



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 04, 2019 (the “Application”). The Tenant applied for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement and for compensation for monetary loss or other money owed.

The Tenant, Landlord and Co-landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues were raised in this regard.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?
2. Is the Tenant entitled to compensation for monetary loss or other money owed?

Background and Evidence

A written "Room Rental Agreement" was submitted as evidence. The parties agreed on the following. The Landlord and Co-landlord own the rental unit. The rental unit is in a house with an upper portion that the Landlord and Co-landlord live in. The downstairs is a separate suite with two bedrooms. The Tenant rented one of the bedrooms from the Landlord and Co-landlord. The Tenant shared the common areas of the suite with a second tenant. The Landlord and Co-landlord did not share bathroom or kitchen facilities with the Tenant.

The parties agreed on the following. The tenancy started June 01, 2017. Rent is \$600.00 per month due on the first day of each month.

Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?

The Tenant stated that she was requesting the following orders:

- She does not want to interact with the Landlord unless she has to
- The Landlord to stop coming into the rental unit without agreement from her or her roommate
- The Landlord to only enter the rental unit for a valid purpose
- The Landlord to stop telling her to clean and to stop criticizing her
- The Landlord to stop interfering with her schedule and life
- To be allowed to lock the laundry room door

The Tenant testified as follows. The Landlord comes into the rental unit to inspect for cleanliness. The Landlord sends messages about cleaning and expecting cleaning to be done by a certain date. The Landlord messages her about cleaning too much. She does not see why cleanliness is relevant to the Landlord or why he has any say over when or how she cleans. The Landlord cannot tell her how to clean or when to clean. The Landlord does not give 24 hours written notice of entry. She feels like the Landlord is ordering her to clean.

The Tenant testified that the Landlord would inspect the rental unit for cleanliness every two to three months. The Tenant pointed to a text message from the Landlord stating he has all rights to determine cleanliness.

The Tenant testified that the Landlord once sent her a message telling her the laundry room door cannot be locked. The Landlord has also verbally told her not to lock the laundry room door. She did not like that the Landlord said this.

The Tenant testified that she agrees to the Landlord entering the rental unit because she is scared and intimidated by him. She said she does not want to cause a hassle. She said the Landlord has yelled at her previously. She testified that her roommate told her to let the Landlord come into the rental unit because he will just come in anyway.

The Tenant pointed to a message from the Landlord in which he tells her to clean the window ledge in her room. The Tenant testified that she believes the Landlord entered the rental unit and her room without permission because her window ledge is not visible from the outside of the house. She testified that she found this comment inappropriate and that it made her uncomfortable. The Tenant said the Landlord is interfering with her privacy and makes her anxious.

The Tenant referred to messages between her, her roommate and the Landlord in relation to these issues. The Tenant testified that the issues raised interfere with her life and that she has experienced a loss of quiet enjoyment.

The Tenant submitted that she is not the Landlord's child and is paying rent and so the Landlord should not treat her the way he does.

I confirmed with the Tenant that she is raising the following issues:

- No or insufficient notice of entry
- Unreasonable demands about cleanliness
- Inspections for cleanliness
- Not being allowed to lock the laundry room door

I asked the Tenant what evidence had been submitted showing the Landlord entered the rental unit or room without permission. The only evidence the Tenant pointed to was the message from the Landlord about the window ledge which the Tenant says shows the Landlord entered the rental unit and room.

I asked the Tenant what evidence had been submitted showing the Landlord corresponded or acted in a way that was intimidating, scary or threatening. The Tenant could not point to any evidence submitted showing this and said it was more verbal. In relation to her position that the Landlord cannot inspect for cleanliness, the Tenant relied on a conversation she had with someone at the RTB and term six in the RTB Residential Tenancy Agreement form.

In reply, the Landlord and Co-landlord testified as follows. The Landlord sends the Tenant and/or second tenant a message letting them know he is coming downstairs every time he does. He never comes downstairs unless both the Tenant and second tenant reply to the message. He has never attended the rental unit unannounced or without permission. The Landlord did ask about cleanliness. He was relying on section 29 of the *Act* which permits monthly inspections. He would provide at least one week notice of the inspections. There was one time when the Landlord came down without much notice when there was a water leak but he did let the Tenant and second tenant know he was coming down. The Landlord did tell the Tenant not to lock the laundry room door but did so out of frustration because the Tenant and second tenant would forget their keys and be locked out of the rental unit. The Landlord found it easier to let them through the laundry room than find the spare key.

The Landlord disputed that he has yelled at the Tenant. The Landlord acknowledged that one time he sent the Tenant a message about not leaving a diffuser on because the smell was coming up into the room of the Landlord and Co-landlord and they could not sleep because of it. He said this was the most abrupt message he had ever sent the Tenant. The Landlord pointed out that the Tenant acknowledged she had put too much of the liquid into the diffuser.

In relation to the window ledge, the Landlord testified that he could see items on the ledge from outside the house and asked that the Tenant clean it up.

The Landlord denied that he had ever been rude, threatening or intimidating to the Tenant.

The Landlord testified that the Application is the first time the Tenant has ever complained about the issues raised or the tenancy. The Landlord testified that he never thought there was a problem because the Tenant never raised any issues and their communications seemed to be fine.

Is the Tenant entitled to compensation for monetary loss or other money owed?

The Tenant submitted a breakdown of monetary loss. She sought \$2,000.00 being the equivalent of one semester of tuition or three full months of rent plus \$200.00.

The Tenant said she is relying on the same circumstances set out above as her basis for seeking compensation.

The Tenant further testified as follows. She feels uncomfortable about the Landlord being in her room without permission. She has not received the privacy she paid for.

I asked the Tenant twice to explain why she says she is entitled to \$2,000.00 in compensation. The Tenant answered as follows. The Landlord's demands for cleanliness have interfered with her schedule and studies. She must clean on his schedule which put her behind in her studies. She does not look forward to coming home to the rental unit. The Landlord sends messages that are rude and demanding. She did not know the tenancy would be like this. She wanted to be left alone and in a safe and secure rental unit.

The Tenant advised that she did not provide the Landlord with written notice or a written complaint about the issues raised until February of 2019.

The Tenant submitted a message in which the Landlord states "I have all rights on cleanliness account shared space".

I have reviewed all of the evidence submitted.

Analysis

Although the parties entered into a "Room Rental Agreement", there was no real issue during the hearing that the Landlord is a landlord under the *Act* and that he entered into a tenancy agreement with the Tenant. The parties both agreed the Landlord did not share a bathroom or kitchen with the Tenant and I find based on the evidence and testimony that it was never the intention of the parties to share bathroom or kitchen facilities. In this way, I do not find this to be the same as a situation where an owner of a rental unit rents out only a room to a tenant with the intention that the parties would share all other common areas. This is supported by the evidence which shows that the Landlord sought permission to enter the suite. If the intention was that the Landlord could come and go as he pleased then I would expect that the Landlord would have

simply entered the suite without notice, without seeking permission and without calling it an inspection. Given the evidence before me, I find that a tenancy existed between the Landlord and Tenant that falls under the *Act*. Both parties are therefore bound by the *Act*.

Section 7(1) of the *Act* states that a party that does not comply with the *Act*, *Regulations* or a tenancy agreement must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Section 67 of the *Act* states that "...if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party".

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule 6.6 of the Rules of Procedure states that it is the party making the claim that has the onus to prove it.

The issues raised by the Tenant relate to the following sections of the *Act*:

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.

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).

No or insufficient notice of entry

I do not accept that the Landlord has failed to comply with section 29 of the *Act*. The Landlord testified that he has never entered the rental unit without permission. The Tenant took the position that the Landlord had; however, the Tenant submitted no evidence in support of this. The Tenant relied on the Landlord making a comment about cleaning her window ledge which she believed could not be viewed from outside of the house. She submitted that this shows the Landlord entered the rental unit without her present and without permission. The Landlord denied this and testified that his observations were made from outside. It is the Tenant who has the onus to prove the claim. There is no evidence supporting the Tenant's position that the Landlord entered the rental unit without her present and without permission. I am not satisfied that the Landlord did.

The Tenant submitted that she gave the Landlord permission based on what her roommate told her and because she was scared and intimidated by the Landlord. I do not accept this. I have reviewed the communications between the parties submitted. None of the communications indicate that the Landlord is intimidating or threatening. The Tenant has not submitted any other evidence supporting her position that the Landlord has ever yelled at her or been rude, threatening or intimidating. The Landlord denied that he has ever acted this way. I find the Landlord's position is supported by the communications submitted. I do not accept that the Tenant had any basis to fear the Landlord or be intimidated by him and do not accept that this is the reason she permitted the Landlord to enter the rental unit.

In summary, I am not satisfied the Landlord entered the rental unit without permission and therefore am not satisfied the Landlord breached section 29 of the *Act*.

Inspections for cleanliness

The Tenant submitted that the Landlord cannot inspect a rental unit for cleanliness. I do not agree with this position. She relied on term six in the RTB Residential Tenancy Agreement form for this position. This term relates to condition inspections done at the start and end of the tenancy, not inspections done during the tenancy. Further, condition inspections done at the start and end of the tenancy can and do relate to cleanliness. The Tenant's position is not supported by term six in the RTB Residential Tenancy Agreement form.

Section 32 of the *Act* states:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

[emphasis added]

Section 29 of the *Act* allows a landlord to inspect a rental unit monthly in accordance with section 29(1)(b) of the *Act*.

In my view, the Landlord was entitled to inspect the rental unit for cleanliness given one of the obligations of the Tenant is to keep the rental unit reasonably clean. The Landlord was permitted to inspect the rental unit to ensure the Tenant was complying with section 32(2) of the *Act*.

Further, here the Landlord told the Tenant and second tenant when and why he was completing the inspections and the Tenant permitted the Landlord access to the rental unit for this purpose. The Tenant cannot now take issue with the inspections she permitted the Landlord to do.

I do not find the timing of inspections to be an issue. The Tenant testified that the Landlord inspected every two to three months. Pursuant to section 29 of the *Act*, the Landlord was authorized to inspect monthly if he wished. I acknowledge that the Landlord was not providing written notice in accordance with section 29(1)(b); however, I do not find this to be an issue as the Tenant and second tenant were permitting the Landlord to enter the rental unit for the inspections and therefore the Landlord was not required to give written notice.

Unreasonable demands about cleanliness

The Tenant took issue with the Landlord telling her when and how to clean. I have reviewed the correspondence in relation to this issue. It appears to me that the Landlord was advising the Tenant when inspections would be done and what was expected as far as cleanliness. I do not find that the Landlord was breaching the *Act* by telling the Tenant what he expected in relation to cleanliness. I accept that a landlord could go too far in this regard and perhaps breach section 28 of the *Act*. However, I am not satisfied that there has been a breach here based on the content and timing of the correspondence.

Not being allowed to lock the laundry room door

There is no issue that the Landlord told the Tenant and second tenant not to lock the laundry room door. I understand this to be a door that connects the upper portion of the house with the lower suite. I find the Tenant is entitled to lock this door as I find the Landlord has rented the lower suite out to the Tenant and second tenant with no intention of sharing the common areas of the lower suite. The Tenant and second tenant are entitled to exclusive possession of the lower suite and the Landlord is not entitled to tell them to keep the laundry door unlocked.

Orders

Given the above, I find the following in relation to the requested orders.

The Landlord is bound by the *Act* including sections 28 and 29 in relation to entering the rental unit and allowing the Tenant her right to quiet enjoyment. The Landlord is to comply with the entire *Act* including these sections. I do not find it necessary to make any further orders in this regard. I am not satisfied the Landlord has breached section 29 of the *Act*.

I am satisfied the Landlord breached section 28 of the *Act* by telling the Tenant not to lock the laundry room door. However, I am only satisfied this occurred once and accept the Landlord's testimony that this was due to the Tenant and second tenant forgetting their keys and locking themselves out. I find this breach to be on the low end of the spectrum of seriousness in the circumstances of this tenancy and the evidence before me. The Landlord is now on notice that he is not entitled to tell the Tenant or second tenant not to lock the laundry room door and I am satisfied this is sufficient for the Landlord to comply.

I am not satisfied the Landlord has done anything to justify any further order to comply with the *Act*, *Regulations* or tenancy agreement. I also find some of the requests of the Tenant to be outside the purview of the *Act* and therefore will not address them further.

Compensation

I am not satisfied the Landlord has breached section 29 of the *Act* in relation to entering the rental unit. Nor am I satisfied the Landlord has breached section 28 of the *Act* by making unreasonable demands about cleanliness. Nor am I satisfied the Landlord has been inspecting the rental unit for an improper purpose. In the absence of a breach in relation to these issues, the Tenant is not entitled to compensation.

I am satisfied the Landlord breached section 28 of the *Act* by telling the Tenant not to lock the laundry room door. This occurred once. The basis for the Landlord stating this puts it at the lower end of the spectrum of seriousness. I am satisfied the Tenant felt uncomfortable about this as she is entitled to reasonable privacy and exclusive possession of the rental unit. However, I am not satisfied this is anything but a minor issue with no significant loss and therefore award the Tenant nominal damages in the amount of \$10.00.

The Tenant can deduct \$10.00 from one future rent payment pursuant to section 72(2) of the *Act*.

Conclusion

The Landlord is bound by the *Act* including sections 28 and 29 in relation to entering the rental unit and allowing the Tenant her right to quiet enjoyment. The Landlord is to comply with the entire *Act* including these sections.

The Landlord is on notice that he is not entitled to tell the Tenant or second tenant not to lock the laundry room door.

The Tenant is entitled to nominal damages in the amount of \$10.00 for the Landlord telling her not to lock the laundry room door. The Tenant can deduct \$10.00 from one future rent payment. The Tenant is not entitled to further compensation.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 18, 2019

Residential Tenancy Branch