



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT LRE MNDC OLC FF

Introduction

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

- an order authorizing the Tenant to change locks to the rental unit (LAT);
- an order suspending or setting conditions on the Landlord's right to enter the rental unit (LRE);
- a monetary order for money owed or compensation for damage or loss (MNDC);
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement (OLC); and
- an order granting recovery of the filing fee (FF).

However, during the hearing, the Tenant advised that she vacated the rental unit on October 1, 2017. Accordingly, it is not necessary for me to consider the Tenant's requests for:

- an order authorizing the Tenant to change locks to the rental unit (LAT);
- an order suspending or setting conditions on the Landlord's right to enter the rental unit (LRE); and
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement (OLC).

The Tenant attended the hearing on her own behalf, as did the Landlord. Both parties provided a solemn affirmation at the beginning of the hearing.

The Tenant testified that Landlord was served with the Application package, in person, on the evening of July 31, 2017. The Landlord acknowledged receipt. I find the Landlord was served with and received the Application package on that date.

The Landlord submitted documentary evidence in response to the Tenant's Application, which was received at the Residential tenancy Branch on October 10, 2017, contrary to Rule of

Procedure 3.15. According to the Landlord, it was not served on the Tenant as she moved out of the rental unit and could not be reached. As the Tenant did not receive the Landlord's documentary evidence in accordance with the Rules of Procedure, it has not been considered further in this Decision.

No further issues were raised with respect to service or receipt of the above documents and evidence. 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.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties confirmed the tenancy began on or about December 1, 2016, and ended when the Tenant vacated the rental unit on October 1, 2017. During the tenancy, rent in the amount of \$900.00 per month was due on the first day of each month. The tenant paid a security deposit of \$450.00, which was not at issue during the hearing.

The Tenant claimed \$1,800.00 for loss of quiet enjoyment during the tenancy. She testified the door separating her rental unit from the Landlord's premises was opened in May 2017. She discussed this with the Landlord, who put a lock on the door. Further, the Tenant testified that someone tried to open the locked door on several more occasions when the Landlord had guests over. The Tenant testified that this scared her.

In reply, the Landlord acknowledged that his young niece opened the door in May 2017, but that it was closed immediately. The Landlord later apologized and installed a lock. He suggested that the Tenant should have contacted him or called emergency services if she was concerned for her safety, but that she did neither.

Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

With respect to loss of quiet enjoyment, section 28 of the *Act* states:

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

[Reproduced as written.]

Policy Guideline #6 elaborates on the meaning of a tenant's right to quiet enjoyment. It states:

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- *entering the rental premises frequently, or without notice or permission;*
- *unreasonable and ongoing noise;*
- *persecution and intimidation;*
- *refusing the tenant access to parts of the rental premises;*
- *preventing the tenant from having guests without cause;*
- *intentionally removing or restricting services, or failing to pay bills so that services are cut off;*
- *forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,*
- *allowing the property to fall into disrepair so the tenant cannot safely continue to live there.*

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however, it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

[Reproduced as written.]

I find there is insufficient evidence before me to grant the relief sought by the Tenant. She testified the door between her rental unit and the Landlord's residence opened on one occasion in May 2017. The Landlord responded immediately and placed a lock on the door. Since that time, the Tenant has been concerned about alleged attempts to open the door, but confirmed during the hearing that the door has not opened. She testified these attempts have caused her to be scared. As noted in Policy Guideline #6, frequent and ongoing interference is required to find there has been a loss of quiet enjoyment. In this case, I find there is no frequent or ongoing interference to justify an award for loss of quiet enjoyment as contemplated under section 28 of the Act and Policy Guideline #6. Accordingly, the Tenant's Application is dismissed, without leave to reapply.

Conclusion

The Tenant's Application 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 16, 2017

Residential Tenancy Branch