



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parnell Place Apt.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, PSF, RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; provide services required by law; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, her advocate and two agents for the landlord.

At the outset of the hearing the landlord's agent indicated that he had not received the tenant's entire evidence package, in particular he was missing several pages of the package that include 7 pages. Upon review of the file, I confirmed that the all of the missing pages included only information relevant to the administrative functions of the tenant's Application and they would have no bearing on this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to provide her with keys to residential property and not requiring her to use the landlord's cleaner for carpet cleaning at the end of the tenancy; to a monetary order for compensation for time without a key to the property and return of key deposits, pursuant to Sections 30, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant has provided a copy of a tenancy agreement signed by the parties on August 30, 2012 for a month to month tenancy beginning on August 1, 2012 for the monthly rent of \$550.00 due on the 1st of each month with a security deposit of \$275.00.

The tenancy agreement includes additional clauses, the following two of which are relevant to the tenant's Application:

- There is a \$40.00 refundable deposit on front door key. Unless the key is damaged or lost; and

- Carpet has to be steam cleaned on move out by our cleaner (in apartments with carpet).

The tenant submits that she had not paid the key deposit at the start of the tenancy because she believes that the landlord is not entitled to charge such a deposit but that when she lost her key on March 6, 2013 after she was hospitalized the landlord refused to give her a key until she paid the original \$40.00 deposit and a second \$40.00 "deposit" for the replacement key.

The landlord submits that the tenancy agreement stipulates that the tenant pay a key deposit of \$40.00 and that the tenant agreed to this clause in the addendum to the tenancy agreement and stated she could not pay it at the time but that she would be receiving money shortly and would pay it then.

The landlord submits the tenant did not pay the deposit until she had lost her key and a replacement was required and that because she lost her key the landlord then charged her an additional key deposit. The landlord testified that all tenants in the complex must pay the key deposit.

The landlord explained that the deposit is for the key for the front door of the residential property and includes access to the laundry but that there is not deposit required for the key to the tenant's rental unit. The keys used are a high security type of locking system. The landlord testified that the cost of the key is \$40.00 but no documentary evidence to substantiate this was provided by the landlord.

The tenant submits that a replacement key would more likely be around \$8.00 from research she did by posing as a potential customer with the same supplier that the landlord used for the keys and on the internet.

The tenant submits that she agrees it is reasonable to be charged \$15.00 for a replacement key but seeks return of \$65.00 of these deposit monies. The tenant also seeks compensation of \$128.00 for 7 days that the landlord refused to provide her with a key to the rental unit. The landlord submits they did nothing wrong but rather it was the tenant who lost her keys and it was the tenant who refused to pay the key deposit.

The tenant also seeks clarity on a clause in the addendum regarding carpet cleaning. The landlord submits that they prefer to have tenants use the landlord's cleaners to complete carpet cleaning and that a small charge would be applied to the tenant for the cleaning and it would depend on the amount of carpeting in the rental unit.

The landlord also stated, however, they would not object if the tenant chose to have it professionally cleaned herself. The landlord testified that it would likely cost her more money to hire someone herself.

As a result of this dispute the tenant has changed her method of rent payment. She had originally had her rent paid directly from the Ministry of Social Development to the landlord. The tenant sought clarity from the landlord on how to arrange for the payment of rent.

The landlord testified that the tenant may pay rent in cash, certified cheque or money order on or before the day that rent was due and that the tenant should discuss her method of payment with the onsite manager.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 6(1) of the Residential Tenancy Regulation states if a landlord provides a key to a tenant they may charge the tenant a refundable fee, that is no greater than the direct cost of replacing the key. However, Section 6(2) states that a landlord must not charge a fee described in Section 6(1) if the key is the tenant's sole means of access to the residential property.

Section 1 of the *Act* defines "residential property" as:

- a) A building, part of a building or a related group of buildings in which one or more rental units or common areas are located;
- b) The parcel or parcels on which the building, related group of buildings or common areas are located;
- c) The rental unit and common areas, and
- d) Any other structure located on the parcel or parcels.

I find, in the case before me, the key, described in the tenancy agreement as for the front door, would be used to gain access to the building in which the rental unit is located and to common areas (such as the laundry). Further there was no evidence before me that the tenant had obtained a secondary key at any time.

I therefore, find the landlord has charged a deposit for a key that was the tenant's sole access to the residential property in contravention of Section 6(2) of the Regulation. Further, I find the replacement key provided by the landlord also was the tenant's sole access to the residential property and as such the landlord is not entitled to charge a deposit for the replacement key either.

I accept that the landlord is entitled to charge the tenant the actual cost of replacing any keys that may be lost or damaged as a result of the tenant's actions. However, as the landlord has provided no documentary evidence to establish how much the replacement key cost the landlord, I accept the tenant's submission that she is willing to pay the landlord \$15.00 for replacement of the key she lost in March 2013 as reasonable.

Section 30 of the *Act* stipulates a landlord must not unreasonably restrict access to residential property by the tenant of a rental unit that is part of the residential property or a person permitted on the residential property by that tenant.

I find that by failing to provide the tenant with a key replacement until the tenant paid two key deposits for which the landlord was not entitled to has resulted in the landlord unreasonably restrict access to the residential property for this tenant for a period of 7 days.

However, I find the tenant's determination of \$128.00, which she states to be based on a pro-rated amount of the \$550.00 rent to be excessive. While I recognize the tenant had to rely on other tenants to gain access to the rental unit I find that other than not being able to use the laundry she was able to use the rental unit for living and as such she cannot be compensated for the total value of rent for that period of time.

Rather I find that a \$50.00 rent reduction for this period of time to be more reasonable and reflective of the cost any actual inconvenience.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In relation to the portion of the tenant's Application seeking clarity of the carpet cleaning issue. I find that any clause that specifically requires a tenant to utilize a landlord's cleaning service to the exclusion of other service providers, to meet the tenant's obligations under Section 37, is unenforceable if the tenant is required to make a payment for that service unless the tenant freely agrees to the use of that service.

However, I am satisfied, based on the landlord's testimony that should the tenant, in the case before me, have the carpets professionally cleaned, if and when this tenancy ends, she will not be required to utilize the landlord's cleaners but that she can use them if she wants.

As I directed the tenant in the hearing to discuss the issue with the onsite manager, I make no findings or orders related to the tenant's request for clarification on how to pay rent now that she is no longer going to have her rent sent directly from the Ministry of Social Development to the landlord.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$115.00** comprised of \$65 key deposits and \$50.00 restricted access. In accordance with Section 72 (2)(a) I order the tenant may deduct this amount from her next rent payment.

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: April 15, 2013

Residential Tenancy Branch