



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sterling Management Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RR

Introduction

The tenant applies for compensation and a rent reduction claiming that he is without a working intercom system and that he was without the use of his balcony for approximately eleven weeks.

He also claimed compensation for an alleged assault by a workman at the property but withdrew that claim at the hearing.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant is entitled to the relief claimed?

Background and Evidence

The rental unit is a one bedroom apartment on the second floor of a conventional apartment building. The tenancy started on May 27, 2014 for a fixed term to May 31, 2015. The monthly rent is \$850.00. The landlord holds a \$450.00 security deposit.

It is not disputed that on June 11, 2014 the tenant received a notice from the landlord that it would be conducting repairs to the balcony and that he must remove his belongings from it. On June 15, the balcony was removed.

The tenant testified that he was without a balcony or the use of his balcony until September 3rd when he was authorized to recommence his use of it. The landlord's representative Mr. H. testified that the contractor told him the balcony was gone or out of service for only six weeks.

The tenant claims that the intercom system has not worked since his move-in and that the landlord refuses to “code in” his cell phone. The landlord’s representative says that the tenant only needs a conventional telephone to be plugged into the telephone jack and the intercom system would work. He says such a phone can be had for very little money and that the landlord does not supply it.

Analysis

The tenant pays rent for a one bedroom apartment with a balcony. Whether or not the landlord is attending to necessary renovations or repairs preventing use of the balcony, the tenant is still paying for it and is entitled to use it or be compensated for the lack of it.

The landlord’s representative voiced disagreement with this proposition at the hearing, but it is not different from the hypothetical situation where, say, a cable company informs its customers that the cable network will be out of service for a month for infrastructure maintenance but the customers are expected to pay for that month anyway. No reasonable person would agree and nor does the law of contract.

I find that the tenant is entitled to be compensated for the loss of use of the balcony. I prefer the tenant’s evidence about how long he was without the balcony. The landlord’s representative had no direct knowledge of the length of time and related only second hand evidence about what an unidentified contractor told him. The evidence about the tenant’s normal use of the balcony is, understandably, vague. He is a smoker and the balcony was the only portion of his rental unit where he could do so. The landlord’s representative argued that the tenant could leave the apartment building and smoke on the lawn below. I find that to much more inconvenient than having one’s own balcony close at hand.

Having regard to the available evidence, I award the tenant \$400.00 for loss of use over from June 11 and September 3, 2014.

I dismiss the tenant’s claim for compensation for lack of intercom service. He has not shown that he suffered any particular inconvenience from its lack.

Notwithstanding the lack of an award for the intercom, it is my view that since the apartment building has a locked front door and an intercom system for visitors to contact residents to unlock that door, it is implicit that the rental unit include a mechanism to alert the resident and enable him to unlock the door from his suite. A

landlord is of course free to contract out of supplying such mechanism, but the landlord has to make that clear in the tenancy agreement.

The tenant's allegation that he has been complaining to the landlord about the intercom service is not supported by the evidence and, in my view, is contradicted by his email of July 25 to the landlord wherein he failed to mention the intercom issue in his list of the issues he wanted dealt with.

The tenant is entitled to a simple phone to plug in to work the intercom. I award him \$20.00 to buy one. He must leave it at the premises when he vacates.

Conclusion

The tenant is entitled to a monetary award totalling \$420.00. He did not request recovery of any filing fee. I authorize him to reduce his next rent due by \$420.00 in full satisfaction of this award.

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, 2014

Residential Tenancy Branch

