Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, RR, O, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders for the Landlord to comply with the Act or tenancy agreement, for compensation under the Act or tenancy agreement, to reduce the rent by $650.00, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Tenant entitled to the relief sought?

Background and Evidence

This tenancy began on November 30, 2008, with the parties entering into a written, standard form tenancy agreement. Included in the $1,100.00 monthly rent was a storage locker for the Tenant's use. The rental unit is a condominium in a Strata building.

On December 8, 2008, shortly after the Tenant occupied the rental unit, the Tenant sent the Landlords an email requesting a repair to the storage locker door latch. According to the evidence of both parties, the loop latch that allows a lock to secure the door appears to have been installed improperly. The screws that fasten the latch to the door frame are exposed and therefore, someone could unscrew the latch and gain access to the locker without bothering with the lock. Furthermore, the door hinges have been improperly installed, as the screws for the hinges are also exposed.

On December 10, 2008, the Landlords replied via email to the Tenant and offered him two options. They explained to the Tenant he could either change the lock latch himself, or he could contact an on-site building caretaker to meet him at the locker to

repair the problem. The Landlords had called the caretaker and arranged to have him do this repair, according to their testimony. The caretaker had told the Landlords to give the Tenant his phone number, as he would require the Tenant to remove the lock from the latch to do the repair.

According to the testimony of the Tenant he spoke to the caretaker when he was passing him in the hallway, and the Tenant alleges the caretaker told him that the latch was the responsibility of the Landlords.

On December 12, 2008, the Landlords emailed the Tenant again and asked, "Have you resolved the storage lock issue yet?". The Tenant did not reply with any information about the storage locker.

On January 28, 2009, the Landlords emailed the Tenant again and informed him that a Strata meeting was coming up and asked if he had any other issues to bring forward. Again the Tenant did not bring up the issue of the door latches.

Over the next months the parties dealt with a sticking access door to the storage locker area and an issue involving a leak from the ceiling over the parking stall for the Tenant's car. There is no written evidence that the Tenant brought up the issue of the lock latch again until December of 2009, although the Tenant claims he spoke with the Landlords about the issue in May of 2009. I note the issue of the sticking access door to the storage locker area was dealt with prior to this hearing.

I also note the Tenant filed an Application for Dispute Resolution to deal with the ceiling leak over the parking stall and that matter was dealt with in September of 2009, and a copy of that Decision was entered into evidence in this hearing. The Tenant did not raise the issue of the door latch in that earlier Application and it was not mentioned in the Decision.

Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, **I find that the Tenant has been partially successful in his claim.**

I order the Landlords to repair the storage locker door latch and hinges within 15 days of the date of receipt of this Decision.

I deny the Tenant any monetary compensation or a rent reduction in this matter. When making a claim for damages under a tenancy agreement or the Act, the party making the allegations, here the Tenant, has the burden of proving their claim.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed, and proof that the party took all reasonable measures to mitigate their loss.

I find the Tenant failed to show any damage or loss occurred. I accept the evidence of the Landlords that the Tenant was still using the storage locker.

I further find the Tenant did not take reasonable steps to mitigate his loss, such as notifying the Landlords earlier that the repairs were not made. More importantly, the Tenant waited until after his first Application (which was unsuccessful), to make this Application, and therefore, did not take reasonable steps to mitigate his loss.

I also cautioned the Tenant at the conclusion of the hearing that his claim was bordering on being frivolous and vexatious. The fact that he did not raise the issue in the first Application he made indicates a willingness to involve the Landlords in an unnecessary multiplicity of hearings. This is bordering on vexatious behavior towards the Landlords by the Tenant.

As to the issue of the filing fee, I initially believed the Tenant was entitled to the return of his filing fee for the Application, as the repairs were not completed by the Landlords. However, I am varying that decision now as I have deliberated over it while reviewing all the evidence before me.

Upon careful consideration, **I have determined that the Tenant should <u>not</u> be awarded the filing fee for this Application.** This entire matter should have been dealt with in the earlier hearing. To create a need for a second hearing, on a matter that is relatively minor and did not cause the Tenant to suffer any measurable financial loss, is bordering on frivolous behavior. Therefore, I find that the Tenant is not entitled to the return of the filing fee for the Application.

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: February 19, 2010.

Dispute Resolution Officer