



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOLLD REAL ESTATE MANAGEMENT
and [tenant named suppressed to protect privacy]

DECISION

Dispute Codes LAC, MNDC, FF

Introduction

The tenant seeks an order requiring the landlord to issue more access keys/fobs for the rental unit. He also seeks reimbursement for expenses incurred as a result of him not having the required number of fobs for the rental unit.

Both parties attended the hearing, the landlord by its representative, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the landlord breached the law or the tenancy agreement by failing to provide the tenant with reasonable access to the rental unit? If so, has the tenant reasonably suffered damage or loss as a result?

Background and Evidence

The rental unit is a two bedroom condominium apartment. The tenancy started in July 2017 for a one year fixed term at the end of which the tenant was required to vacate unless another agreement was reached. The monthly rent was \$2750.00. The tenant paid a \$1375.00 security deposit.

The written tenancy agreement shows that the tenant is the only tenant under the agreement. It states that in addition to him there would be two other occupants; Ms. S.V. and Mr. V.V. Clause 13 of the agreement provides:

ADDITIONAL OCCUPANTS. Only those persons listed in clauses 1 or 2 above may occupy the rental unit or residential property. A person not listed in 1 or 2 above who, without the landlord's prior written consent, resides in the rental unit or on the residential property in excess of fourteen cumulative days in a calendar year will be considered to be occupying the rental unit or residential property contrary to this Agreement. If the tenant anticipates an additional occupant, the tenant must apply in writing for approval from the landlord for such person to become an authorized occupant. Failure to obtain the landlord's written approval is a breach of a material term of this Agreement, giving the landlord the right to end the tenancy on proper notice.

The parties appear to have abided without dispute until about May 2018.

The property is what might be considered "high end" accommodation. The building has a concierge service at the entrance. In May one of the occupants of the rental unit, a person not listed on the tenancy agreement, approached a concierge about bike storage. In the ordinary course the man's fob was scanned by the concierge and discovered to be an unauthorized duplicate of one of the two fobs that had been issued to the tenant for this rental unit.

As a matter of security the concierge cancelled the duplicate fob, resulting in the cancellation of the original as well. The tenant was left with one fob.

The concierge, who it is assumed is employed by the strata corporation, contacted the landlord, who manages the rental unit for its owner(s), to inform it that the fob had been cancelled. The concierge also informed the landlord that the tenant was occupying seven other rental units in the building and using this unit and the others to house foreign students and foreign workers, sometimes four or five to a suite. The stays, he said were usually for one to three months and the "tenants" paid this tenant in cash. The concierge indicated that he knew all this from talking to various of the "tenants" occupying the suites.

In July the occupant of the suite below this rental unit reported that water was coming down from the ceiling, likely from the unit above. A strata representative entered the rental unit and discovered that there were beds being used, not just in each bedroom but in the solarium and storage room in the rental unit. Either the strata or the concierge service reported this to the landlord and indicated the tenant was doing the same thing in six other units he rented in the building.

At the start of August the parties entered into communication and correspondence about the tenant obtaining another fob. The landlord's representative Mr. L.C. informed the tenant that in order to have fobs issued the landlord would need to know who the occupants of the rental unit were and would want some identification. The tenant appeared to balk at this request, citing security reasons related to his business.

The tenant testifies that he is one of the principles of a company that carries on the business of an electronic or business technology provider. He was not clear about it at the hearing but his emails to the landlord set out that business description.

He acknowledges that his company has rented out other suites in the building and that this rental unit is the only one he has rented in his personal name. He states that the suites are all used for his employees while they are working in the city. They work on projects that take between six and eighteen months. While they are working on a particular project his employees like to live together to promote a better sense of teamwork and so they switch units as they move from one project to the next.

After cancellation of the fob in May, the tenant says that he had difficulty gaining access to the rental unit because Ms. S.V. had the remaining one and it was very inconvenient to arrange for her to be available to let him in. Ultimately, she went away, apparently with the fob. The tenant says he was relegated to renting out alternate accommodation in the months of June, July and August and he seeks recover of the cost of doing so, producing receipts for the days June 29 and 30, July 1, 28 and 31, and August 18, 19 and 20. In support, he provides bills from a "relocation" service issued to his company. He also provides receipts for the use of Zipcar service in the city on various dates for travelling to and from the alternate accommodation.

Mr. L.C. responds testifying that the tenant had told him he was not living in the rental unit but only "handling the occupants." He says the tenant first contacted him about the fob on August 3. and that he was prepared to direct the concierge service to issue fobs but had to know who the people were who were living in the unit. He says the tenant was and is entitled to two fobs because it is a two bedroom apartment.

Mr. L.C. says that the original occupants no longer lived there when the fob issue came up and the concierge has told him the tenant has never lived in the rental unit.

He is of the view that the tenant is using this and the other units for short term rentals and that he has made duplicate fobs for the subtenants as the need arises.

Ms. U. testified for the landlord, he employer. She says she has called the service the tenant claims to have used to locate and pay for alternate accommodation but there was no answer. She says she went to the address advertised by that outfit and it was residential building and the concierge at that building told her there was no such business at that location.

The tenant notes that it is not illegal to do short term rentals. One only needs a business licence. He says he knows nothing about copying fobs.

Analysis

The evidence raises a significant suspicion that the tenant is operating a short term rental business at the units he and his company have rented in this building. However, I do not find it necessary to make a determination about that question.

The evidence satisfies me that neither of the original occupants; Ms. S.V. and Mr. V.V. reside in the rental unit any longer. I find that there are new people living there.

The tenant has not proved that he requested a fob from the landlord before August 3 and so the landlord cannot be responsible for the tenant's expenses for cars and alternative accommodation to that point, even had the tenant been entitled to another fob.

The tenancy agreement is clear. The landlord must be informed of and give approval for any new occupants. That clause is a reasonable clause in the circumstances of this case and, given the evidence, the landlord was justified in hesitating to provide the tenant with replacement or additional fobs until the new occupants could be properly identified and vetted.

The tenant has been reluctant to do so and he is therefore the author of his own misfortune.

Conclusion

The tenant's application is dismissed.

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 05, 2018

Residential Tenancy Branch