



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC ERP LAT LRE MNDC MNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; an order to the landlord to provide services or facilities required by law pursuant to section 65; an order to the landlord to make repairs (or emergency repairs) to the rental unit pursuant to section 33; an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; an order relating to the landlord's right to enter the rental unit pursuant to section 70; and a monetary order for losses as a result of this tenancy.

Both parties attended this hearing including both landlords and one tenant representing both tenants. The landlord confirmed receipt of the tenants' Application for Dispute Resolution and both parties confirmed receipt of the other's evidentiary materials for this hearing. Tenant SW ("the tenant") testified that she have vacated the rental unit and therefore withdrew the tenants' application for an order requiring the landlord to comply with the *Act*; an order the landlord provide services or facilities; an order to the landlord to make repairs; as well as the application for an order relating to the landlord's right to enter the rental unit were withdrawn by the tenants. The tenant testified that she wished to pursue their application for a monetary order resulting from a retroactive rent reduction and losses as a result of the tenancy.

Preliminary Issue: Jurisdiction

The landlord submitted that this living arrangement was never a tenancy agreement and therefore this dispute is not within the jurisdiction of the Residential Tenancy Branch. He testified that this tenant had previously resided in another suite within the residential premises and that, after a series of incidents in her previous residence, he allowed the

tenant to reside in another suite on a temporary basis. He testified that the tenant was to reside with another resident until a new suite was renovated and became available for the tenant and her daughter. He testified that the tenant moved into the rental unit suite without his permission before renovation was complete and that she did so without his permission. He testified that he asked the tenant to stay out of the suite under renovation, advising her that the suite was unsafe.

The tenant submitted text message correspondence with the landlord in which the landlord and the tenant discuss what they both refer to as rent and receipts for payment of rent as recently as one month prior to this hearing. An excessive amount of text messages were submitted that reflect a variety of topics, some personal and some related to this living arrangement. The tenant testified that she was offered a different rental unit at one point but that her bed would not fit in that unit/suite.

I accept the tenant's testimony that the landlord ultimately allowed her to move into the rental unit and then, because of her complaints and requests, attempted to revoke his permission to reside in the rental unit. The landlord testified that he accepted rental payments from the tenant on an ongoing regular basis regardless of his feelings about the tenant residing in the unit under renovation.

Residential Tenancy Policy Guideline No. 20 addresses illegal contracts which include situations where the rental of the unit is not permitted by local bylaws. The guideline states that "a rental in breach of a municipal by-law does not make the contract illegal." Recent decisions on this issue suggest consideration a variety of factors in determining whether a contract between the parties is void and therefore not enforceable by the Residential Tenancy Branch including,

- The serious consequences of invalidating the contract;
- The social utility of those consequences;
- The class of persons for whom the legislation was enacted to determine whether a refusal to enforce the contract would affect other than that group.

If this arrangement or contract were considered void or invalid, the tenant would have no recourse for the condition that she lived in. The tenant paid rent regularly and the landlord accepted those rental payments. I find that the landlord ultimately permitted the tenant to reside in the rental unit by failing to remove her from the unit and by accepting her rent on an ongoing basis.

If a person with property was able to claim that a person they have allowed to live on that property is not their responsibility regardless of the payment of rent, then that

property owner or manager would be able to opt out of the Act. An integral part of the Act is the statement at section 5: that the Act cannot be avoided,

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

The *Residential Tenancy Act* creates obligations and rights for both landlords and tenants. These rights and obligations are in place to protect both parties. The Act describes a tenancy agreement as a written or oral agreement between a landlord and a tenant respecting a rental unit, use of services and facilities with standard terms including the payment of rent and the provision of a security deposit. The evidence provided by both parties is that the tenant both paid rent and paid a security deposit. Given all of the considerations canvassed and the nature of the understanding between the two parties, I find that this was a residential tenancy agreement and therefore the Act applies.

Issue(s) to be Decided

Are the tenants entitled to a monetary order as a result of any rent reduction or loss incurred as a result of this tenancy?

Background and Evidence

This tenancy began on June 4, 2015. A copy of the residential tenancy agreement was provided as evidence for this hearing. The agreement indicated a rental amount of \$1000.00 payable on the first of each month. The landlords confirmed that they continue to hold a \$500.00 security deposit paid on June 1, 2015 by the tenants. The tenants vacated the rental unit on June 14, 2016. The tenant testified that she provided notice to the landlord by text message at the start of June 2016 that she could no longer reside in the rental unit.

The tenants sought \$4080.41 from the landlord. Tenant SW, the tenant who attended this hearing ("the tenant") testified that she had no alternative but to vacate the rental unit. She testified that there were mice in the unit and that the mice damaged their belongings while they resided in the rental unit. She testified that, when she complained to the landlords, Landlord JP would scream at her. She testified that the landlord was very angry that she requested humane mouse traps on a variety of occasions, indicating she preferred not to place inhumane mouse traps in her rental unit.

The tenant submitted black and white photographs to show the state of the rental unit. They included photographs of dead mice, unfinished walls, holes in walls and boxes and as well as food containers (bags of noodles) chewed by mice and ... The tenant submitted a letter from the city bylaw department to indicate that the unit does not comply with the minimum standards required and “is not to be occupied” for a variety of reasons including but not limited to;

- No running water except toilet;
- Windows covered with plywood;
- No fire safety devices;
- Only one exit from basement;
- No heat in the unit;
- Not sealed against ingress of water, pests or rodents;
- Holes in walls;
- Exposed electrical wiring;
- Area of the flooring is unfinished cement.

The landlord submitted that the tenant withheld a certain amount of correspondence between the landlord and tenant. He testified that he had not submitted further documents as it was not his job to prove anything at the dispute resolution hearing. He further submitted that the landlord staged the mice infestation situation in the rental unit and called the bylaw officer with the intention of causing difficulties for the landlord.

A witness testified on behalf of the tenant. Witness JN testified that he witnessed verbal abuse of the tenant by the landlord on more than one occasion. He testified that he witnessed the landlord screaming at the tenant. He described several different circumstances where the landlord yelled or acted aggressively towards the tenant. The witness described one circumstance where the landlord “got right up in [the tenant’s] face” while speaking harshly to her. He testified that he witnessed this type of action on more than one occasion as well. The witness testified that he was concerned the landlord would become violent. He testified that the landlord described the tenant as a pest.

Analysis

Pursuant to section 32 of the Act and Residential Tenancy Policy Guideline No.16, “[the] Legislation allows a landlord or tenant to make a claim in debt or in damages against the other party where there has been a breach of the tenancy agreement or the Act. Damages [are] money awarded to a party who has suffered a loss which the law

recognizes.” When a tenancy agreement exists between the landlord and the tenant, both are bound to meet certain obligations. If a landlord fails to meet his obligations and a tenant is subsequently deprived use of a part of their premises, the tenant may be entitled to damages in the form of a rent abatement or a monetary award.

In consideration of the tenant’s monetary request for compensation for the two mice in the rental unit and her treatment by the landlord in attempting to address these issues, I refer to Policy Guideline No. 6 regarding the right to “quiet enjoyment”. The right to quiet enjoyment includes but is not limited to a right to freedom from unreasonable disturbance,

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

When considering whether there has been a breach of a tenant’s right to quiet enjoyment, I must consider whether the landlord has created or allowed a substantial interference to the tenant’s enjoyment of their premises. Temporary inconvenience does not constitute a breach of quiet enjoyment however an interference that would give the tenant sufficient cause to end the tenancy would constitute a breach of quiet enjoyment. However, a tenant does not have to end a tenancy to show that there has been such interference. Policy Guideline No. 6 provides the following,

It is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

In this case, I find that the landlord has not made sufficient efforts to minimize the tenant’s disruption or inconvenience by the mice infestation in the unit as well as other standard repairs left undone after the tenant moved in to the rental unit. I accept the tenant’s testimony that the landlord permitted her to move into the rental unit and that he accepted her rent for that unit on a regular basis.

I accept the tenant's witness testimony. Witness JN's testimony was provided in a calm and candid manner. While the witness testified that he was shocked with the landlord's responses to the tenant's requests, I find the witness provided objective and reasonable testimony. Witness JN testified to witnessing the mice infestation and damage from the mice in the home. Witness JN also testified to witnessing the landlord yell inappropriately at the tenant on numerous occasions. I accept the testimony of the witness and note that it supports the evidence of the tenant.

I find that the tenant's photographic evidence shows clearly the state of the tenant's unit and I find that the effects of mice and other disrepair within the rental unit upon her are beyond nuisance as they have general health implications as well as specific effects on this tenant. The tenant has shown through her documentary evidence and undisputed testimony that she has repeatedly requested the landlord's assistance in addressing the mice/pest problem. Addressing pest issues within the residential premises is an obligation of the landlord. Under section 32(1) of the *Act*, a landlord is required to provide a residential property in a state of repair that complies with health, safety and housing standards under the law and having regard to the character of the rental unit, make it suitable for occupation by the tenant. Based on the evidence before me, the tenant met her legislated obligations and mitigated her damages by attempting to keep the unit clean and reporting mice activity to the landlord, requesting action from him.

Based on the tenant's testimony and the documentary materials, as well as her supporting witness testimony, I find the landlord did not meet his obligations under the *Act* regarding the mice infestation and other disrepair in the rental unit. The tenant must also provide evidence to of her loss. She testified that she was emotionally impacted by the state of the residence and that the condition of the rental unit affected her ability to remain in the rental unit. I note that the tenant moved into the rental unit in question recently. She testified that her ability to relax in her home has been impacted generally as well as her ability to have her child with her in the residence.

If a tenant is deprived of the use of all or part of the premises, or when the tenant's right to quiet enjoyment has been impacted, the tenant may be entitled to damages. The types of damages an arbitrator may award are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; "nominal damages" 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; and finally aggravated damages for significant infractions by the landlord to the tenant.

In this case, the tenant has not *proven* out of pocket expenditures however I find that she has proven that the landlord failed to honour the residential tenancy agreement and meet their obligations under the Act. I find that the tenant has shown some loss in the use of her unit and particularly her right to quiet enjoyment warranting compensation. Therefore, I find that the tenant is entitled to a nominal damage award in the amount of \$1500.00.

For the information of both parties, I provide a reproduction of section 38 of the Act with respect to the tenant's security deposit.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Conclusion

The tenants' application for an order requiring the landlord to comply with the *Act*; an order the landlord provide services or facilities; an order to the landlord to make repairs; and an order relating to the landlord's right to enter the rental unit were withdrawn by the tenants.

I grant a monetary order to the tenant in the amount of \$1500.00.

The tenant is provided with this Order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 9, 2016

Residential Tenancy Branch

