



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEIGHBOURHOOD HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, LRE

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70.

The landlord did not attend this hearing, which lasted approximately 19 minutes. The tenant and his agent, DZ, attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant provided a signed, written authorization indicating that his agent had authority to speak on his behalf. The tenant's agent provided limited testimony at this hearing.

The tenant testified that he personally served the landlord's agent, M, with the tenant's application for dispute resolution hearing package ("Application") on August 11, 2015 in the elevator of the rental building. The tenant stated that a female witnessed this service but she was unavailable to testify during this hearing. In accordance with section 89 of the *Act*, I find that the landlord was personally served with the tenant's application on August 11, 2015.

Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

The tenant testified that this month-to-month tenancy began in August 2006 and continues to present. The tenant's share of monthly rent is \$375.00 payable on the first day of each month, while another portion of rent is subsidized. A security deposit of \$375.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant testified that a written tenancy agreement governs this tenancy, but he did not provide a copy for this hearing.

The tenant seeks a monetary order of \$250.00 due to stress, mental anguish and a loss of quiet enjoyment. The tenant stated that the landlord's agent, M, illegally entered his rental unit without notice or permission on August 7, 2015, around 11:00 a.m. The tenant testified that he was engaging in sexual relations with his girlfriend at the time that the landlord's agent knocked on his door three times. The tenant stated that he before he could answer the door or put any clothes on, the landlord's agent entered the unit using a key. The landlord's agent was with a plumber, and advised the tenant that there was a leak in the tenant's bedroom and that he would return later to assess the situation. The tenant indicated that the landlord's agent did not enter the bedroom or return later to fix any leaks. The tenant maintained that he advised the landlord's agent that he was busy and the landlord's agent sounded confused.

The tenant stated that his girlfriend was scared, confused, worried and upset, as a result of the landlord's agent illegally entering the rental unit. The tenant indicated that he could not convince his girlfriend that it was the landlord's agent who illegally entered the rental unit because the landlord's agent did not return to fix any leaks. The tenant maintained that he did not know his girlfriend well when this happened and that his relationship ended as a result of the landlord's agent's actions. The tenant testified that he mentioned this incident to a counsellor, during a session regarding another issue. The tenant maintained that he did not consume medications or seek further treatment to deal with this issue. The tenant stated that he does not work, due to disability, so no work time was affected by this incident. The tenant advised that he has two locks on his door but has added a ladder, which he props against the door, to avoid any future illegal entry by the landlord. The tenant stated that the landlord has not entered his rental unit illegally since the above incident. The tenant maintained that he wants to deter the

landlord from entering his rental unit illegally, as this has also happened to other tenants in the same rental building.

Analysis

While I have turned my mind to the testimony of the tenant and his agent, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

Section 29 of the *Act* requires the landlord to give the tenant written notice prior to entering the tenant's rental unit. Alternatively, the tenant can give permission at the time of entry. In this situation, the landlord's agent entered the rental unit using a key, without giving prior written notice and without obtaining the tenant's permission at the time of entry. Therefore, the landlord violated section 29 of the *Act*.

Section 28 of the *Act* states that the tenant is entitled to quiet enjoyment, including reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter in accordance with section 29 of the *Act*. I find that the landlord breached section 28 of the *Act* by violating the tenant's right to reasonable privacy and exclusive possession of the rental unit.

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 or 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 and show efforts to minimize this loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord caused him a loss of quiet enjoyment.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be

awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I accept the tenant's undisputed evidence that he suffered a loss of quiet enjoyment, due to the landlord's agent's actions. The tenant was entitled to reasonable privacy with his girlfriend and exclusive possession of the rental unit on August 7, 2015. The tenant suffered as a result of the landlord's agent's breach of sections 28 and 29 of the *Act*. However, the tenant did not submit any documentary evidence, such as medical records, or provide any witness testimony to support his claim. As per RTB Policy Guideline 16, where no significant loss has been proven but there has been an infraction of a legal right, an Arbitrator may award nominal damages. Based on this principle, I award the tenant nominal damages of \$50.00.

I order the landlord to comply with section 29 of the *Act* with respect to this tenant at this rental unit. For the landlord's information, section 29 of the *Act* states the following:

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:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(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;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I dismiss the tenant's claim for an order to suspend or set conditions on the landlord's right to enter the rental unit, without leave to reapply. The landlord illegally entered the rental unit once. The landlord has not shown a pattern of illegally entering the tenant's

rental unit. I find that the tenant has not provided sufficient evidence that the landlord's right to enter the rental unit should be suspended or altered by conditions. I have already issued an order for the landlord to comply with section 29 of the *Act*.

Conclusion

I order the tenant to deduct \$50.00 from a future rent payment at this rental unit in full satisfaction of the monetary award.

I order the landlord to comply with section 29 of the *Act* with respect to this tenant at this rental unit.

The tenant's claim for an order to suspend or set conditions on the landlord's right to enter the rental unit is dismissed 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: October 19, 2015

Residential Tenancy Branch

