Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WASTRIDGE LANDING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, MNDC, FF

Introduction

Both parties and a legal representative for the landlord attended the hearing and gave sworn or affirmed testimony. The landlord was represented by the manager also. The tenant said he served the Application for Dispute Resolution on the landlord personally and by registered mail. The tenant said he did not receive the landlord's evidence until March 2, 2018 and this was too late. The landlord provided evidence that they attempted service by courier which the tenant would not accept and they sent it by express post the next day. They also sent a copy by email on February 28, 2018 to make him aware of the evidence, although they recognize this is not legal service. I find Rule 4 of the Residential Tenancy Branch Rules of Procedure provides that the respondent's evidence must be served at least five days before the dispute resolution proceeding. I find the respondents complied with Rule 4 as their evidence was served 12 days before this hearing. I find the documents were legally served pursuant to section 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to sections 7 and 67;
- an order for the landlord to make emergency repairs for health and safety reasons pursuant to section 33; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Preliminary Issue:

Both parties agreed that the named landlord in the application was the manager and the landlord's name should be amended to show the company as named on the tenancy agreement. The amendment was made as requested.

Issues to be Decided

Are the tenants entitled to an order compelling the landlord to make emergency repairs?
Are the tenants entitled to a monetary award for loss arising out of this tenancy?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenants' testimony is as follows. The tenancy began either March or April 2015, rent is $1400 a month and a security deposit of $700 was paid. This was a new building and verbal promises were made that there would be a workshop and workout room but the rooms were left empty and locked. There was insufficient security in the building so there were thefts which cost the tenant money in insurance deductibles. The tenant claims as follows:

1. $200 for day off work to fix the door to my unit which was stuck. The key was sticking and was likely to break so after telling the landlord and waiting 10 days, I had to fix it myself rather than being locked out at some point.
2. $200 for day off work tending to 3 yr. old daughter's hand which stuck in the elevator door as it opened. There was no automatic stop so it was unsafe. The landlord said their technician examined the door after the complaint and found nothing wrong. The little girl stuck her hand in a crevice which is not designed to be protected by the automatic system. The tenant had no technical report to note it was deficient.
3. $1000 for the insurance deductible paid due to theft from his locker. He states this was due to a breach of the landlord in not supplying surveillance cameras as promised at move-in. Now there is a locked door and cameras. The landlord said that there were locked doors to enter the building, then the elevator which required authorization, then another door to the lockers. He said the lockers are constructed well but have only chicken wire tops and are not designed to hold valuables. There were some old cameras which were not helpful. The tenant pointed out the Police reports in evidence say there are no cameras.
4. $200 for day off work dealing with locker loss. He is a self-employed painter charging $50 an hour so the $200 charge is a minimum.
5. $170 for impound fee. After the locker theft, the tenant was concerned and wanted to park his car within sight of his unit. He obtained permission from J. (or

M. which is the name used by the landlord) to park in a certain spot on the Saturday. He intended to come into the office on Monday morning and pay the $50 for the more secure parking inside the gate. However, before the office opened the manager had his car towed. The manager said the spot where the tenant parked is clearly marked for 90 minute parking only, there is some free underground parking and legacy parking but the spot where the tenant parked is limited due to their commercial tenants. It was clearly signed. The manager said he tried to call the tenant first but there was no answer. He was not told of the tenant's intentions nor aware he had permission. The tenant denies he was called.

6. $200 for day off work dealing with impound lot.
7. $200 for a bag stolen from his vehicle.
8. $400 for damage to his vehicle's door
9. $200 off work for day dealing with vehicle damage.
10. $2009 for 20% rent rebate for 7 months for lack of peaceful enjoyment due to problem tenant. The landlord said they acted on information and complaints and ended the problem tenancy. There was no proof that he was responsible for the thefts. It took 7 months for them to gather the information and for the process of the paperwork and hearing time in the Residential Tenancy Branch.
11. $2200 for lack of a workshop and workout room as promised. There was recently an advertisement in the office stating these amenities were included. He had planned to use his saw, to clean paint brushes and to spray paint. When he put his saw in the hobby room, the manager removed it. The landlord said the saw was a personal table saw and this should not be left in this public space. He also noted that there is nothing in the tenancy agreement regarding having a workshop for commercial purposes. The tenant said cleaning his paint brushes would not be for a commercial purpose.

The landlords gave the following testimony and submissions. A carpenter was sent to fix the tenant's entry door to fix it after the complaint was made. This was not an emergency repair and the tenant did not follow the procedures in paragraph 10(1) (b) of the Residential Tenancy Agreement (the Agreement). He did not need to take time off work to fix it. Regarding the elevator door, the professional company certified there is nothing wrong with it. The daughter put her hand on the door while it was opening and her hand followed the door into the space between the door and the frame. The landlord is not responsible as neither his act nor neglect caused this injury.

The landlord states there were no written commitments to install cameras and none were in the locker areas when the tenancy commenced. The lockers are accessed by someone able to open 3 locked doors between the outside and the lockers. The landlord took reasonable steps to ensure security and is not responsible to insure the tenant's personal possessions under the Act. The tenant is responsible for his own deductible arrangements with his insurer. Paragraph 32 of the Apartment Rules and Regulations (Rules) require the tenant to maintain insurance and exempts the landlord from liability for lost, stolen or damaged property. The thefts were criminal acts of a third party so the landlord bears no liability because the alleged losses were not caused by the landlord.

The landlord states the underground parking lot is behind locked gates and the tenant has 2 spots there. Level P2 has ten spots also for free use of tenants and that is where the tenant would have been instructed to park, rather than the clearly marked 90 minute parking which is there to assist commercial tenants. Clause 32 of the Rules provides that the landlord may have vehicles towed at owner's expense if parked in inappropriate places or unassigned spot (cl. 46). The landlord asserts they bear no liability for theft of a bag from the tenant's vehicle, damage to the door of the vehicle and $200 lost wages to deal with the theft. The landlord submits that the Preauthorized Debit Plan document signed by the tenant states the use of parking and storage lockers is at the tenant's own risk and the landlord takes no responsibility for stolen or damaged items or vehicles.

Regarding the claim for $2,009 for 20% of 7 months rent for disruption of the tenant's peaceful enjoyment by another tenant, the landlord advises they took all appropriate action in a timely manner when they were aware of the issues. They requested the tenant to report the alleged thefts to the Police which he did and was advised it was proceeding under the Residential Tenancy Act. The police did not conclude the problem tenant was involved in the thefts. The tenant was evicted for excessive noise and late payment of rent. As the landlord took all reasonable steps to address the problem, they assert they are not responsible for loss of the tenant's peaceful enjoyment.

The landlord denies there was a commitment to having a workout room in the building and states the hobby room provided is usable for many of the same activities but is not designed for handling commercial activities.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

1. I find insufficient evidence that the tenant followed the correct procedures to have his door repaired by the landlord. I find insufficient evidence of neglect by the landlord. I dismiss this portion of his claim.
2. I find insufficient evidence that the elevator door was deficient or that the injury was caused due to act or neglect of the landlord. I dismiss this portion of his claim. I also find no emergency repairs are needed to the elevator as I find the

landlord's evidence credible that it has been inspected by the professionals and nothing has been found to be wrong.

3&4. I find insufficient evidence that the landlord violated the act or tenancy agreement or that neglect or act of the landlord caused theft in the locker rooms; it was a criminal act by a third party and I find the evidence is the lockers were reasonably secure. I dismiss his claim for the deductible and the day he took off work to deal with the theft.

5&6. I find the landlord's evidence more credible than the tenant's. I find the tenant may have been given permission to park in another area but I find it highly unlikely that M. who was managing at the time would give him permission to park in a 90 minute restricted area when there were several underground free spots that were usually allotted in such circumstances. Further, if he was given permission and was going to see management on Monday morning, why did he not leave a note on his car to that effect to ensure any other manager was aware? I find the manager's evidence credible that he tried to call him without success before arranging for towing. While this is expensive, I find the tenant was aware of the apartment's rules regarding this and did not take steps to mitigate any damages he might suffer by enforcement of them (e.g. by leaving a note on the vehicle). I find him not entitled to recover wages lost in dealing with the matter.

7&8&9: I find the landlord through act or neglect did not cause the loss of the bag from the tenant's vehicle or the damage to the vehicle door. These are criminal acts of third parties for which insurance is designed to compensate. The Rules in the tenancy agreement exempt the landlord for liability for these issues for this reason.

10. Regarding the claim for loss of reasonable and peaceful enjoyment of the premises, I find the weight of the evidence is that the landlord acted with reasonable timeliness to address the issues. The result of the tenant reporting to Police did not yield a charge of theft and the evidence is that the landlord collected other complaints to end the tenancy. I take note that the landlord must have evidence of at least 3 late rent payments and several reports over time of excessive noise to end the tenancy under section 47. I take note also that it takes some months usually to process the file to the hearing stage. Therefore, I find the loss of reasonable enjoyment of the tenant was not caused by neglect of the landlord to address the problem so I find the landlord not obligated to compensate him. I dismiss this portion of his claim.

11. Regarding the amended portion of the claim for the loss or non supply of a workshop and workout room, the landlord denies the promise of a workout room and states the hobby room is used as a workshop for various activities. I find

insufficient evidence that the landlord committed to installing a workout room. It is not in the tenancy agreement and the only supporting evidence supplied by the tenant to a verbal statement is a letter from a tenant who is being evicted. I accept the landlord's testimony that this letter should be weighed in light of motivation to bias. I put little weight on this letter. In respect to the workshop, I find there is a room provided for tenants to do hobbies etc. The fact that it does not meet the tenant's requirement for a more commercial type environment to wash out paint brushes or spray paint or store a circular saw does not mean that this is not a workshop as intended or defined by the landlord. I dismiss this portion of the tenant's claim.

In conclusion, I dismiss all the tenant's claims as I find he has not proved on a balance of probabilities that the landlord through act or neglect violated the Act or tenancy agreement and cause his losses. I find insufficient evidence that any emergency repairs are needed.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply. I find him not entitled to recover his filing fee due to lack of success.

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: March 15, 2018

Residential Tenancy Branch