



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RR

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order for the landlord to comply with the *Act* pursuant to section 62; and
- an application to reduce the rent retroactively for repairs agreed upon but not provided pursuant to section 65 of the *Act*.

The tenant and landlord attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlord was represented at the hearing by agent, T.S. (the "landlord").

The landlord acknowledged that she received a copy of the tenant's Application for Dispute Resolution and evidentiary package by hand on May 2, 2017. Pursuant to sections 88 and 89 the *Act*, the landlord is found to have been served with these documents.

On January 26, 2017 a hearing was convened to address an application from the tenant concerning issues she had related to this tenancy. The tenant sought a monetary award of \$500.00 for "Issues with the furnace temperature, for the landlord illegally entering the suite and for compensation for loss of enjoyment of the rental unit due to heating issues." The tenant failed to attend this hearing. Since this hearing was scheduled as a result of her application, the matter, pursuant to *Rule of Procedure 10.1* proceeded without the participation of the tenant. As a result, all matters related to this January 2017 application were dismissed without leave to re-apply.

The legal principle of *res judicata* prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action.

I find that this current application is *res judicata* for all matters related to the tenancy prior to January 3, 2017, the date of the tenant's first application for dispute resolution. These matters have already been conclusively decided and cannot be decided again. This hearing will only focus on matters related to the tenancy from January 4, 2017 to May 29, 2017.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order?

Should the landlord be ordered to comply with the *Act*?

Is the tenant entitled to a retroactive rent reduction?

Background and Evidence

Testimony was provided by both the landlord and the tenant that this tenancy began in September 2015 and ended on May 29, 2017. Rent was \$946.00 per month and a security deposit of \$460.00 continues to be held by the landlord.

The tenant explained that she sought a Monetary Order of \$2,000.00, in addition to an Order for the landlord to comply with the *Act*, and a retroactive rent reduction for the months of April and May 2017. The tenant testified that she sought the amount due to the suffering that she endured during this tenancy as a result of the landlord's actions. In addition, she explained that she had to quickly vacate the rental unit and therefore suffered a loss. Specifically, the tenant highlighted an incident that occurred on April 7, 2017 when the landlord entered her suite without permission at 11:00 A.M. while she slept. The tenant also described mould that was present in the apartment.

Much of the tenant's testimony concerned matters that cannot be considered in this hearing, as they relate to heating issues in the apartment that the tenant described as taking place between October 15, 2016 and January 2017. In addition, the tenant described an incident where a repair person entered her rental unit and stole a knife from her kitchen as well as used her bathroom without permission. No specific date was cited by the tenant but this incident was described as having happened in January 2017.

The landlord explained that the tenant received notice of the April 7, 2017 suite visit. The landlord testified that she personally, hand delivered notices to each rental unit in the building. She said the purpose of the visit was to ensure that technicians could conduct an annual fire inspection of fire suppression equipment in the building. The

landlord continued, stating that following the tenant vacating the rental unit, she personally conducted an inspection of the apartment and found no evidence of mould. The landlord said that she could not comment on whether a knife was stolen from the tenant's unit, or that a repair person used the tenant's bathroom. She continued explaining that the building has its own team of maintenance staff; however, the tenant refused these people entry, and the landlord was therefore forced to hire sub-contractors to perform necessary work. It was with these sub-contractors that the tenant suspected of mistreating her apartment.

Analysis

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/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. In this case, the onus is on the tenant to prove her entitlement to a claim for a monetary award.

Based on the evidence submitted to the hearing and the tenant's oral testimony, I am not satisfied that the tenant has suffered a loss that has stemmed directly from a violation of the tenancy agreement or in contravention to the *Act*. The landlord's evidentiary package demonstrated that a notice warning the building's tenants that a fire inspection would be taking place on Friday, April 7, 2017. I found the landlord to be a credible witness and accept her testimony that these notices were distributed to the tenants pursuant to section 29(1)(b) of the *Act*, permitting a landlord to enter a tenant's suite.

The tenant did not demonstrate to me, how she arrived at her figure of \$2,000.00 or on what basis this amount should be awarded. The tenant sought to rely on her negative experience with this tenancy. A monetary award requires that a claimant provide evidence that can verify the actual monetary amount of the loss or damage. No receipt was provided to the hearing demonstrating the value of the knife that was lost, nor was any breakdown of the tenant's expenses related to an abrupt move-out. Finally, many of the issues cited by the tenant related to her experiences with the heat in the building. As mentioned previously, the tenant had an opportunity to air these grievances during a January 26, 2017 hearing in which she did not participate. The principle of *res judicata*

prevents me from considering these matters in this hearing of June 5, 2017. The tenant's application for a monetary award is therefore dismissed.

In addition to a monetary award for loss suffered as a result of the tenancy, the tenant applied for a retroactive rental reduction for the months of April and May 2017 pursuant to section 65 of the *Act*. In order to succeed with this application, section 65 notes that the tenant must demonstrate that, "A landlord has not complied with the *Act*, the regulations or a tenancy agreement." Little evidence was presented at the hearing that the landlord did not comply with the *Act*. The tenant presented testimony that the landlord illegally entered her suite. The landlord disputed this version of events, and provided evidence that steps were taken to ensure that the *Act* was followed when entrance to the tenant's suite was deemed necessary. I find that the landlord did not breach the *Act* concerning any of the other complaints pertaining to the alleged theft of a kitchen knife. The tenant's application for a retroactive rent reduction is dismissed.

As the tenant is no longer in occupation of the rental unit, the tenant's application directing the landlord to comply with the *Act* is dismissed.

Conclusion

The tenant's application for a Monetary Order is dismissed.

The tenant's application for an order directing the landlord to comply with the *Act* is dismissed.

The tenant's application for a rental reduction 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: June 12, 2017

Residential Tenancy Branch