Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RPP, MNDCT, FFT**

Introduction

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

- An order for the landlord to return the tenant's personal property pursuant to section 65;
- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both the tenant and the landlord attended the hearing. The landlord acknowledges receiving the tenant's Notice of Dispute Resolution Proceedings, however submits that a portion of the tenant's evidence was received late. The tenant acknowledged receipt of the landlord's evidence.

Preliminary Issue

The tenant served her evidence by email on June 3rd by email, pursuant to the director's order made on March 30, 2020. The landlord states that this order was received three days later, on June 6th, or should be deemed received on that date in accordance with the order. Due to this, the landlord received a portion of the tenant's evidence 12 days before the hearing, rather than the 14 days as required by Rule 3.14 of the Residential Tenancy Branch Rules of Procedure. The landlord acknowledged he had the opportunity to review the tenant's evidence.

In accordance with Rule 3.17, I determined that I would accept the evidence that was served upon the landlord two days late, however I would allow parties the opportunity to make submissions regarding an adjournment of the hearing to review the evidence further. The landlord did not seek an adjournment and advised that he was ready to proceed to have the merits of the tenant's application heard.

Preliminary Issue

The landlord advised that there was a previous hearing that was heard before an arbitrator regarding the landlord's application for monetary orders and the return of the security deposit. The previous case number is recorded on the cover page of this decision. The landlord submits that the tenant is barred from filing this application pursuant to section 60(3) of the *Act*.

Section 60 of the *Act* is reprinted below:

60 Latest time application for dispute resolution can be made

(1) If this *Act* does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this *Act* or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this *Act*, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties ***after the applicable limitation period*** but before the dispute resolution proceeding in respect of the first application is concluded. (emphasis added).

The landlord submits that since his application (the first application) was concluded, the tenant may not make an application for dispute resolution pursuant to 60(3). I find the landlord's interpretation of this section to be incorrect. The purpose of section 60(3) is to allow the other party (in this case the tenant) to file an application ***after the limitation period*** of two years after the tenancy has ended in the limited circumstance where the other party's (the landlord's) dispute is still ongoing and not concluded. Section 60(3) does not outright prevent a party from filing a dispute after the conclusion of the other party's previous arbitration hearing. The landlord's application to have the tenant's application dismissed based on section 60(3) is denied.

Issue(s) to be Decided

Is the tenant entitled to:

- An order for the landlord to return the tenant's personal property pursuant to section 65;
- A monetary order for damages or compensation pursuant to section 67; and

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant provided the following testimony. The fixed term tenancy began on July 8, 2017 and ended on the pre-arranged date of June 30, 2018. The security deposit provided at the commencement of the tenancy was partially returned to the tenant after a settlement was reached at the previous arbitration hearing. The rental unit is the lower unit of a detached house containing an upper and lower unit.

During the tenancy, the tenant discovered the signs of mice in her rental unit. On April 14th, the tenant advised the landlord that there were mice and that she wanted the issue taken care of immediately. On the same day, the landlord contacted a pest extermination company who treated the rental unit for mice by installing traps. During the treatment, the exterminator opened a door that connects the upper and lower units. The tenant thought this door was locked and felt concerned for her safety and privacy when she discovered the door was unlocked. She contacted the landlord by text message and the landlord came and locked the passageway door two days later, on April 16th. The tenant referred me to page 48 of her evidence, the photo of the unlocked door between the two units during testimony.

Due to the mice issue, the tenant had to throw out food, cutlery and tea towels. She spent 100 hours to bleach clean the rental unit, including the time she spent unpacking boxes to see if the mice got in there. The tenant testified that the smell of mice made forced her to eat out instead of cooking at home. The tenant testified that after the exterminator visit on April 14th, no further evidence of mice was detected.

The tenant testified that she had gone on vacation in February 2018 and while she was gone, the landlord entered her unit without her knowledge, advance notice or permission. On April 1, 2018 the upstairs tenant knocked on her door asking her to allow her in to reset the breaker, located behind the door in the utility room, an area that

should not be known to the other tenant because it is located within this tenant's rental unit. This person advised the tenant that she had been in the tenant's unit previously with the landlord when the breaker previously switched off. After the conversation with the upstairs tenant, the tenant asked the landlord if he entered the unit while she was on vacation in February and the landlord acknowledged he did.

The landlord also gave contractors keys to the unit, however didn't provide testimony as to when this happened or provide details regarding this.

When she moved out on June 30th, the tenant realized many items were missing. The tenant is seeking a return of 30 porcelain drinking glasses, a saw, flat chopping knife, two parts of a three-part camping enclosure, a black backpack and an outdoor heavy duty stapler. Also, the tenant alleges that during her tenancy, $3,000.00 that was kept in a bedside table went missing. The tenant submits that due to the unlocked door between the two units and because the landlord gave keys to unknown contractors, the items and the money went missing.

The landlord provided the following testimony. He has not seen any of the items the tenant seeks return of. The tenant has not provided any proof of ownership of any of the items she says were in her possession. He acknowledges he entered the tenant's unit the one time when the tenant was on vacation, however it was done because the electrical breaker broke and had to be fixed. The landlord is a certified electrician which gives him a right to fix the electrical issues that affect the other occupants. The landlord testified he tried to phone the tenant to let her know he entered the suite however he got no answer. He does not recall trying to send the tenant a text before entering the rental unit or after.

The landlord testified he never allowed the upstairs tenant to go into this tenant's rental unit. He must have told that tenant the whereabouts of the second breaker box and it's exact location in this tenant's unit which that tenant must have remembered.

Regarding the unlocked door, the landlord submits in his written response that he 'went to check and door was locked'.

The tenant's estimate of time to clean up after the mice is exaggerated. The tenant could not have spent 100 hours cleaning the rental unit between the time it was discovered and the end of the tenancy, given the time needed to sleep and go to work. The tenant countered that both she and her daughter cleaned the unit due to the mice.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

- Return of personal property

Pursuant to section 65 of the *Act*, if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may order that personal property *seized or received by a landlord* contrary to this *Act* or a tenancy agreement be returned. The standard of proof for this order is the same: the applicant/tenant bears the burden to prove the claim. Here, the tenant has not provided any documentary evidence to corroborate her claim that she owned any of the items she seeks return of. The applicant/tenant provided neither photographs nor proof of purchase of any of the items she testified she owned. As for the $3,000.00 cash the tenant claims went missing, the tenant provided no evidence to corroborate her testimony that it was taken. I find the tenant failed to establish the existence of the goods she seeks to have returned. The burden to prove the existence of the items she wants returned is greater than mere testimony that the items are no longer in her possession.

Second, the tenant has not successfully linked the loss of the items to a violation of the *Act*, regulations or tenancy agreement by the landlord. She suspects the upstairs tenant may have taken the items based on the allegation that the door was left unlocked, however the tenant's reasoning for the loss doesn't go beyond speculation.

As an example, the likelihood of the upstairs tenant taking two-thirds of the tenant's camping enclosure defies reason. The tenant has not provided sufficient evidence to establish the first and second points of the four-point test (above) and I dismiss this portion of the tenant's claim.

- Tenant's monetary claim

The tenant seeks:
$300.00 for food thrown out, cutlery, plates and tea towels
$5,000.00 for cleaning
$2,000.00 for loss of quiet enjoyment.

The first two claims relate to what the tenant calls a 'mouse infestation'. The tenant testified she discovered mouse droppings on April 14th and the landlord contacted an exterminator the same day and it was dealt with. Section 32 of the *Act* states 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. I find that in this case, the landlord immediately fulfilled his obligation under section 32 by contacting and hiring the exterminator. The tenant even acknowledges there were no mice beyond the initial complaint. The tenant might have been entitled to monetary compensation if the landlord had breached the *Act* and ignored her request to eradicate the mice, however since the landlord fulfilled his obligations under section 32, I find there was no breach of the *Act* or tenancy agreement. Turning to the 4-point test, the tenant's claim fails on point 2, by failing to provide sufficient evidence to prove damage or loss resulting from a breach of the *Act*, regulations or tenancy agreement.

Lastly, the tenant claims $2,000.00 for a loss of quiet enjoyment, based on the landlord's unpermitted entry into her rental unit and leaving the door between her unit and the other tenant's unit unlocked. Residential Tenancy Branch Policy Guideline PG-6 [Entitlement to Quiet Enjoyment] provides guidance regarding this point.

A. LEGISLATIVE FRAMEWORK
Under section 28 of the Residential Tenancy Act (RTA) a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- *reasonable privacy;*
- *freedom from unreasonable disturbance;*
- *exclusive possession, subject to the landlord's right of entry under the Legislation; and*

- *use of common areas for reasonable and lawful purposes, free from significant interference.*

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT
A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

…

Compensation for Damage or Loss
A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA. In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

The landlord submits that he only entered the tenant's unit once, to repair a broken breaker for the upstairs tenant while this tenant was away on vacation in February. The landlord acknowledges that he did not provide any prior notice to the tenant that he was going to enter her unit and based on the evidence before me; he only told her about entering after the tenant asked him about the entry. While the landlord contends that he had the right to enter the unit, being a certified electrician who needs to look at the breaker panel and fix the issue for the tenant living upstairs; I do not find he was entitled to do so without first notifying the tenant in the lower unit. Although he testified that he tried calling the tenant prior to entry, I find no evidence to support this testimony. Nor

did the landlord provide any text messages to show he made attempts to notify the tenant of his requirement to enter. Lastly, I am particularly concerned by the fact that he didn't advise the tenant that he entered her unit until two months later when directly asked by the tenant.

A landlord's right to enter a rental unit is restricted by section 29(1):

29 Landlord's right to enter rental unit restricted

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).

Based on the evidence before me, I find the landlord breached section 29 of the *Act* by entering the tenant's rental unit while she was away on vacation in February 2018. As such, the tenant's right to quiet enjoyment was compromised. Her entitlement to reasonable privacy was breached, contrary to section 28(1)(a). I am also satisfied that the landlord left the connecting door between the two units unlocked, further depriving the tenant of reasonable privacy, based on the tenant's testimony and the photograph. Although the landlord testified it was never unlocked, I am satisfied the tenant has met the burden of proof to satisfy me it was.

The tenant claims $2,000.00 for her loss of quiet enjoyment, however she has not provided any reasoning as to how she arrived at this figure. PG-16 [Compensation for Damage or Loss] states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward: "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, although the tenant claims there were multiple entries into her unit, I find the evidence leads me to believe there was the one entry in February, 2018 when she was on vacation. For this breach of section 28, and for the landlord's failure to lock the door between the two units, I award the tenant nominal damages for the landlord's failure to provide quiet enjoyment. I set the tenant's compensation at $500.00.

As the majority of the tenant's claim was unsuccessful, the tenant will not recover the filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of $500.00.

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: June 19, 2020

Residential Tenancy Branch