



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ERP, LAT, LRE, MNDCT, OLC, PSF, RP, RR

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order for emergency repairs
- b. An order authorizing the change of locks to the rental unit
- c. An order to suspend or set conditions on the landlord's right to enter the rental unit.
- d. An order for a monetary order in the sum of \$6400
- e. An order that the landlord provide services or facilities required by the tenancy agreement or law.
- f. An order that the landlord comply with the Act, Regulations and/or tenancy agreement
- g. A repair order
- h. An order for the reduction of rent for repairs, services, or facilities agreed upon but not provided

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on respondent by mailing, by registered mail to where the respondent carries on business. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for emergency repairs
- b. Whether the tenant is entitled to an order authorizing the change of locks to the rental unit
- c. Whether the tenant is entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit.
- d. Whether the tenant is entitled to an order for a monetary order in the sum of \$6400

- e. Whether the tenant is entitled to an order that the landlord provide services or facilities required by the tenancy agreement or law.
- f. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement
- g. Whether the tenant is entitled to a repair order
- h. Whether the tenant is entitled to an order for the reduction of rent for repairs, services, or facilities agreed upon but not provided

Background and Evidence:

The tenancy began on July 1, 2014. The present rent is \$781 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$362.50 on June 1, 2010.

The tenant gave the following evidence:

- That on August 18, 2018 the building manager conducted an inspection of the rental unit in her presence. The inspection was cordial. He was sympathetic to many of my concerns. He told me he would be forwarding my requests to the management company. She recorded the conversation and other that took place without advising the other party.
- She never heard back from the Property Manager or the management company. She phoned the management company to find about status of the repair requests. VF told her it was the first time she had heard about the repairs and that she would contract the owner.
- On about September 7, 2018 she received a phone call from the owner requesting that the parties arrange a time in order for him to view the rental unit and the repairs that were being requested. She told him that she had just had an inspection and that he was not to contact her again.
- The Owner phone her several times a day for about 3 days after that. She did not pick answer the phone call. She then contacted the police and made a complaint the owner was harassing her. The police contacted the owner and got back to her stating that the owner would not attempt to contact her.
- The tenant alleges this is an example of the landlord harassing her. It shows a lack of respect. She further alleges the management company has breached the Privacy Act by giving her telephone number to the owner and this amounts to discrimination against her as a single mother.
- On September 16 2018 the tenant e-mailed a notice to VF giving the landlord 3 days to repair the dishwasher and fix a light dangling in the hallway failing which she would be filing an Application for Dispute Resolution. A plumber contacted her to inspect the dishwasher but was not tasked to look at the bathroom sink or faucet. The dishwasher was replaced by a plumber on behalf of the landlord on September 24 2018.
- The tenant testified the landlord harassed her throughout September, October and November including:
 - Failing to do repairs in a timely fashion

- Directing the plumber to do one job only rather than completing all of the jobs on one visit.
- Asking that the building manager do the electrical work for the dangling light rather than a licenced electrician. She testified the Building Manager told her that he was not able to fix the light. The hanging light was not finally repaired by an electrician until the end of November.
- On October 31, 2018 the landlord gave her a Notice about the proper disposal of garbage, the storing of garbage on her deck and the strata could enforce the bylaws with fines.
- On November 9, 2018 the landlord gave her a Final Warning notice demanding that the tenant ensure the unit was cleaned to avoid possible eviction. The tenant testified there is no basis for this notice.
- She withheld the rent for November as the landlord failed to make the repairs. However, the rent has been paid.
- On November 23, 2018 the tenant gave the landlord a letter that outlined the provisions of the Residential Tenancy Act which she alleged the landlord had breached that included the following concerns:
 - The landlord failed to make repairs in a timely way. Serious repairs were reported 6 months ago.
 - Inspection every three months is not reasonable.
 - The reporting of repairs has resulted in harassment
 - The landlord has harassed her.
- The tenant filed the within Application for Dispute Resolution on November 23, 2018.

The landlord gave the following evidence:

- The owner testified that he contacted the tenant in early September to arrange a time to view the tenant's repairs concerns. The conversation was very short. She told him she was in a meeting and could not talk to him. He testified she never told me that he was not to phone back. He called several times over a few days but she never answered. He thought she was not home or was busy. There was never any attempt to harass her.
- The Property Manager testified as follows:
 - The tenant failed to provide her with her evidence.
 - The tenant refused to give access to the repair people at reasonable times. He referred to an e-mail from the plumber saying he attempted to make arrangement but the only time the tenant would allow access was after 6:00 p.m. weekdays, wouldn't allow any building staff to give access and wasn't willing to make any other arrangement.
 - The tenant refused to give the building manager access to inspect the light or to repair the light.
 - In September the tenant told them she intended to move and she did not want the inconvenience of a plumber repairing her dishwasher at that time.

- He denied allegations of discrimination and breach of the Human Rights Code. He attached an e-mail from the owner dated June 20, 2016 where the owner agreed that the tenant should not be required to pay a repair plumbing bill after her child had put something down the toilet because she was a single mother.
- The Building Manager testified as follows:
 - He conducts quarterly inspections on all units. He always gives notice before conducting the inspection.
 - The tenant's rental unit is messy.

Application for a Repair Order/Emergency Repairs:

The landlord agreed to the all of the repair requests made by the tenant at the hearing. As a result I ordered the landlord to complete the following by January 15, 2019:

- a. Replace the broken shelf in he fridge
- b. Replace the bathroom sink.
- c. Replace the broken burner on the stove and repair the oven.

Application for an order to change the locks or restricting the landlord's right to enter the rental unit.

I determined there was no basis for an order to change the locks to the rental unit or restricting the landlord's right to enter the rental unit. The tenant failed to present sufficient evidence to establish that the landlord was accessing her rental unit without her consent or as permitted by the Act. As a courtesy to the parties I have included section 29 of the Act.

Section 29 of the Act provides as follows:

Landlord's right to enter rental unit restricted

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).

There is no basis for the Tenant's objection to quarterly inspections. Section 29(2) of the Act allows a landlord to inspect a rental unit monthly. The tenant also objected to the landlord inspecting areas other than areas that might contain plumbing or electrical outlets. The Act does not restrict the locations the landlord can inspect.

Application for a Reduction of Rent & Monetary Order:

Section 32(1) of the Act provides as follows:

“Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

Section 28 of the Act provides as follows:

Protection of tenant's right to quiet enjoyment

28 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.

Rule 2.2 provides as follows:

2.2 Identifying issues on the Application for Dispute Resolution

The claim is limited to what is stated in the application.

The Application of the Tenant for a monetary order and a reduction of rent and claims the sum of \$6400. With respect to each of the tenant's claims I find as follows:

- a. The tenant seeks an administrative penalty of \$5000 for harassment. The assessment of an administrative penalty involves a different process. An arbitrator does not have the jurisdiction to award an administrative penalty in the process brought by the tenant. As a result I dismissed this claim.
- b. The tenant seeks \$100 for repairs done late with harassment. In particular she claims \$3 a day for 32 days or the sum of \$100. After carefully considering all of the evidence I determined the tenant failed to prove the landlord has harassed the tenant. I also find that the tenant is partially responsible for the delay in making this repair. However, I find landlord is also partially responsible for the delay. I determined the tenant is entitled to \$50 for this claim.
- c. The tenant claimed the sum of \$500 for no hallway light for 3 months. The tenant failed to provide sufficient evidence to prove how the lack of a proper hallway light has reduced her enjoyment of the rental property. I determine the tenant is entitled to nominal damages of \$50 for this claim.
- d. The tenant claimed \$500 for the lack of a stove burner for over 5 years. The tenant had other burners which she used. She failed to provide sufficient evidence to establish this has reduced her tenancy in a significant way. However, I determined the tenant is entitled to nominal damage of \$50 for this claim.
- e. The tenant claimed \$300 for the landlord's failure to make repairs to a bathroom faucet. I determined the tenant is entitled to nominal damages of \$50 for this claim.

The tenant claimed harassment and breach of the covenant of quiet enjoyment as part of her claim for an Administrative Penalty. For the reasons set out above I dismissed the claim for an Administrative penalty.

I determined the landlord is partially responsible for delays in completing all of the repairs and awarded compensation for the reasons set out above.

However I determined the tenant failed to prove that she is entitled to compensation for the breach of the covenant of quiet enjoyment as set out in section 28 of the Act for the following reason:.

- The tenant has not sufficiently identified such a claim.
- I do not accept the submission of the tenant that the owner was harassing her when he phoned her to try to arrange a time to view the property. It is not unreasonable for an owner to request to view possible repair issues. I prefer the evidence of the landlord to that of the tenant when he testified that the tenant told him she was in a meeting and could not talk but she did not tell him not to phone her again. I find that the tenant has acted unreasonably in her dealings with the owner.

In summary I determined the tenant is entitled to a monetary order in the sum of \$200 such sum may be deducted from future rent.

Conclusion

In conclusion I ordered the landlord to do the following by January 15, 2019:

- a. Replace the broken shelf in the fridge
- b. Replace the bathroom sink.
- c. Replace the broken burner on the stove and repair the oven.

I ordered the landlord(s) to pay to the tenant the sum of \$200 such sum may be deducted from future rent. .

I dismissed the other claims without leave to re-apply including

This decision is final and binding on both parties.

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: December 27, 2018

Residential Tenancy Branch