



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC FF O

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated June 28, 2017, as amended by an Amendment to an Application for Dispute Resolution, dated August 31, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, regulation, or a tenancy agreement;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant attended the hearing on her own behalf and was accompanied by D.T., her spouse, who also lives in the rental unit. The Landlord attended the hearing and was assisted by D.F., his daughter. S.F. also attended the hearing but did not participate. All parties giving testimony provided a solemn affirmation.

The Tenant testified that he served the Application package, including a Notice of a Dispute Resolution Hearing and documentary evidence, on the Landlord by registered mail on April June 30, 2017. A documentary evidence package was served on the Landlord by registered mail on August 15, 2017. The Landlord acknowledged receipt of both.

On behalf of the Landlord, D.F. testified the documentary evidence in response was served on the Tenant by registered mail on August 16, 2017. The Tenant acknowledged receipt.

No issues were raised with respect to service or receipt of the parties' documents. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant's original application was received at the Residential Tenancy Branch on June 27, 2017. The original claim did not include a claim for monetary relief, although a monetary order worksheet, dated June 30, 2017, was submitted at that time. The Tenant testified that an amendment was filed at the Residential Tenancy Branch and served on the Landlord by registered mail on August 15, 2017, although I was not directed to a copy in the Tenant's documentary evidence. In any event, the Tenant did file an Amendment to an Application for Dispute Resolution, dated August 31, 2017 (the "Amendment"). The Amendment purported to add a monetary claim in the amount of \$6,005.21. The Tenant also submitted with the Amendment a second monetary order worksheet, also dated August 31, 2017.

The Amendment was filed late, contrary to the Rule of Procedure 4.6. Accordingly, I consider the Amendment to be a nullity and decline to hear the Tenant's monetary claim. The Tenant remains at liberty to apply for monetary relief at a future date.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the *Act*, regulation, or a tenancy agreement?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The Tenant sought an order that the Landlord comply with section 28, 29, and 30 of the *Act*. She testified that there have been a number of instances in the past 15 months that have caused her concern. Specifically, she testified that the Landlord has climbed a ladder to the deck adjacent to the en suite bathroom 10-12 times in this period. On at least one occasion, the Tenant woke up from a nap to see the Landlord standing on the deck. The Tenant testified further that the Landlord's treatment of her has been "horrendous", and that he has "freaked out" at her.

Recently, she stated that the Landlord provided notice to inspect the deck on June 28, 2017. She let the Landlord into the rental unit but later realized the Landlord had taken

photographs in other parts of the rental unit not described in the notice. A copy of the written notice was submitted into evidence by the Tenant. She stated she will never let the Landlord into her suite unattended again.

In reply, D.F. testified that the Landlord accesses the property regularly to address routine maintenance issues, and to respond to concerns raised by tenants. The Landlord also attends the property to access belongings stored there. D.F. explained that the Landlord attends the property regularly because the location by the ocean requires more maintenance. In specific response to the Tenant's suggestion that the Landlord took pictures throughout the rental unit when she was told the inspection was of the deck, D.F. confirmed this occurred. D.F. testified that the Landlord inspected the deck because of previous instances where the Tenant used the deck as a bathroom for their pet, and to ensure that planters had the appropriate dishes to capture water.

Further, the Tenant testified that the Landlord entered her suite without written notice on or about March 9, 2017. The purpose of accessing the rental unit was to replace a broken washing machine with a new washing machine.

In reply, D.F. acknowledged that this occurred. However, she stated the Tenant gave the Landlord permission the previous day when she told him she would leave the back door open for him to replace the washing machine.

Finally, the Tenant testified the Landlord prevented a roommate from leaving the property on or about June 27, 2017, by blocking the driveway with a vehicle. She testified that the Landlord "freaked out" on her roommate, who then decided to move out. The Tenant referred me to a copy of the current tenancy agreement between the parties. Specifically, she noted the agreement does not limit the number of occupants in the 3-bedroom rental unit. In addition, she advised that the addendum to the tenancy agreement stipulates that the Tenant pays 3/5 of the water charges, and that there are 5 bedrooms in the entire rental property. Finally, the Tenant testified that the Landlord has been well aware of international students and other roommates during the tenancy, and that no issues have been raised previously.

In reply, D.F. stated that the roommate told the Landlord he would be moving out at the end of the week, and submitted that the Landlord's actions did not impact that decision. She also testified that the Tenant was always supposed to ask permission to have roommates or international students living with her in the unit, and that all previous arrangements have been on a short term basis.

The Tenant also sought to recover the \$100.00 filing fee paid to make the Application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

The Tenant submitted she has suffered a loss of quiet enjoyment under section 28 of the *Act* as a result of the Landlord's frequent attendances at the rental property. I am satisfied that the Tenant has been disturbed by the Landlord's attendances at the property, but that the Landlord's reasons for attending the property have not been unreasonable. I make no finding regarding whether or not the Tenant has suffered a loss of quiet enjoyment. However, the Landlord is required to comply with the *Act* and I order that the Landlord respect the Tenant's right to quiet enjoyment protected under section 28 of the *Act*, which includes the right to reasonable privacy and freedom from unreasonable disturbance.

The Tenant also requested an order that the Landlord access the rental unit only in accordance with section 29 of the *Act*. I am satisfied that the Landlord has entered the rental unit without adequate notice. I order that the Landlord provide notice of entry to the Tenant's rental unit, in accordance with section 29 of the *Act*. However, I note that section 32 of the *Act* places an obligation on a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and makes it suitable for occupation by a tenant. Accordingly, this order does not include required repairs that may include the exterior of the Tenant's rental unit, although the Landlord may wish to consider providing the Tenant with such notice.

Finally, the Tenant requested an order that the Landlord cease from interfering with the ability of the Tenant or roommates to access the rental unit. I note the tenancy agreement does not limit the number of occupants in the rental unit, and that previous roommates and international students were permitted by the Landlord. I order that the Landlord not unreasonably restrict access to the rental unit by the Tenant or a person permitted on the property by the Tenant.

Having been successful, I find the Tenant is entitled to recover the filing fee paid to make the Application, which order may be deducted from a future rent payment at the Tenant's discretion.

Conclusion

I order that the Landlord respect the Tenant's right to quiet enjoyment, as protected under section 28 of the *Act*.

I order that that the Landlord provides 24-hours written notice of entry to the Tenant's rental unit, in accordance with section 29 of the *Act*.

I order that the Landlord not unreasonably restrict access to the rental unit by the Tenant or a person permitted on the property by the Tenant.

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: September 22, 2017

Residential Tenancy Branch