Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application filed by the tenant on November 14, 2018 seeking compensation under the *Residential Tenancy Act* (the Act) for damage or loss/restricted access resulting in a loss of use of the rental unit, recovery of the security deposit, and to recover the filing fee.

The tenant's representative, and the landlord with legal counsel and representative all attended the hearing and both parties participated in the hearing and provided testimony. Both parties acknowledged exchanging evidence as submitted to this proceeding. The parties were further provided opportunity to settle their dispute to no avail. They were also provided opportunity to present all relevant evidence and relevant testimony in respect to the claim and fully participate in the conference call hearing. The hearing proceeded on the merits of the tenant's claims. The parties were informed that only *relevant evidence* would be considered toward a final and binding Decision. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters

It is undisputed the security deposit of the tenancy was determined by a previous Decision of a hearing between the same parties, and therefore preliminarily *dismissed* in this matter.

During this proceeding the tenant orally amended their monetary claim from $8000.00 to the equivalent of 2 months' rent under the tenancy agreement ($4900.00), focusing on the tenant's claim of loss of use of the rental unit due to a denial of access of the rental unit.

Issue(s) to be Decided

- Did the landlord restrict or deny access to the residential property by the tenant, in contravention of the Act?
- Is the tenant entitled to a refund of rent paid due to the landlord's breach of the Act or tenancy agreement?
- Is the tenant entitled to the monetary amounts claimed?

The burden of proof lies with the tenant to support their claim against the landlord.

Background and Evidence

It is undisputed this tenancy started March 01, 2018 and ended on August 24, 2018 when the tenant chose to vacate and removing all their possessions from the rental unit and surrendering vacant possession to the landlord.

The tenant's original application stated, "*the landlord continued to collect rent while the tenant had no access to the rental property or the premises. The landlord refused or neglected to remedy the situation despite numerous demands by the tenant but continued to collect rent from the tenant*", reportedly via pre-approved debit withdrawals. The tenant's application further stated, *"the landlord attempted to collect rent even after the tenant had moved out of the premises*". However, to the latter the tenant clarified in testimony that the landlord indeed collected rent in September 2018, after the tenant had vacated, to address the unpaid/unsatisfied rent for August.

It undisputed that for a portion of June 2018, and for the balance of the tenancy the tenant did not have unrestricted access to the unit due to an *access device issue*, specifically the Fobs used to gain entry to the residential property. The tenant's explanation, which to a sizeable degree is undisputed, is that the Strata Corporation in whose residential property the rental unit is situated de-activated the Fobs. The tenant approached the Strata for remedy which referred them to the tenant's landlord, whom referred them back to the Strata. The Strata determined the "numbers" of the Fobs "did not match" for their purposes and declined to resolve the issue, and again referring the tenant back to their landlord. The landlord testified they investigated and tried to resolve the Fobs issue without success.

The tenant did not dispute the landlord's testimony that the tenant had acquired their own Fobs and presented them to the Strata for re-activation, however the, "numbers did not match". Thereafter, the issue with the access Fobs remained unresolved and the tenant claims as a result the rental unit remained inaccessible to the tenant; therefore

the landlord should refund the tenant rent paid for the 2 last months of the tenancy, July and August 2018. The landlord provided evidence that rent collected for October 2018 was refunded to the tenant.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: ***www.gov.bc.ca/landlordtenant***

On preponderance of the *relevant* evidence in this matter and on balance of

probabilities, I find the following relevant.

Section 26 of the Act states,

> **Rules about payment and non-payment of rent**
>
> **26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Sections 30 and 31 of the Act, in parts relevant to this matter, state as follows,

> **Tenant's right of access protected**
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> **30** (1) A landlord must not unreasonably restrict access to residential property by
>
> (a)the tenant of a rental unit that is part of the residential property, or
> (b)a person permitted on the residential property by that tenant.
>
> **Prohibitions on changes to locks and other access**
>
> **31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.
>
> (1.1) A landlord must not change locks or other means of access to a rental unit unless
>
> (a) the tenant agrees to the change, and
> (b) the landlord provides the tenant with new keys or other means of access to the rental unit.

(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

I find that the evidence of the parties clearly points to the Strata, and not the landlord, as the entity which denied access to the tenant by 'electronically' changing the means of access to the residential property without providing the tenant with other means that gave access to the property. The tenant did not expressly advance evidence as to why this occurred, but articulated they attempted to resolve the problem through the Strata and then via the landlord and then via the Strata again, to no avail. On the other hand, the landlord did not expressly advance evidence as to why they did not or could not do more to aid in restoring access to the tenant. Again, I find the evidence points to the Strata, and not the landlord, restricting or denying access to the tenant.

I further find insufficient evidence respecting the tenant's other "own Fobs" which when made available were not accepted for re-activation by the Strata. In that absence and on balance of probabilities I find it reasonable to conclude the tenant played a role in compromising the means of access to the rental unit.

I also find that contrary to the tenant's assertions the landlord refused or neglected to remedy the situation, I have not been presented with evidence that the landlord wholly neglected to aid the tenant's situation. I find the landlord provided sufficient evidence they did what they could and what was reasonable given the authority of the Strata. I find the landlord continued to collect rent during the time the tenant's access was compromised, as is permitted by the parties' contract between them.

Moreover, **Section 7** of the Act speaks to the tenant's claim for loss, and states,

Liability for not complying with this Act or a tenancy agreement

7 (1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, **Section 7** states that in this matter the tenant must satisfy each component of the following test:

1. *Proof the loss exists*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the landlord in violation of the Act or the 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 reasonable steps to minimize the loss or damage.*

As a result of all the foregoing on the evidence and on balance of probabilities I find the tenant has not proven that their loss or abridgement of their right of access to the rental unit resulted (solely) from the conduct of the landlord in violation of the Act or the parties' contract. Therefore, I must **dismiss** the tenant's application.

Conclusion

The tenant's application is dismissed, without leave to reapply.

This Decision is final and binding.

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 20, 2019

Residential Tenancy Branch