



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMACON PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT ERP MNDCT OLC PSF RP

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order, to have the landlord make emergency repairs and repairs, to have the landlord provided services or facilities required by law, and to have the landlord comply with the Act and to allow access to the rental unit.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and procedural matters

May 22, 2018

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application for emergency repairs, repairs and to allow access to the unit.

I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request for emergency repairs, repairs and to allow access to the unit. The balance of the tenant's application is dismissed, with leave to reapply.

July 13, 2018

This matter commenced on May 22, 2018, and was adjourned to continue on this day to hear from the tenant's witness D-R. The interim decision should be read in conjunction with this decision.

The Residential Tenancy Branch audit notes show that on May 23, 2018, the Residential Tenancy Branch (RTB) staff contacted the tenant as a scheduling error occurred. The RTB staff confirmed that the tenant fully understood that the matter was scheduled for July 13, 2018 at 9:30am.

On July 13, 2018, the tenant did not appear at the hearing.

On July 13, 2018, the tenant contacted the RTB at 10:15 am, as they alleged they did not receive the notice of hearing for the July 13, 2018, hearing. The RTB could not confirm whether a copy of the notice of hearing was sent to the tenant at the preferred method of service. As a result this matter was rescheduled for July 18 2018.

July 18, 2018

Both parties appeared. However, the tenant did not have their witness attend to provide their testimony. Although this was the only reason this matter was adjourned.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the **relevant facts and issues in this decision**.

Issues to be Decided

1. Should the landlord be ordered to make emergency repairs and repairs for health and safety reasons?
2. Has the landlord denied access to the unit to the tenant or the tenant's guest?

Background and Evidence

The parties agreed that the tenancy began December 1, 2004. Current rent in the amount of \$870.00 was payable on the first of each month.

Emergency repairs and repairs

On May 22, 2018, the tenant testified that the landlord has failed to deal with the issue of a rat and bug infestation.

On May 22, 2018, the landlord testified that they have inspected the rental unit and they have had a qualified pest control attend and there was no evidence of an infestation found. Filed in evidence are copies of pest control invoices.

On May 22, 2018, the landlord agreed to have a pest control company attend and inspect the rental within seven (7) days of the hearing. The interim decision should be read in conjunction with this decision as it has orders for both parties on this issue.

On July 18, 2018, the landlord testified that they were unable to get a qualified pest control company to attend within 7 days, as they were unavailable. The landlord stated that they were able to have a qualified person attend three days later; however, the tenant refused access on the basis that it was not within seven (7) days. Filed in evidence is a copy of the written refusal of the tenant.

On July 18, 2018, the tenant testified that the landlord did not comply with the order and they only gave them three days' notice that they would be attending. The tenant stated that they did not give the landlord permission to access the premises as they do not trust the landlord and they were not going to be home at the time. The tenant stated that they have been given notice to end the tenancy in any event.

Has the landlord denied access

The tenant testified that they live in a smoking building. The tenant testified that their home support workers will not attend to their rental unit due to second hand smoke in the building which is coming into their unit from the occupant below them.

Filed in evidence are letters from F-H, which in part reads,

'the tenant has been a client currently receiving home support since January 2016. F-H required, as per WorkSafetyBC, that the homes are smoke free. For clients that smoke, we ask them **to refrain from smoking two hours prior to the visit and to air the rooms where workers will be.**'

[Reproduced as written]

The tenant testified that the occupant below them has also harassed and threatened them on two occasions in the past five years. The most recent was in the lobby on

December 22, 2017, when the occupant got off the elevator and rushed at them threatening them. The tenant stated that the police attended.

Filed in support of the tenant is a copy of the police report which in parts reads,

“On December 22, 2017 at 1221 hrs ... RCMP received a complaint from from S-D regarding an ongoing neighbor dispute with one of her tenants. Police attended and spoke with S-D who was advised that while she was gathering her mail she got into a verbal argument with one of her tenants. S-D advised the police that she was upset because her apartment always smelled of smoke coming in from the balcony. **Police noted that there was a strong smell of smoke in her residence, but none coming in from outside and no smell inside the accused’s suite either. Police determined that the smell was from someone smoking inside her residence. No threats made by either party...**”

[Reproduced as written]

The landlord testified that they have never denied access to the tenant or any of the tenant’s guest or their home support. The landlord stated that it is the tenant who allows their guest to smoke in the rental unit. The landlord stated that they have investigated the tenant’s complaints and they have determined them to be unfounded, along with the police.

Filed in support of the landlord is a copy of a memo at page 22, 2017, which the tenant has written the following,

“F-H was just here to drop of this memo. The first thing she said is she smells smoke.”

[Reproduced as written]

The memo in part reads,

“... Persons wishing to smoke can do so outdoors during this period of time. ... If it turns out that the client or owner consistently violates the contractual agreement, then the employer is in a position to suspend provision of service or cancel the contract.”

[Reproduced as written]

The landlord testified that it is the tenant who is accusing and harassing people in the building. The landlord stated that it is the tenant that leaves messages for the occupant below, making the occupant believe that they were issued by the landlord. The landlord

stated that the tenant has attended the occupants unit banging their cane on their door, scaring the occupant and waking the child. The landlord stated that the occupants below the tenant are a young family with an infant and they have attended their rental unit on several occasions and there has been no smell of smoke or any evidence of smoking such as an astray, this also confirmed by the police report. File in evidence is a letter from the occupant.

The landlord testified that the tenant has acknowledged that they allow their guest to smoke in their rental unit at page 5 of the tenant's submission and at page 26 of the landlord's evidence and is confirmed by the police report.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Emergency repairs and repairs

In this case, the tenant seeks emergency repairs as they have testified that there is an infestation of rats and bugs in the rental unit. On May 22, 2018, I made an order that the landlord have a qualified pest control inspect the unit within seven day, while I accept the landlord breached my order it was not due their failure to comply, it was as a result of a pest control company not being available until three days later.

The tenant although they were given three days' notice of the pest control company attendance, the tenant refuse to allow access to the unit. A tenant cannot refuse access when proper notice is given. Further, I find it unreasonable that the tenant would request this as an emergency repair, yet refuses access to the landlord when this is for their own benefit. Since the tenant is refusing access, I dismiss the tenant's application for emergency repairs and repairs.

I caution the tenant that if the landlord needs to do repairs or inspect the rental unit, the tenant cannot deny access when given proper notice. This could be considered interference with the landlord right to maintain and repair. The landlord can file a copy of this decision showing the tenant has been caution on this issue.

Has the landlord denied access

In this case, I accept the tenant has health issues that are supported by their medical evidence; however, I find the tenant has not provided evidence that the landlord has denied access to the rental unit, to either of the tenant's guest or home support workers. The evidence supports that the tenant has allowed their guest or the tenant is smoking in the rental unit. This is support by the submission of the tenant and the police report.

Further, the tenant has provided no evidence that their home supported services were cut off due to the fault of the landlord. The only letters provided were reminders of the tenant's obligation to air their unit out. The tenant has provided no dates, time or any other evidence from their home support, in which they have denied there services because of smoke coming from any other source.

Furthermore, the evidence submitted by both parties leaves me to believe the smell of smoke is directly for the tenant's own action. It is the tenant's responsibility to ensure their rental unit is smoke free two hours before each visits.

Conclusion

The tenant has failed to prove a violation of the Act by the landlord. 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: July 23, 2018

Residential Tenancy Branch