Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFL

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $35,000 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. She was assisted by an advocate ("**NS**"). The landlord was represented at the hearing by its associate director of operations ("**SG**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and SG confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. SG testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served the required documents in accordance with the Act.

Preliminary Issue – Amendment of Landlord's Name

At the outset of the application, I inquired of SG if the name of the landlord (a corporate entity) was properly stated on the application. She stated that it was missing the designation "limited partnership" at the end. As such, and with the consent of the parties, I amend the application to correct the landlord's name.

Preliminary Issue – Narrowing of Issues at Hearing

In preparation for this hearing, I noted that two central issues existed in the tenant's application. The first being whether the landlord was liable for the tenant's loss, and the second being the amount of the tenant's loss. I advised the parties that I did not believe there was sufficient time in the hearing to deal with both of these issues. I indicated that I would address the issue of the landlord's liability first and then adjourn the hearing. I would then decide as to liability and, if necessary, reconvene the hearing to determine the amount of loss, in the event I found that the landlord was liable.

For the reasons that follow, I do not find that the landlord is liable for the tenant's loss, and that it is not therefore necessary to reconvene the hearing to determine the amount of loss.

Issues to be Decided

Is the landlord liable for the tenant's loss?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, month to month tenancy agreement starting August 7, 2015. Monthly rent is currently $1,102.90 plus $85.00 for parking due on the first of each month. The tenant paid the landlord a security deposit of $480, which the landlord continues to hold in trust for the tenant.

The rental unit is located in a large apartment complex which contains roughly 500 rental units.

The tenant testified that in September of 2018 she returned to her home country to undergo medical treatment. She testified that she advised the building's property manager of this and provided them her contact information while she was out of the country.

The parties agree that, on May 6, 2019, the manager's office located in the residential property (the "**Office**") was broken into and a master key to all the locks in the residential property was stolen. The tenant was still out of the country.

The Office was located off of the foyer of one of the buildings on the residential property. This foyer was accessible to the general public and did not require a key fob to enter. At the time of the break in, the office door was locked and the master key was in a filing cabinet located therein. SG stated that the filing cabinet had a lock on it, but she was unsure whether or not it was locked.

Later that day, the landlord slid a memorandum under the door of each unit in the residential property which stated:

> Please note that our rental office has experienced a recent break in. We assure you that we are dealing with this incident as quickly and efficiently as possible.

> For your safety, and to prevent future incidents we will be upgrading our alarm system and changing all building/suite locks. During this time, we have hired security guards to walk the building.
>
> We will begin changing suite locks on Tuesday May 7th, at 9am and this process will take a few days. If you come home and your key no longer works, please contact 604-980-3606 to receive your new set of keys. Please have this memo serve as suite entry for Tuesday May 7th -Friday May 10th from 9am-5pm.
>
> We appreciate your patience as we continuously work to improve the standards and services of [the landlord]. Should you have any further questions or concerns please contact the Rental Office.

SG testified that the landlord slid this memorandum under the door of each unit, rather than posting it on the door, because the landlord was concerned about notifying potential thieves of which units were unattended (unattended units would not have someone inside to remove the memorandum from the door of the rental unit).

SG testified that the landlord did not have the ability to send this memorandum to all the tenants electronically and that the landlord did not send it to the tenant via email or otherwise notify her that the Office had been broken into beyond sliding the memorandum under the door of the rental unit. She testified that the landlord immediately hired two security guards to patrol the residential property and that all of the locks on the residential property were changed by the end of May 10, 2019.

On May 10, 2019, the tenant received an e-mail from her Canadian bank stating that her chequebook had been found. This concerned her, as her chequebook was located in the rental unit. After some investigating (the details of which are not relevant to this portion of the application), she asked a friend of hers who lived on the residential property to attend the rental unit with the building manager on May 10, 2019. She stated that they discovered the rental unit had been “totally turned over” and that a large number of her personal belongings, including her chequebook, were missing. The tenant submitted a copy of the RCMP report about the break into her rental unit which stated:

> [Redacted] then went to [the rental unit] to see if anyone had broken in and stole [the tenant’s] chequebook, thus discovered that [the rental unit] was unlocked. On further investigation, [redacted] found [the rental unit] to have been completely ransacked. Point of entry is believed to have been gained through the front door as it is the only entrance to the unit. [The tenant] advised that she had not been home since the past January and advised that she takes extended periods out of the country. No signs of forced entry, which lead to believe that a key was used.

SG stated that the rental unit's lock had not yet been changed when the building manager and the tenant's friend attended the rental unit.

The tenant argues that the landlord should be liable for the loss she suffered as a result of the break-in to her rental unit. She alleged that the perpetrator of the Office break-in and the rental unit break-in was a former employee of the landlord. She testified that the RCMP advised her of this, but she did not offer any documentary evidence corroborating this. SG denied that the individual suspected of the break-ins was a former employee.

Additionally, the tenant argued that the landlord should be liable for the following reasons:

1) the landlord failed to properly secure the master key in the Office;
2) the landlord failed to notify the tenant of the Office break-in so she could take steps to secure the rental unit;
3) the landlord failed to replace the rental unit's lock in a reasonable amount of time; and
4) the landlord failed to hire adequate security to surveil the residential property between the Office break-in and when the lock to the rental unit had been changed.

The tenant argued that Residential Tenancy Branch (the "**RTB**") Policy Guideline 1 created an obligation for the landlord to keep the master key adequately secured. It states:

> In a multi-unit residential premises, in addition to providing and maintaining adequate locks or locking devices on all doors and windows of each individual unit within the premises, the landlord is responsible for providing adequate locks or locking devices on all entrances to common areas in the premises and on all storage areas.

She argued that by not properly securing the master key, the locks on the rental unit door was not adequate.

The tenant also argued that the large number of items removed from the rental unit indicate that there was not adequate security patrolling the residential property following the Office break-in.

SG argued that they hired adequate security, but due to the size of the residential property they could not patrol all of it at all times.

Analysis

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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:
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> - 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.
>
> (the "**Four-Part Test**")

As such, the tenant must prove that the landlord breached the Act or tenancy agreement in order to be successful in a claim against the landlord. For the reasons that follow, I do not find that she has established it is more likely than not that this occurred.

There is no part of the Act that prescribes the method or standard of security a landlord must meet with regards to the residential property. Policy Guideline 1 states that entrances to common areas must have "adequate locks". It does not cite the statutory authority for this, however it is likely derived from section 32(1) of the Act, which states:

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

Having locks that serve their purpose on entrances to common areas is consistent with making a residential property suitable for occupation by a tenant. However, I do not find that this section can be interpreted to include proscribing the method which a landlord must store keys to these locks. Such an interpretation is not in accordance with a plain reading of the Act, is overly broad, and would change the nature of the section from one relating to the residential property itself to one that dictates the manner in which a landlord undertakes its obligations and more generally organizes its affairs.

For this reason, I do not find that if the landlord failed to adequately secure the master key (which I explicitly make no finding on) that such a failure would amount to a breach of the Act.

However, I find that section 32(1) of the Act obligates a landlord to change locks after it learns that the key to that lock has been stolen. This amounts to maintenance necessary to provide a secure rental unit suitable for occupation. That being said, I do not find that the landlord breached the Act in this regard.

While the Act requires a landlord to repair and maintain a residential property, it does not require that repairs be instantaneous. The landlord is permitted a reasonable amount of time to undertake the repairs. In this case, the landlord immediately scheduled a locksmith to attend the residential property and replace over 500 locks within four days of the Office being broken into. The tenant did not dispute SG's testimony that all the locks at the residential property were replaced by the end of May 10, 2019. Accordingly, I accept this is true. In the circumstances, given the number of locks that had to be replaced, I find that four days is a reasonable period of time to replace a compromised lock.

I accept SG's testimony that the landlord hired security guards to patrol the residential property. This was reasonable in the circumstances. However, for the reasons set out above, I do not believe that section 32 of the Act ought to be interpreted to impose an obligation on the landlord to do this. As such, a failure to hire an insufficient number of security guards is not a breach of the Act.

Additionally, the tenant has not referred to any section of the Act which would obligate the landlord to notify her of the Office break-in. I also note that while sliding a document under the door of a rental unit is not a method of service set out at section 88 of the Act, in the circumstances, it was a prudent way of delivering documents to residents. I also note that, had the landlord posted the memorandum on the door of the rental unit, the tenant would be in the same position as she was with it being slid under the door. In the event that I am incorrect and the landlord had an obligation to notify the tenant of the Office break-in, I find it appropriate to deem that the landlord served the memorandum in accordance with the Act pursuant to section 71(2)(b), given that in the circumstances it posed less risk to the tenant's property than posting it on the door of the rental unit (a mode of service permitted by the Act).

For these reasons, I do not find that the landlord has breached the Act, its regulations, or the tenancy agreement and the tenant has failed to satisfy the first part of the Four-Part test. As such, I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

I dismiss the tenant's application 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: March 14, 2023

Residential Tenancy Branch