



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR MNDC MNSD FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for: a monetary order for unpaid rent pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for: a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and authorization to recover the filing fee for this application from the landlord pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for loss of rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

Is the tenant entitled to a monetary order for loss as a result of this tenancy?

Is either the landlord or the tenant entitled to recover the filing fee for their application?

Background and Evidence

This tenancy in a basement suite where the landlord resides in the upper unit began on July 1, 2016 with successive fixed term agreements and a current monthly rental amount of \$1200.00 payable on the first of each month. The tenant vacated the rental unit on November 6, 2017. The landlord has returned the tenant's \$600.00 security deposit that the tenant paid at the outset of this tenancy. The landlord sought \$1801.88 to recover unpaid December 2016 rent as well as the recovery of the tenant's security deposit that she returned when the tenant vacated the rental unit. The tenant sought \$6756.46 from the landlord to reclaim the rent she paid to the

landlord over the course of the tenancy and her costs in acquiring equipment to show that the landlord was entering her unit without her permission.

The landlord testified that the tenant vacated the rental unit before the end of the fixed term tenancy with no notice that she intended to do so. The landlord testified that she posted internet advertisements the same day that the tenant vacated the rental unit. She testified that she showed the unit twice and that she rented the unit to the second person who viewed the unit. She testified that the new tenant was unable to move in prior to January 1, 2017. The landlord argued that all of these circumstances resulted in a monetary loss of December 2016 rent in the amount of \$1200.00. She also testified that she wants the tenant to pay her back the amount of the security deposit (\$600.00) for her troubles in re-renting in these circumstances.

The tenant testified that she was forced to vacate the rental unit because of the circumstances of the tenancy. The tenant provided undisputed testimony that there was no provision of heat within the rental unit. The tenant provided email evidence repeatedly requesting that the landlord turn on the heat. In her email correspondence, she states she has been using a portable heater that is mostly ineffective. The landlord responded that she hasn't had problems with heat before and offered that the tenant keep her current heater as the best solution.

The tenant testified that it was very cold in the rental unit however the most concerning issue for the tenant was that the landlord regularly went into her rental unit when she was not home. She testified that, on some occasions early in the tenancy, the landlord stated in emails to the tenant that she had entered her residence. When asked to respond at this hearing, the landlord stated that sometimes she went into the unit if she felt it was an emergency, for example if a light went out unexpectedly. The tenant testified that she purchased camera equipment in order to catch the landlord entering her rental unit without her permission. The tenant sought compensation from the landlord for a lack of quiet enjoyment (including her privacy) as a result of the actions of the landlord.

The tenant submitted video evidence showing the landlord in her unit. In the video, the landlord opens the entrance door to the rental unit with keys in her hand. She does not open the door entirely but looks around the unit. After looking around, the landlord turns on and off the lights in the rental unit. Next, the landlord enters the unit entirely and turns away from the camera: she remains in the unit for a period of time and then exits the unit. The tenant also presented witness testimony from a co-worker who described the increasing anxiety and fear that the tenant displayed when she suspected the landlord was coming and going from her rental unit. The co-worker stated that the tenant regularly expressed concern that the landlord was entering her unit.

The witness/co-worker testified that she made suggestions so that the tenant could discover whether the landlord was coming in the unit, for example placing an item on the doorknob or buying a video camera. The co-worker testified that the tenant was very anxiety ridden over her situation both because she did not want to accuse someone falsely and because she felt very

violated that someone had been in her rental unit. The co-worker testified that she was present when the tenant called the Residential Tenancy Branch for assistance. The co-worker testified that the situation “really took a toll on [the tenant]”.

The tenant testified, supported by documentary evidence that she visited a doctor as a result of the effects that the stress of the tenancy and the landlord’s actions caused her. The tenant testified, supported by documentary evidence that she had to explain the circumstances to her employer because of the effects of the stress. The tenant testified that, while her doctor advised her to take time off work, she continued to work. She testified that she did not re-rent a new place immediately but stayed with friends to feel safer and recover.

The tenant testified that she did not want to break her lease without good reason and she also testified that she was concerned that she was imagining things. However, the video evidence confirmed what the tenant had suspected: the landlord entering the tenant’s rental unit without permission. Based on all of the circumstances at that time, the tenant immediately vacated the rental unit after viewing the video. She testified that she was too distraught to give any notice to the landlord or to speak with the landlord at all.

The landlord testified with certainty that she only entered the tenant’s suite two times. She acknowledged entering the suite in September 2016 because the tenant’s car was parked behind. The landlord testified that on the occasion in September 2016, when she knocked on the door, no one answered so she entered the unit. She confirmed the testimony of the tenant that she spoke to the tenant while the tenant was in the shower. She also acknowledged in email entering the suite on October 4, 2016 and November 4, 2016 because there was a light on outside and the landlord stated she is trying to be power smart. She testified that, on November 6, 2016, it was late and there was *not* a light on, so she entered the unit to switch the light on so the tenant could see clearly if she was coming home late. The landlord described these situations as “safety emergencies” and counted the occurrences as totalling two.

A copy of the residential tenancy agreement(s) for this tenancy provided by the landlord and signed by both parties was submitted for this hearing. The agreement provides the details of the tenancy and some provisions of the Act. Included in the agreement is a section titled “landlord’s entry to the rental unit”. It states that, “[for] the duration of this tenancy agreement, the unit is the tenant’s home and the tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance and exclusive use of the rental unit” and states that, “[if] a landlord enters or is likely to enter the rental unit illegally, the tenant may apply ... to change the locks”.

This portion of the residential tenancy agreement relating to the landlord’s entry into a rental unit indicates a lengthy list of conditions under which the landlord may enter the rental unit when the landlord has not been granted permission by the tenant;

- with at least 24 hours and not more than 30 days before the entry, with written notice and,
 - with a reasonable purpose for entering AND

- a date and time between 8am and 9pm
- in an emergency requiring entry to protect life or property,
- if the tenant has abandoned the rental unit,
- if the landlord has a lawful order to enter the unit,
- if the entry is for agreed-upon housekeeping purpose and at a reasonable time,
- to conduct a monthly unit inspection.

Other evidence submitted for this hearing included; a letter dated October 24, 2016 from the tenant referencing section 29 of the Act: that the landlord must provide written notice and have a reasonable reason for the entry.

Analysis

I accept the tenant's testimony, supported by a variety of documentary evidence and video evidence that the landlord entered her rental unit on several occasions. I find that the evidence of the landlord does not provide a satisfactory response to the tenant's claim. The landlord provided insufficient evidence in her testimony or materials to show that the tenant's claims are without merit. Based on all of the evidence at this hearing, I find that the landlord entered the tenant's suite on numerous occasions without her consent. I find that the variety of occasions described and the reasons the landlord provided for entering the unit should have required the landlord to seek the tenant's permission or at minimum provide sufficient notice before entering the unit. I do not accept the testimony of the landlord that her entrance into the rental unit was only done in "emergency" situations as the descriptions of the events do not reflect emergencies.

I refer to (and reproduce for the benefit of the parties) section 29 of the Act regarding a landlord's access to a rental unit. As previously stated in this decision, this information is also supplied within the residential tenancy agreement.

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). **[emphasis added]**

The landlord testified that she did not provide written notice or seek the tenant's permission to enter the suite. Therefore, I find that the tenant is entitled to an amount of compensation that reflects the landlord's lack of compliance with the Act and the ongoing violation of her privacy. I find that, overall, the tenant has described a tenancy where she was not provided all facilities or services that he was entitled to (including heating) and that she suffered invasion of her home and her privacy. I find that the landlord's actions were the sole cause of the tenant's lack of quite enjoyment of her home.

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the Act; a tenant is expected to pay rent; a landlord is expected to provide the premises as agreed to. If a tenant is deprived of the use of all or part of the premises, 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 proven that the landlord failed to honour the residential tenancy agreement and the landlord's obligations under the Act. I accept the testimony of the tenant that the residential premises lacked sufficient heat. I accept the testimony of the tenant that she lost quiet enjoyment, privacy and security as a result of the behavior of the landlord. Given all of the evidence at this hearing, I find that the tenant is entitled to damages to reflect the significant disturbance and disruption she suffered during this tenancy. However, it is not appropriate that the entirety of the tenant's rent be returned to her as she requested: she resided, granted unhappily, in the rental unit for approximately four and a half months (4.5 months).

The tenant agreed to a rental amount of \$1200.00 but she was not provided with heat or privacy. I find that both heat and privacy are fundament elements that the landlord failed to provide. Both the tenant's perceived safety if not her actual safety as well as her health were impacted by the landlord's actions. The landlord continued to enter the tenant's rental unit after the tenant had pointedly asked her to cease entering the unit. There are aggravating features of the landlord's actions by entering the unit including but not limited to the insufficient reasons given for entering the unit. Those reasons given did not reflect any of the requirements under the Act and were not emergencies.

I find that the tenant is entitled to reduce her monthly rent by 50% to the start of her tenancy. I find that the lack of heat in the rental unit represents a minimum of 25% of a tenancy and that privacy represents a minimum of 25% of a tenancy in these circumstances. Therefore, for the 4 months that the tenant paid full rent (July, August, September, October, and November 2016), I find that the tenant is entitled to a rent reduction equaling **\$2400.00**. The tenant testified that she paid a reduced amount of rent for July 2016 of \$851.62 and therefore she is entitled to recover **\$425.81** for July 2016 rent reduction.

In her original application, the tenant also sought to recover the \$217.64 cost of the camera to gain evidence that the landlord entered the rental unit without permission; an additional cost for packing and lunch supplied for the individuals who helped her move out. As the costs of moving are inevitable costs, I find that the tenant is not entitled to recover those costs. However, given the circumstances of this particular tenancy and the actions of the landlord, I find that the tenant purchased a camera solely for the purposes of recording her landlord in her unit. As the tenant will use the camera for other purposes, I find that the tenant should be entitled to recover a portion (50%) of the camera costs of **\$108.82**.

In all of the circumstances described, I find that the tenant is entitled to a monetary award in the amount of \$1804.30 as well as the cost of the filing fee for this application (**\$100.00**).

The landlord sought \$1801.88 to recover unpaid December 2016 rent as well as the tenant's security deposit that she returned when the tenant vacated the rental unit. The landlord provided no basis to retain the tenant's \$600.00 deposit in an amount beyond the \$1200.00 December 2016 rent amount she sought. She testified that she did not understand that a security deposit must be applied to an amount owed by the tenant to the landlord and was not recoverable on its own. Therefore, I will only consider the landlord's claim that she should be compensated for December 2016 rent in the amount of \$1200.00

I find that the tenant would not have vacated the rental unit but for the two issues created solely by the landlord: a failure to sufficiently heat the rental unit and a failure to allow the tenant the privacy and security in her unit. As it is the violation of the Act by the landlord that led the tenant to vacate the rental unit in November 2016, I find that the landlord is not entitled to compensation for December 2016 rent. Furthermore, the landlord did not submit any evidence to show that she had attempted to mitigate her rental loss by advertising immediately. While the landlord testified that she advertised immediately, she did not submit documentary evidence to support this claim. Given the circumstances surrounding this tenancy, I am uncertain of the veracity of the landlord's testimony. I dismiss the landlord's application to recover December 2016 rent.

Finally, because of the nature of the violation of the landlord in that she, contrary to the Act, entered the tenant's rental unit without permission, that she disregarded all of the requirements for entry to the unit that are provided within the *Residential Tenancy Act*, and given that she

continued to justify her entry to the rental unit at this hearing, I find that a further nominal amount should be awarded to the tenant. I also take into consideration the witness testimony and materials of the tenant that show the level of impact the landlord's invasion had on her. Therefore, I award an amount in nominal damages of **\$250.00** to reflect the nature of the landlord's violation of the Act and her obligations under the Act.

Conclusion

I dismiss the landlord's application in its entirety without leave to reapply.

I grant the tenant a monetary order against the landlord as follows,

Item	Amount
Lack of Heat, Lack of Privacy (4 full months' rent)	\$2400.00
Lack of Heat, Lack of Privacy (partial rent month)	425.81
Nominal Award to reflect violation by Landlord	250.00
Camera Purchase	108.82
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$3284.63

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: June 28, 2017

Residential Tenancy Branch