



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, ERP, RP, RPP, AAT, O

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

As I found the tenants written application somewhat difficult to follow; at the beginning of the hearing I clarified with the tenant what the issues were that he wanted dealt with.

It was determined that the issues are as follows:

- An allegation that the landlord has been restricting access to the rental unit, and a request for compensation totalling \$9,855.00 for nine years of restricted access.
- An allegation that six years ago the landlords negligence resulted in the theft and/or damage of the applicants stored speakers, and a request for \$800.00 in compensation for those stolen/damaged items.
- An allegation that the landlord has restricted access to a rooftop garden area, that was included in the rental at the beginning of the tenancy, and is locking a fire exit door leading to the roof area, and a request for \$3000.00 in compensation for loss of use of this area for the past five years.

Restricted access

Background and Evidence

The applicant testified that:

- For the past nine years, the landlord has been disabling the door buzzer panel at night, and as a result the tenant's guests are unable to access the tenant during those hours.
- The landlords have also been refusing to put the tenants names or suite numbers on the access panel and therefore the tenants guests do not know how to contact the tenant.
- This is a major inconvenience because he has missed visits from many guests including friends and family and even his girlfriend.

The applicant is therefore requesting an order that the landlord stopp disabling the door buzzer panel at night, and that the tenants name and or suite number be listed at the access panel. The applicant is also requesting an order that the landlord pay \$9,855.00 compensation to the tenant for loss of use and enjoyment over a nine year period.

The respondent testified that:

- The buzzer is disabled between the hours of 10 p.m. and 7 a.m. for security reasons.
- This building is in a very high crime district with a large number of street people in the area and it is common for unwanted people to ring all the buzzers in hopes that someone will open the door. To avoid this happening the buzzer has been disabled during the night-time hours.
- They are not limiting access to the tenants invited guests, as there is always a staff person either available at the building, or by telephone at a number which is listed in plain view of the entrance. Legitimate guests are allowed into the building during the night-time hours by the staff person.

- They also do not list names or suite numbers on the access buzzer panel, for the safety of the tenants and all tenants are given an access code to give to their invited guests.

The respondent therefore believes that buzzer system should continue to be disabled between the hours of 10 p.m. and 7 a.m. and names and numbers not listed on the buzzer panel. The respondent also believes that the monetary claim is unreasonable considering that the tenant has filed no complaints prior to this application.

Analysis

It is my decision that the landlord is not unreasonably restricting access by turning the buzzer system off between 10 p.m. and 7 a.m. or by not listing names and numbers of the suites as I believe this is being done due to legitimate safety considerations; however that being said it is also my finding that it is not reasonable that the tenants invited guests should have to make a phone call to get a staff person to allow them to enter the building, because not all persons have access to a telephone.

Therefore it is my decision that the landlord must insure that a staff person is available to allow access between the hours of 10 p.m. and 7 a.m. and that that person can be accessed through the buzzer panel, not by phone. The buzzer panel should be clearly labelled so that anyone requiring access between the hours of 10 p.m. and 7 a.m. know which button to push for access. This will allow for the safety and security of the building and still allow access to legitimate guests of the tenants.

I will not allow the tenants claim for monetary compensation however, because although the restricted access may have been an inconvenience for the tenant and his guests, I am not convinced that there was any significant loss of use and enjoyment.

Further if this was a great inconvenience to the tenant he could have applied for an order 9 years ago and thereby mitigated his loss, instead of waiting and then attempting to get compensation for 9 years of loss of use.

Stolen items

Background and Evidence

The applicant testified that:

- Approximately 6 years ago some speakers that he had stored in an area to which only the landlord had keys were stolen or damaged.
- It is his belief that since the landlord was the only person who had keys to the area, the theft must have been the result of negligence or wilful actions on the part of the landlord.

The applicant is therefore requesting an order for \$800.00 as compensation for these lost items.

The respondent testified that:

- There is no evidence of negligence on the part of the landlord, and in fact the tenant has not even filed a police report on this matter even though he claims it happened approximately 6 years ago.
- The tenant never gave us any written notification of this theft and this application is the first notification that we have received.

The respondent therefore believes this application should be dismissed.

Analysis

it is my decision that the applicant is not met the burden of proving that the theft/damage of his speakers was the result of any negligence on the part of the landlord, and in fact I find it very strange that if he really believed that the landlord was responsible he would not of filed a police report six years ago when this happened.

I therefore will not allow the applicants claim for compensation for stolen speakers.

Rooftop Garden

Background and Evidence

The applicant testified that:

- When he first viewed this rental property one of the main selling features for him was that it had a rooftop garden that he would be able to access and enjoy.
- Approximately 5 years ago the landlords locked the door that provides access to the rooftop garden and which in his opinion is also a fire escape, and since then he has not had access to the rooftop garden.
- Loss of use of the rooftop garden has had a detrimental effect on his health, as he requires a large amount of sunlight for health reasons.
- He also believes that it is a safety issue that the fire escape to the roof has been locked.

The applicant is therefore requesting an order that the door allowing access to the roof be unlocked and that the tenants once again be allowed access to the rooftop garden. He is further requesting compensation of \$3000.00 for loss of use of the rooftop garden for the past five years.

The respondent testified that:

- This rooftop area has never been considered a feature of the tenancy.
- The rooftop area was at one time left unlocked and some people had been using the rooftop area however due to abuses that occurred such as items being thrown off the roof, needles and condoms being left lying around on the roof, etc. the door to the rooftop area was locked approximately 5 years ago.

- The door is not a fire escape door for the building; it is only a fire escape door from the roof so that, in the event of a fire, if someone wants to escape from the roof they are able to do so.
- The fire department has come and inspected the facility numerous times and they have been told by the fire department that it is not a fire escape for the building, only for the roof. Therefore since it is not locked from the roof side it complies with the fire department requirements.
- They have also been informed by a roofing company that allowing access to the roof could damage the roof membrane which could possibly cause leaking of the roof.
- The rooftop area is also not a safe area for the tenants to be, as the fence in the rooftop area is quite low and it would be easy for someone to fall over.

The respondents therefore believe that the rooftop area should remain locked to the tenants and since it was never a feature of the tenancy they do not believe that compensation is reasonable.

Analysis

Again the fact that the tenant has taken approximately 5 years to file a request for compensation for loss of use of the rooftop area indicates to me that the tenant did not consider loss of use of the rooftop area to be that significant.

Further had the tenant considered loss of use of the rooftop area to be a significant loss of use he should have filed a claim five years ago and thereby mitigated his loss rather than wait five years and then attempt to be compensated \$3000.00 for loss of use.

Therefore the request for compensation for loss of use is denied.



Dispute Resolution Services

Page: 7

Residential Tenancy Branch
Ministry of Housing and Social Development

I am also not convinced that the rooftop garden was ever included in the tenancy, and although the tenant did have access to this area for a period of time, I am not willing to order that access be reinstated because I am convinced that there are legitimate reasons to deny access to the tenants.

It is also my decision that the applicant has not shown that the door to the roof is a fire escape door, and in fact I accept the landlords testimony and evidence that it is not.

I therefore dismiss the request for access to the roof area.

Conclusion

I have ordered that the landlord ensure that there is access **by buzzer** to a staff person between the hours of 10 p.m. and 7 a.m.. The remainder of the claim is dismissed 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: February 12, 2010.

Dispute Resolution Officer