Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by tenants, (hereafter known as "*the tenant*"), of 17 different units living in the senior's complex, requesting monetary compensation and rent abatement for loss of services including:

- Termination by the landlord of a "buzzer system"
- Termination by the landlord of the provision of hot water for laundry
- Termination by the landlord of the provision of a garbage chute on each floor

for which the tenant was seeking compensation under the Act. Both the landlord and the tenant appeared and each gave testimony in turn

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss in the past and possibly a future rent abatement. This determination will be based on two factors, both of which must be proven by the tenant:

1. Proof that the landlord has violated the Act or the tenancy agreement by restricting services and facilities included as part of the tenancy

2. Proof that the violation of the Act or agreement by the landlord resulted in a loss or devaluation of the tenancy for which the tenant should be compensated.

The burden of proof is on the applicant to prove all of the claims contained in the tenant's application.

Background and Evidence

The 17 tenancies began between 1996 and April 2008 and the rents varied from $343.00 per month to $491.00 per month. The complex is run by a charitable organization and receives funding from the province and some of the rents are based on a percentage of each tenant's income.

The tenant testified that tenancy agreements affecting 10 of the 17 applicants, all of whom moved in after 2003, included the provision of security buzzers or "panic buttons" located in the bedroom and bathroom of each rental unit. The tenant could evidently summon the manager using the buzzer in the event of an emergency. In July 2003, the landlord notified all of the tenants that the provision and use of the buzzers would be discontinued and advised the tenants that they should contact "911" by telephone for any health emergency that may arise. A copy of the notification was in evidence. The tenant's position was that under section 27 of the Act, a tenant is entitled to be compensated in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. The tenant presented calculations for the claimed compensation based on the cost of engaging a substitute, that being an external "life-line" service that provided a personal security buzzer at a cost of approximately between $32.00 and $37.00 per month. The tenant calculated that each tenant deprived of a security buzzer should be entitled to $2,730.10 compensation from the landlord for the loss of this service.

The landlord did not agree with the claim and pointed out that the security panic buttons were originally installed with a view to future needs in the complex. The landlord stated that, although the building was currently being used for seniors capable of independent living, the buzzer system was still put in use for the convenience of the tenants. However, according to the landlord, there was never any intention that residents could

rely solely on the buzzer for all emergency services and as the security buzzer system aged, serious problems began to occur that affected its reliability and usefulness. The landlord testified that in 2003, the buzzer system could not be depended upon nor could it be repaired as it had become obsolete over time. According to the landlord, it was finally determined by the Board that the tenants should instead be directed to utilize the widely utilized community “911” system for any emergency that may arise as a alternative to the internal system which was found to be so deficient that it was being removed altogether.

The tenant testified that another restriction of services occurred when the hot water to the laundry machines in the complex was shut off by the landlord on October 1, 2008. The tenant testified that many residents felt that suddenly being forced to use exclusively cold water, when the tenancy had previously included both hot water and cold water for laundry, constituted a restriction of service under section 27 of the Act which warranted compensation.

The tenant gave testimony that using hot water in the washing cycle was necessary to ensure that infections and bacteria were eliminated. According to the tenant, the deprivation of hot water had forced some residents to take their clothing to a laundromat for health reasons, thereby incurring additional costs of approximately $8.00 per month. The tenant was seeking compensation for 78 weeks of $164.00 for each tenant.

The landlord acknowledged that the laundry room was restricted to the use of cold water only and stated that this was a common practice especially in buildings where laundry is included at no cost. The landlord testified that it is an accepted fact that hot water is not necessary to properly clean clothes and stated that some of the latest models of washing machines often do not include a “hot” cycle at all. The landlord testified that, in any case, the water heater in the building was set at 60 degrees which was never sufficient to kill all pathogens merely through heated water alone. The landlord stated that, on the other hand, the use of a cold-water washing cycle with adequate detergent would safely eliminate any soil or dangerous bacteria. The landlord

had submitted into evidence a copy of a flyer from the H1N1 Pandemic Booklet published by the World Health Organization which stated that to ensure protection from virus contamination, "*Laundry can be washed in a standard machine with warm or cold water and detergent*". The landlord's position was that, although the washing facilities were altered, this change did not inflict any loss of value to the tenancies whatsoever and would certainly not warrant compensation under section 27 of the Act.

The tenant testified that part of the tenancy agreement also included the provision of garbage chutes on the second, third and fourth floors and the tenancy agreements directed the tenants to use them. However, the landlord suddenly closed off all of the garbage chutes on April 1, 2009 restricting this service/facility without any compensation to the affected tenants. The tenant testified that this would constitute a restriction of services under section 27 of the Act and compensation for the loss and devaluation of the tenancy was clearly warranted. The tenant estimated the value to be $1.00 per week per affected tenant amounting to $52.00 up to April 1, 2010. The tenant pointed out that imposing a new requirement forcing the elderly tenants to take the elevator to carry their garbage down to the garbage room instead of using the chutes that were previously part of their tenancy would be considered to be a significant loss of convenience to the tenants. The tenant felt that this action should be recognized as such with compensation from the landlord. The tenant also stated that some residents using wheelchairs or those with other mobility restrictions could not access the bins.

The landlord testified that the tenancy agreements did provide for the use of garbage chutes but that these chutes had become a concern of the Board due to hygiene, odour and vermin issues, as well as promoting separation of recyclables. According to the landlord, and it was decided that the chutes should be closed for the benefit of the complex and all of its inhabitants. The landlord directed all tenants, as an alternative, to follow a new process which entailed requiring each tenant to bring their sealed garbage down the elevator and go a short a short distance directly to the garbage room for disposal. The landlord testified that the tenants had to come to the lobby to check their

mail anyway and therefore taking the garbage on their way would not involve much additional effort. The landlord pointed out that in some instances this was actually more convenient than using the chutes, depending on how far the rental suite was from the elevator. The landlord testified that no reports were received about residents being unable to access the bins in the garbage room. However, the landlord was aware that some residents who received homecare were given help with the garbage removal from support staff. The landlord indicated that it was willing to address accessibility problems should any be reported to the landlord. However, no concerns had ever been raised by any incapacitated tenants to date. The landlord disputed the tenant's claims for compensation.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant and the tenant has established that the tenant was subjected to a loss created by the landlord, that violated the Act.

Section 65(1) states that if it is found that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. I find that justifying a past rent reduction, could be supported by proving both: a) that the landlord has **not complied with the Act or agreement** and b) that the **value** of the tenancy was **reduced** as a result

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

In this instance, I find that the matters under dispute are services and facilities that do not pertain to any deficiencies on the part of the landlord's in regards to section 32. I find that the tenant's allegations instead pertain to alleged violations by the landlord of contractual terms contained in the tenancy agreement.

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or

tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that: (i) are required or prohibited under this Act, or; (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities. Based on the above, I find that the application would be based on section 58(b)(ii).

In regards to enforceable terms in a tenancy agreement, I find that section 28 (2) of the Act provides that a landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord:

> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
>
> (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Security Buzzer

I find that there was clearly a term in the agreement that a buzzer system would be provided and I accept that by eliminating the buzzer the landlord had ended this a service that was included in the tenancy agreement. However I find that the elimination of the buzzer service was tempered by the availability of 911 emergency services provided by the community.

In regards to the tenant’s position that the landlord’s elimination of the in-house buzzer system would require that the landlord must provide a third-party service or compensation for the same at a cost between $1.07 and $1.23/per/day, I find that such a service could not be considered as an equivalent substitute. In fact, I find that this proposal constitutes a significant enhancement over the obsolete buzzer system previously offered by the landlord.

The landlord's former 'in-house' buzzer system evidently involved having alert buttons physically located in two areas of each rental unit that could be used to contact the resident manager, who would presumably be on hand around the clock, and who may or may not have had any specific medical training. I accept the landlord's testimony that the system was not reliable nor widely utilized by the tenants.

On the other hand, the life-line system put forth by the tenant as a comparable substitute is a third-party medical alert service that apparently utilizes a "help" button to be worn on the person. This external service is evidently aimed to protect vulnerable or disabled persons at risk and I find that, being suited to live in a complex aimed at independent living, not all of the senior tenants in this complex would be candidates for monitoring of this intensity and I am not convinced that the residents at large would be amenable to signing up for this service even if it was available at no additional cost.

I find that having one or more telephones available to call 911 for genuine emergencies would be equivalent to, or in some situations even superior to, the landlord's former defunct buzzer contact system that did not function particularly well, a fact that could actually have placed a distressed tenant in genuine peril if relied upon without caution. Given the above, despite the fact that a service that was explicitly included in the tenancy agreement was taken away by the landlord, I find that the loss of value suffered by the tenant was negligible because an alternate service existed that provided similar protection Accordingly, I dismiss the tenant's request for compensation for the loss of the security/panic buzzers.

Loss of Hot Water

I accept the tenant's testimony and position that the landlord's actions in restricting the laundry solely to cold water when the tenancy had previously included both hot and cold water for laundry, would definitely constitute a restriction of service under section 27 of the Act. However, I find that the tenant did not sufficiently prove that this restriction of services ultimately caused a quantifiable loss or devaluation of the tenancy warranting

compensation. Although it is understandable that some tenants would naturally prefer to use hot water for washing of their clothing, the evidence presented by the tenant did not establish that the restriction caused the amount of monetary losses being claimed. The tenant's verbal testimony alleging that using hot water would inhibit infections and promote hygiene was successfully rebutted by the landlord who pointed out that the hot water temperature in the building set at 60 degrees was not high enough to kill pathogens on its own and that, in fact, it was the washing cycle and detergent that effectively eliminates dangerous bacteria and infections regardless of water temperature.

Given the above, I find that no compensation is warranted for the landlord's restriction of hot water in the laundry machines.

Garbage Chutes

I accept the tenant's testimony and position that the landlord's actions in closing off the 3 garbage chutes would without any doubt constitute a restriction of services and facilities under section 27 of the Act. That being said, I find that the landlord did provide an alternative method, albeit not one that some would perceive as particularly convenient. However, I find that if there is a devaluation of any kind, it would be minimal and would not warrant compensation. This is based on the fact that I find that the loss of value due to the inherent inconvenience of having to transport household garbage for a longer distance would be equally set off by the elimination of garbage odour problems in the halls and the prevention of contamination by organic materials caught in the chute vents, along with associated vermin that this would facilitate. Moreover, I find that, if the building has already implemented, or if it plans to enforce a recycling program in the near future, the tenants would still be required to take their recyclable material to the proper location for disposal, as the chutes could not be utilized for that purpose. Therefore I find that no compensation for the deprivation of the garbage chutes previously operational on each floor can be justified.

Conclusion

Based on the testimony and evidence discussed above, I hereby dismiss the tenant's application in its entirety without leave to reapply.

July 2010 _____

Date of Decision Dispute Resolution Officer