Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The landlord and one of the tenants attended the conference call hearing and both gave affirmed testimony. The landlord also called a witness who gave affirmed testimony. The parties provided evidence in advance of the hearing and were given the opportunity to cross examine each other and the witness on the testimony given and evidence provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?
- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The parties agree that this month-to-month tenancy began on March 1, 1996 and ended on May 31, 2011. Rent in the amount of $1,070.00 per month was payable in advance on the 1st day of each month, which included utilities, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the

amount of $437.50 which has been returned to the tenant. No move-in or move-out condition inspection reports were completed.

The landlord testified that the tenants gave notice on April 30, 2011 to move from the rental unit at the end of May, 2011. On June 2, 2011 the landlord completed a walk-through of the rental unit with the tenant, which was not in writing. The carport door had been installed by the tenant who is a licensed carpenter. The landlord testified to asking the tenant in mid-May, 2011 to remove the carport door, but the tenant denied that it was put there by the tenant in the first place. The landlord further testified that the parties had agreed that the tenant could move the garage doors 15 years ago from the back left side of the carport to the front right side in order for the tenant to use the carport as a workshop, and that the tenant would put the carport back to its original condition at the end of the tenancy. The landlord claims $280.00 for the door removal and has provided a receipt to substantiate that claim. The description of work on that invoice states: "Remove fixed doors (wall) and hardware from carport and dispose of; remove spilled adhesive on carport cement floor; Total $280.00 (includes dumping fees)"

The landlord further testified that during an inspection, the landlord noticed a broken window in the living room and the tenant told the landlord that the landlord had been advised about it earlier and that the crack appeared during construction work that was taking place next door. The landlord denies that the tenant ever disclosed the cracked window to the landlord. The landlord claims $168.00 for that repair and provided a receipt to substantiate that claim.

A witness for the landlord testified to repairing the roof of the building in November, 2010. The witness was at the rental unit and the tenant pointed out a roof leak in the overhang. At a later date, the witness put tar where the witness thought the crack was and applied the tar in the rain. Another crack was found and the witness tarred and placed sheet metal over it that the witness found in a storage area of the property.

The witness was at the rental unit on a few occasions and fixed a bathroom window, looked at the fridge for possible repairs, and replaced the fridge. The old fridge sat outside for 2 weeks waiting for BC Hydro to pick it up, but they only collected such appliances about once every 2 weeks.

When asked if the witness noticed any evidence of door hardware ever being at the back of the carport, the witness replied that he did not know. When asked if the witness repaired the roof in an area where a painter stepped through the roof, the witness replied that he did not know but it was at an outside edge.

The tenant testified that the landlord returned the security deposit after ordered to do so at a previous dispute resolution proceeding.

The tenant further testified that a material term of the tenancy was to enclose the carport; the tenant needed that secure, dry space and it was agreed by the landlord but no discussion took place respecting dismantling the door at the end of the tenancy.

The tenant further testified that when moving in, the seal in the living room window broke and a small crack developed. The tenant told the landlord that the seal had broken, not to get it fixed, but to notify the landlord that the seal was broken and it was no longer a thermal pane. The landlord was shown the crack at that time. The tenant also testified that the crack is a stress crack, and that if it had been broken by negligence or an accident, the crack would stretch out in several cracks from the area of impact. In this case the crack is one line only.

The tenant further testified that the roof of the carport leaked. The landlord was told that water was starting to seep in and the landlord said it would not be repaired. Also, the outside of the house was painted, and the painter stepped right through the roof of the carport, which rendered the carport unusable. Large pieces of stucco fell off the outside wall in front of the only entrance to the rental unit. The landlord completed those repairs after the tenant moved out.

The tenant claims $4,500.00 in damages for the landlord's failure to maintain the rental unit, being loss of use of half the garage for 48 months.

Analysis

Firstly, with respect to the landlord's claim for a monetary order for damage to the unit, site or property, I accept the testimony of the parties that the tenant was permitted by the landlord to move the carport door. The tenant testified that there was no discussion about moving the door at the end of the tenancy, and the landlord testified that there was such a discussion, and that during that discussion the tenant agreed to change the doors back to their original state. I refer to Residential Tenancy Policy Guideline 1, Landlord & Tenant Responsibility for Residential Premises, which states as follows:

"RENOVATIONS AND CHANGES TO RENTAL UNIT

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or

> residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had."

In this case, the landlord chose to return the unit to its original condition, and the landlord has not made a claim for devaluation, but claims the cost to return the carport to its original condition and has provided evidence of the cost associated with the changes. Having found that the parties agreed to the changes at the outset of the tenancy, and although I do not make any findings regarding credibility of the parties, I do find it reasonable in the circumstances that the tenant is responsible for returning the carport to its original state. Further, there is no evidence before me that the landlord did not explicitly consent to the changes without returning the carport to its original condition. I find that the landlord has established a claim in the amount of $280.00.

Further, with respect to the broken window, the *Act* states that a tenant is responsible for damages to a rental unit. Although no move-in condition inspection report was completed to substantiate the landlord's claim that the damage was caused by the tenant, the tenant testified that when the tenant moved in, the seal in the window broke and a small crack developed. The landlord was notified, not for the purposes of getting it fixed, but to advise the landlord that the window was no longer a thermal pane. The landlord denies ever hearing about it from the tenant. Whether or not the landlord was advised, the tenant is responsible for damages that are beyond normal wear and tear. The tenant ought to have ensured that the landlord was advised in writing when it happened and ought to have obtained something in writing from the landlord to ensure that no dispute would arise with respect to the damage. I find that the landlord has established a claim in the amount of $168.00.

With respect to the tenants' claim for damages, firstly I cannot find, in the evidence before me that the tenant ever suffered any loss as a result of broken stucco.

The tenant did not provide any evidence of loss of space in the carport and if any space was lost, the tenant did not provide any evidence to satisfy me of the amount of space or what that space would be worth. The tenant has claimed loss of use of half of the space for 48 months. The tenant also testified that the carport was a material term of the tenancy, but if that were the case, the tenant would not have remained in the rental unit for 48 months with only use of half of that space.

Further, the tenant testified to receiving an order for return of the security deposit at dispute resolution. In common law, the tenant had an opportunity at that time to raise

these issues but chose not to. The tenant is not entitled to continue to sue the landlord when all issues could have been dealt with at the previous dispute resolution hearing.

In summary, I find that the landlord has established a claim for returning the carport to its original state in the amount of $280.00 and $168.00 for the broken window. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the $50.00 filing fee for the cost of this application.

The tenant's application is hereby dismissed.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $498.00.

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

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 11, 2012.

Residential Tenancy Branch