



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding ENTRE NOUS FEMMES HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The tenant was also assisted by an Advocate. The parties were given the opportunity to question each other and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically to have bills issued by the landlord cancelled so that the tenant does not have to pay them?

Background and Evidence

The tenant testified that this month-to-month tenancy began on April 15, 2023 and the tenant still resides in the rental unit. Rent is subsidized and the tenant's share is \$320.00 per month, plus \$40.00 per month cable. A copy of the tenancy agreement has been provided for this hearing. Rent is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$408.50 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenant made a maintenance request on the landlord's online system about a sink that wouldn't drain, but didn't receive confirmation that it had been submitted. The tenant spoke with a property manager at that time, who said that someone would be out the following week. Someone showed up about a week later, and the tenant believes it was a handyman, but does not believe the person is a plumber. The person opened the door and by then the sink had cleared and he asked that the next time, the tenant take a photograph and he left without snaking the drain. No one said that the tenant would be charged for that, and the person said nothing about fault.

Earlier this year the tenant lost the tenant's keys. The tenant is aware that other tenants would be given a key to make a copy without being charged and would be required to return the key back to the landlord after making a copy. The tenant had asked the previous property manager if the tenant could copy the keys, who replied that it was not allowed.

The landlord's agent testified that the landlord has offered to reduce the plumbing charge. The charge-back to the tenant was not due to anything the tenant did to the drain but a charge for a wasted trip; the tenant should have notified the landlord that the drain issue was resolved. The handyman went out for nothing, and the landlord had no way of knowing that it had been resolved. The tenant's maintenance request was received by the landlord on February 28, 2024, wherein the tenant found the sink filled with sediment while the tenant had been out. It appeared to be a drainage back-flow, and on rainy days water can back up. In the tenancy agreement the tenant acknowledges that such repair requests for work that is not required are to be borne by the tenant and the responsibility of the tenant. The landlord has a general contractor who is sent out first to keep the costs more affordable, and if the job is a bigger problem, the landlord calls a plumber. The handyman reported that there was no issue.

The landlord had a key to the suite door, which the landlord copied and gave to the tenant. The landlord had to also replace the patio door lock and mailbox, and the landlord does not maintain copies for the mailbox or patio door lock. The landlord's policy is to copy the key. However, the landlord had to drill out the locks to replace the patio lock and the mailbox lock. The tenancy agreement speaks to extra keys, specifically: "19 (d) The tenant agrees not to make extra keys for any lock in the Rental Unit or on the Residential Property, except with the prior written consent of the Landlord. If the Tenant is locked out of the Rental Unit and the Rental Unit is damaged in regaining access, the Tenant must pay any costs of repairing such damages. The Tenant must pay any other costs incurred in regaining access."

A charge-back letter was sent to the tenant, and several letters with copies of Invoices, and the tenant agreed to pay the costs at \$20.00 per month, but that was rescinded and the tenant did not make any payments. The tenant did not ask for extra keys, but lost them, and locks were replaced.

The patio lock cost \$173.25 and the landlord charged \$78.75 for the lock and labour. The tenant paid \$30.00 for the building front door key. The charges to the tenant are \$250.50, being \$51.45 for the plumbing fee; \$120.75 for replacement of the mailbox lock and \$78.75 for replacement of the patio door and unit door locks.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

The tenant's responsibility is to report maintenance issues to the landlord, and was correct to make the request for the drain issue. It took the landlord about a week to look at it, but did not contact a plumber. The tenant testified that no investigation was done, and the handyman concluded there was no issue, but cannot do so just by looking at it visually. The landlord's agent testified that the handyman did not say that the tenant caused the issue, so it is not appropriate to charge the tenant for the callout. There is no evidence that it was resolved, there was no investigation or a plumber, so there is not enough evidence that the tenant should have known that it was resolved. The Residential Tenancy Branch website states that a landlord may only claim the actual cost of the key, and must not be more than the key itself. If the tenant is charged, the tenant should get something to ensure the cost is correct. The landlord must also mitigate, and a reasonable action would be for the landlord to maintain spare keys to avoid a tenant incurring outlandish locking fees, and for emergency access. The landlord's charges are unreasonable and not proportionate, given that rent is \$320.00 per month and the replacement charge is about 72% of the rental rate. There was no damage caused, and there should be no damages owing by the tenant. The tenant agrees to not make extra keys without prior written consent of the landlord. The tenant paid the actual replacement keys for the building but not the other keys.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord has extra keys. The tenant gained access and there were no damages caused to the rental unit, but other costs referring to drilling are charged to the tenant. The tenant agreed with the work for plumbing and the tenant could have cancelled the callout. At no point at this address was there a request made to copy keys. The *Act* deals with costs of keys, but doesn't deal with locks that need to be replaced.

Analysis

Firstly, with respect to the plumbing call-out, I have reviewed the tenancy agreement, which states that damaged or clogged water or sewer pipes or plumbing fixtures are emergency repairs, which is in accordance with the law, not just the tenancy agreement. It also states: "...The Tenant must promptly report to the Landlord any damage, unsafe condition, fault or deficiency in the Rental Unit, Residential Property or services, including without limitation leaking water and non-operating smoke detectors."

In this case, the tenant reported a sink that would not drain. I see nothing in the tenancy agreement that informs the tenant that if the deficiency is resolved, the tenant must promptly notify the landlord. Further, the parties agree that it took about a week for the handyman to attend, and the tenant testified that the handyman, who the tenant believes is not a plumber, found that the water had drained in that time period, but didn't look at it any further or snake the drain. I don't think that's how an emergency repair ought to have been dealt with by the landlord.

The description of the Invoice that the landlord has passed on to the tenant states: "Repairs @ (suite number), check sink, let water run and found no problem, tenant said happened once in a while, appear to be deep inside." Considering the notation on the Invoice and the tenant's testimony, I am not satisfied that the tenant ought to have cancelled the call-out, and perhaps thought it necessary that someone look at it. I order that the bill be removed from the tenant's ledger.

With respect to the patio door and mailbox keys, I agree with the landlord's agent that the tenancy agreement specifies that:

"19 (d) The tenant agrees not to make extra keys for any lock in the Rental Unit or on the Residential Property, except with the prior written consent of the Landlord. If the Tenant is locked out of the Rental Unit and the Rental Unit is damaged in regaining access, the Tenant must pay any costs of repairing such damages. The Tenant must pay any other costs incurred in regaining access."

In this case, there were no damages, and the tenant did not make extra keys. The only cost incurred in the tenant regaining access was the \$30.00 charge for the main door key, which the tenant has paid for. The description in the Invoice for the mail box lock shows that the charge is for drilling out the mailbox lock and to install new for a charge of \$95.00 and \$20.00 for a mail box lock and 1 key copy, in addition to 5% GST.

The Invoice for the patio door shows a description of: "Locksmith @ #: re key patio door lock with new drum, also replace handle," for a cost of \$95.00 and \$25.00 for the drum and \$45.00 for the handle, for a total of \$165.00, in addition to GST.

I refer to Residential Tenancy Policy Guideline 1 Landlord & Tenant – Responsibility for Residential Premises, which states:

KEYS

The landlord must give each tenant at least one set of keys for the rental unit, main doors, mail box and any other common areas under the landlord's control, such as recreational or laundry rooms. The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.

In my view, the landlord ought to have had at least one extra set of keys for the mail box and the patio door, which would have eliminated any need to drill out the locks. Further, I agree with the tenant's Advocate that the cost of the keys alone can be charged to the tenant, and I find that the fees charged by the landlord are excessive.

In summary, I find that the Invoices charged to the tenant are contrary to the *Act* and the tenancy agreement, and the tenant cannot be held accountable. The tenant has applied for a monetary order to recover the Invoice amounts, however the tenant has not paid those amounts to the landlord. Therefore, I decline to grant a monetary order in favour of the tenant. However, having found that the invoices are contrary to the *Act* and the tenancy agreement, I order that the landlord remove those Invoiced amounts from the tenant ledger.

Conclusion

For the reasons set out above, I hereby order that the landlord remove the Invoiced amounts for the patio door lock and key, and the mailbox lock and key, and the plumbing callout Invoice.

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: October 17, 2024

Residential Tenancy Branch