



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westwood Apartments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC

Introduction

This hearing dealt with an application by the tenant for a monetary order for the cost of emergency repairs and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

Both the tenant and two representatives for the landlord attended the teleconference hearing and gave affirmed evidence. The tenant was assisted by his mother.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the cost of emergency repairs?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The parties agree the tenancy started August 1, 2011. The tenant claims he has been mentally harassed by the landlord and seeks \$5,000.00 as compensation. The tenant also seeks reimbursement of \$250.00 for the cost of a new door lock installed on February 22, 2014.

The tenant gave evidence regarding the following 15 incidents in support of his allegation of harassment:

1. Repairs not handled promptly
 - a. Tenant states that in October 2013 his front door buzzer rang to the wrong phone for five days before the landlord fixed it.
 - b. Tenant states that in October 2013 the landlord did not provide him with a new laundry smart card
 - c. Tenant states that in December 2013 his kitchen sink broke and was not repaired for three days
2. Not provided with key and/or working lock

- a. Tenant states on February 22, 2014 his suite door lock was broken and the landlord refused to get it fixed
 - b. Tenant states in March 2014 he lost his building key and the landlord refused to give him another one
 - c. Tenant states in April 2014 his suite door lock broke again and the building manager refused to replace it.
3. Building manager comments, gestures, or actions
- a. Tenant states in November 2013 the landlord sent him a letter regarding frequent door slamming
 - b. Tenant states in December 2013 the landlord sent him a letter regarding an incident in the back alley
 - c. Tenant states in February 2014 in the elevator, the building manager asked him if he was going to smoke
 - d. Tenant states in March 2014 in the lobby, the building manager saw him, rolled her eyes, and made a comment to another person
 - e. Tenant states in April 2014 the building manager told him to stop talking to her as she couldn't understand him
 - f. Tenant states on two occasions in April 2014 the building manager attempted to take photos or videotape him
4. Previous dispute resolution hearings
- a. November 2013 – hearing held to dispute a notice to end tenancy for cause
 - b. January 2014 – landlord served a notice to end tenancy for landlord's use; subsequently withdrawn

Repairs

The landlord agrees the tenant's front door buzzer rang to the wrong phone for a few days in October 2013. The building manager says she was unfamiliar with the buzzer system and accidentally reset several buzzers (including the tenant's buzzer) to previous numbers. She obtained a manual for the buzzer system and corrected the problem on October 10th.

The landlord agrees they did not replace the tenant's laundry smart card. It is the landlord's policy to require all tenants to purchase replacement cards at a local drugstore.

The landlord agrees the tenant had a problem with his kitchen sink in December 2013. She says they reported it to their plumbers but the plumbers were occupied with other jobs. After three days, they elevated the problem to "emergency status" and the plumbers fixed the problem. The landlord notes the tenant had the use of his bathroom sink during this time.

Keys and Locks

The landlord gave evidence that the tenant knocked on her door at 12:30 the night of February 21/22, 2014 to say that his suite door key did not work. The tenant appeared to be drunk and

swore at her, calling her a “b*tch” and a “c*nt”. The landlord tried her master key in the tenant’s suite door but it did not work. The landlord says she believed this was because the tenant had changed his lock at some point. The landlord provided the tenant with the names of the two locksmiths which install locks compatible with the building master key. The landlord’s evidence is that the tenant used a different locksmith to replace his suite door lock.

The landlord gave evidence that clause 30 of the tenancy agreement states:

“The tenant will be responsible for any cost incurred to regain entrance to the residential property or rental unit including any damage and all necessary repairs, in the event the tenant locks himself out of the residential property or rental unit.”

The tenant gave evidence that he called his mother for assistance. His mother gave evidence that she called the police and also called a locksmith. She asked the landlord to reimburse her the \$250.00 cost for the locksmith, but the landlord refused.

The landlord gave evidence that when the tenant lost his building key in March 2014, she told him to go to the locksmith at the end of the block, show i.d., and they would provide him with a new one.

The landlord gave evidence that in April 2014, she advised the tenant that he would have to get his lock changed to one that conforms to the building master key. Her evidence is that a few days later, the tenant’s suite door lock was again found to be broken. The landlord was of the view that the tenant should pay the cost of replacing the lock with a conforming lock. However, the tenant’s mother contacted the property management company and they agreed to replace the lock at the landlord’s cost.

Building manager comments, looks, actions

The landlord agrees they sent the tenant letters regarding slamming his door and being present one night when a group of people hung a piñata from electrical wires in the back alley. The tenant says his door closes easily and he was not present at the piñata event. The landlord provided a letter from another tenant who says he saw the tenant outside taking photos of the piñata event.

The landlord agrees she asked the tenant if he was going to smoke one day in the elevator. The landlord previously permitted tenants to smoke on the rooftop deck and the elevator was going up. The tenant says he was going downstairs to do his laundry.

The landlord gave evidence that she does not recall the March 2014 event in which the tenant claims she rolled her eyes.

The landlord agrees she told the tenant in April 2014 to stop talking to her because she could not understand him. She was, at the time, speaking to him on her cell phone from a noisy street.

The landlord agrees she tried to photograph the tenant. She says she wished to obtain evidence of his behaviour that might be relevant in this hearing.

Analysis

According to Residential Tenancy Policy Guideline 6 "Right to Quiet Enjoyment":

"A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. ... "

"Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome." As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions, however all reflect the element of ongoing or repeated activity by the harasser."

The evidence does not support that the tenant was harassed or treated in a different manner than other tenants are treated in similar situations. The incidents the tenant has described do not appear to be harassing, whether considered individually or collectively. I find the landlord dealt with the tenant's requests for repairs and other services in a reasonable manner. I find the landlord's conduct in dealing with issues regarding the tenant's behaviour, including preparing for this hearing, to be reasonable. The tenant's claim for compensation for harassment is therefore dismissed.

The landlord faced a challenging situation very early in the morning of February 22, 2014. She was recovering from illness and asleep when the tenant, drunk and verbally abusive, demanded her help getting into his suite. She tried her master key and, when it did not work, provided the tenant with the names of the two approved locksmiths.

I am sympathetic to the position the landlord was in. However, had the landlord called a locksmith herself, that would have ensured an approved locksmith was used. Instead, the landlord told the tenant to call an approved locksmith. The tenant then called his mother for assistance and his mother then called an unapproved locksmith. It may have been unrealistic to expect the tenant, drunk and belligerent, to follow instructions about using certain locksmiths.

I find that clause 30 does not apply in this instance, since I interpret clause 30 to apply only in circumstances when the tenant locks himself out through his own actions. Whether the tenant is at fault should be assessed on a balance of probabilities. Here, the landlord suspected that the master key did not work because the tenant had changed the lock, but there was no actual evidence from a locksmith that that was the problem. If the tenant's evidence is accurate, he had a key which did not work and that may indicate the lock was broken.

If the landlord had called an approved locksmith, that locksmith could have provided evidence about why the master key did not work. However, such evidence is not available. Since there is no expert evidence on why the tenant was locked out that night, I conclude the landlord does not have the evidence necessary to apply clause 30. Accordingly, the landlord should pay the cost of the February 22, 2014 lock replacement. **I authorize the tenant to deduct \$250.00 from his rent on a one-time basis as reimbursement for the February 22, 2014 locksmith fee.**

The landlord provided some evidence apparently in support of an eviction, however there was no notice to end tenancy at issue and the landlord did not cross-apply in this hearing to end the tenancy. Therefore, I have not summarized or considered such evidence.

Conclusion

The tenant is authorized to deduct \$250.00 from his rent on a one-time basis.

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: September 16, 2014

Residential Tenancy Branch

