



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, LAT, OLC, RR, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and confirmed receipt of the notice hearing package and the submitted documentary evidence. Neither party raised any issues with service. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, it was clarified with both parties that the tenant had incorrectly named the landlord for this dispute. It was agreed to by both parties that the named landlords were in fact agents of a company. As such, the landlord's name shall be changed to reflect the actual commercial entity.

The tenant also voluntarily withdrew her monetary claim as both parties agreed that it was incomplete. As such, no further action is required for the tenant's monetary claim request. The hearing proceeded on the tenant's request for:

Authorization to change the locks and not provide a key to the landlord.
Replacement of bathroom flooring (mold in grout)

Have the landlord enforce the no smoking policy of the rental building

Issue(s) to be Decided

Is the tenant entitled to an order to change the locks?

Is the tenant entitled to an order for repairs?

Is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2011 on a fixed term tenancy ending on January 31, 2012 as per the submitted copy of the signed tenancy agreement dated January 30, 2011. The monthly rent began at \$870.00 payable on the 1st day of each month. The monthly rent was later increased to \$954.00. A \$435.00 security deposit was paid.

The tenant seeks an order authorizing her to change the locks and not provide a key to the landlord. The landlord disputes the tenant's request stating that the landlord is entitled to access in case of an emergency. The tenant claims that the landlord's agents are entering the rental unit and stealing her personal belongings. The tenant provided written submissions claiming that 2 police reports were filed in April and November of 2017 in which the tenant claims that she viewed the landlord's agents enter the rental unit and steal money and possessions. The tenant stated that as of yet, no findings have been made regarding these investigations. The tenant was unable to provide any evidence to support her claims that the landlord's agents were entering the rental unit without permission and stealing.

The tenant seeks an order for the landlord to replace the bathroom floors. The tenant claims that the floors have mould as shown in the tenant's submitted photograph marked "H". A review of the photograph marked as "H" shows white one inch tiles with red pink and black tiles intermingled. The tenant claims that the grout lines are "mould". The landlord claims that the last time the floors were inspected was on August 31, 2017 where no mold or cracks were found. The landlord stated that the floor was "just dirty". A review of the provided photograph fails to allow a determination if the grout was indeed mold or dirty. However, during the hearing both parties agreed to resolve this portion of the claim by having the landlord attend the rental unit, inspect and determine if necessary if the grout needs to be replaced. As a result no further action is required for this portion of the claim.

The tenant seeks an order that the landlord enforce a "no smoking" policy. Both parties confirmed that the rental building is a "no smoking" building. The tenant claims that the landlord

is not enforcing the “no smoking” policy stating that she is aware of 3 or more smokers present in the building.

The landlord disputes the tenant’s claims stating that they are aware of only 1 smoker in the building, but that they do not smoke in the building. The landlord claims that they are not aware of any evidence of smoking in the building.

The tenant has submitted a copy of a series of 3 letters from her visitors’ who have confirmed the odor of smoke inside the building, smoke coming from unit 301 and that smoke was present on January 13, 2017 in the building. The tenant’s witness provided affirmed testimony that she has been a tenant since 2001 and is aware of 3 smokers who reside in the building and view them on a regular basis outside standing on the property smoking. The witness states that she has noticed intermittent smoke in the building which started approximately 1 year ago. The tenant’s witness states that the landlord’s agents refused to inspect the property for smoke violations. The landlord confirmed with the tenant’s witness that 2 of the smokers are roommates, but that the witness has never viewed any persons actually smoking in the building. The landlord argued that at no time has the landlord ever refused to inspect the building for smoking violations.

Analysis

Section 70 of the Act states in part that the director may order, may suspend or set conditions on the landlord’s right to enter the rental unit under section 29 of the Act, if satisfied that the landlord is likely to enter the rental unit other than as authorized under section 29, and may authorize the tenant to change the locks and prohibit the landlord from obtaining keys for entry into the rental unit.

In this case, the tenant has made claims that the landlord’s agents have unlawfully entered the rental unit and stolen her personal property. The landlord’s agents have disputed this claim. The tenant has stated that complaints were filed with the local police, but that no findings have been made by the local police.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. As a result, I find that the tenant has failed to provide sufficient evidence that the landlord’s agents are entering the rental premises unlawfully and stealing her personal property. This portion of the tenant’s request is dismissed.

Section 62 of the Act allows the director to make any order necessary to give effect to the rights, obligations and prohibitions under the Act, regulations or the tenancy agreement.

In this case, both parties agreed that a “no smoking” policy exists and was implemented by the landlord. The tenant has provided both documentary signed letters and a witness confirming the existence of smoke in the building. However, the tenant claims that the landlord has failed to enforce this policy. The landlord has claimed that at no time has evidence been found of smoke in the building.

I find on a balance of probabilities that the tenant has provided sufficient evidence that smoke exists in the building as per the signed letter and the witness’s undisputed evidence of smoke present in the building. I find that the landlord has failed to properly investigate the complaints of smoking in the building to determine the source of the smoke. The tenant has provided evidence that the landlord was advised of the smoking problem and claims that the landlord has failed to act.

I order that the landlord properly investigate any smoking complaints filed by any tenants and to respond in writing, the findings of their investigations to the named complainant. Failure to do so could result in an application filed by a tenant for compensation as a result of a loss of quiet enjoyment.

The tenant having been partially successful in her application for dispute is entitled to recovery of \$50.00 of the filing fee. I authorize the tenant to withhold one-time \$50.00 from the monthly rent due upon receipt of this decision.

Conclusion

The tenant’s application for the landlord to enforce the “no smoking” policy is granted.

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: March 13, 2018

Residential Tenancy Branch