's home and she is entitled to make noise as long as this noise does not unreasonably disturb or significantly interfere with others. The landlord should continue to investigate noise complaints, but should remind the tenant to keep noise to a reasonable level rather than insisting that she make no noise whatsoever.

I also caution the tenant that she should ensure that as she goes about her daily activities in her home, she should be mindful that she is voluntarily sharing the home with several other occupants and should take care to ensure that her activities do not become unreasonably noisy. While making noise which disturbs the sleep of other occupants on one night may not be considered unreasonable, it is entirely possible that many nights of repeated disturbance may become unreasonable. I note that in the tenant's evidence she produced a letter she sent to the landlord dated August 21 in which she stated that she had complained to another tenant about him using the kitchen in the early hours of the morning and apparently had asked him not to use the stove at

that hour. I encourage the tenant to show the same respect to the other occupants that she expects them to show to her.

I find that the tenant has not established grounds for compensation and I dismiss the tenant's claim in its entirety.

Conclusion

The claim is dismissed.

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: October 08, 2015

Residential Tenancy Branch

