Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, OPB, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage; an Order of Possession; and to recover the fee for filing this Application for Dispute Resolution. As the rental unit has been vacated I find there is no reason to consider the Landlord's application for an Order of Possession. It is apparent from information on the Application for Dispute Resolution that the Landlord is also seeking compensation for lost revenue and the Application for Dispute Resolution has, therefore, been amended to include an application for a monetary Order for money owed or compensation for damage or loss.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Agent for the Landlord stated that the Landlord did not receive a forwarding address for the Tenant so the Application for Dispute Resolution and Notice of Hearing were mailed to the Guarantor's address, via registered mail, on October 30, 2012. The Guarantor agrees that he received these documents in the mail. I therefore find that the documents have been served to the Guarantor in accordance with section 89(1)(c) of the *Residential Tenancy Act (Act).*

The Tenant stated that he and his co-tenant had the opportunity to view the Application for Dispute Resolution and Notice of Hearing when they visited the Guarantor in December of 2012. On the basis of the Tenant's testimony, I find that both Tenants have been sufficiently served with these documents, pursuant to section 71(2)(c) of the *Act.*

The Agent for the Landlord stated that documents the Landlord wishes to rely upon as evidence were mailed to the Guarantor's address, via registered mail, on January 11, 2013. The Guarantor agrees that he received these documents in the mail. I therefore find that the documents have been served to the Guarantor in accordance with section 88(1) of the *Act.*

The Guarantor stated that he electronically forwarded those documents to the male Tenant, with the exception of the photographs. The Tenant stated that he did receive the forwarded documents and that he showed them to his co-tenant. On the basis of the Tenant's testimony, I find that both Tenant's have been sufficiently served with the Landlord's documents, with the exception of the photographs, in accordance with section 71(2)(c) of the *Act*, and they were accepted as evidence for these proceedings. As the photographs have not been received by either Tenant and they were not served to either Tenant in accordance with the *Act,* they were not accepted as evidence for these proceedings.

Preliminary Matter

At the outset of the hearing the Guarantor applied to have his name removed from the Application for Dispute Resolution.

The Landlord and the Guarantor agree that the Guarantor is named on the tenancy agreement; that the Guarantor did not sign the tenancy agreement; that prior to the tenancy agreement being signed the Guarantor signed a Letter of Guarantor in which the Guarantor guaranteed to pay the rent owed by the male Tenant and that the entire unit will be maintained in an acceptable manner for the term of the tenancy.

Section 6(1) of the *Act* stipulates that the rights, obligations, and prohibitions under the *Act* are enforceable between a landlord and a tenant under a tenancy agreement. There is nothing in the *Act* that stipulates the rights, obligations, and prohibitions under the *Act* are enforceable between a landlord and a guarantor for the tenant. As the Guarantor did not sign the tenancy agreement and there is no evidence to show that the Landlord and the Guarantor entered into a verbal tenancy agreement, I find that I do not have authority to determine disputes between those parties. I therefore dismiss the Landlord's application for an Order naming the Guarantor.

This does not mean that the Guarantor is not liable for any debts or damages arising from this tenancy, it simply means that I do not have jurisdiction over that relationship.

Issue(s) to be Decided

Is the Landlord entitled to compensation for loss of revenue; to compensation for damage to the rental unit; and to recover the filing fee for the cost of this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on March 01, 2011; that the rent was $1,600.00 at the start of the tenancy; and that rent was increased to $1,665.00 after one year.

The Landlord and the Tenant agree that sometime in early June of 2012 the Tenant gave the Landlord notice, via email, of their intent to vacate by July 01, 2012; that the Landlord informed the Tenant the notice was not adequate; that on June 18, 2012 the Landlord posted a One Month Notice to End Tenancy which required the Tenant to vacate the rental unit by July 31, 2012; that the Tenant paid rent for July of 2012; and that most of the Tenant's property was moved from the rental unit by the end of June of 2012.

The Agent for the Landlord stated that he scheduled a time to inspect the rental unit on July 06, 2012, via telephone; that he did inspect the rental unit on July 06, 2012, in the absence of the Tenant; that he never attempted to schedule a time to inspect the rental unit at the end of the tenancy, in writing; and that he posted the completed condition inspection report on the door of the rental unit on July 06, 2012. The Tenant stated that a time to inspect the rental unit was not scheduled at the end of the tenancy; that he located the condition inspection report on the door of the rental unit on July 08, 2012; and that he did not return to the rental unit after July 08, 2012.

The Landlord is seeking compensation, in the amount of $3,998.00, to replace the laminate floor in the living/dining room. The Landlord and the Tenant agree that a condition inspection report was completed on February 28, 2011, at which time is was noted that the living/dining room floor was in good condition.

The Agent for the Landlord stated that when he inspected the floor on July 06, 2012 the floor was damaged in 5 places. He described the floor as being chipped or chewed. The Tenant and the Guarantor both stated that the floor was not damaged at the end of the tenancy.

The Landlord is seeking compensation, in the amount of $150.00, to repair a bedroom door that was damaged during the tenancy. The Tenant agreed the door was damaged when he forced it open. The Landlord submitted a copy of an email from a tradesperson, in which he estimates it will cost between $100.00 and $150.00 to replace the door.

The Landlord is seeking compensation, in the amount of $2,240.00, to repaint the rental unit. The Agent for the Landlord stated that the Tenant painted the entire rental unit; that they did not have permission to paint the unit; that they repainted the unit at the end of the tenancy, although he does not know if it was repainted the original colours; and that the paint job was inadequate. The Tenant stated that the Tenant did paint some areas in the rental unit; that they had permission to paint the unit, with the understanding that it would be returned to its original colours at the end of the tenancy; that the unit was returned to its original colours at the end of the tenancy; that the painting was completed by a professional painter; and that the rooms were painted properly.

The Landlord is seeking compensation for lost revenue from September and August of 2012. The Agent for the Landlord stated that the rental unit was advertised in June of

2012; that he believes the Landlord was unable to find new tenants for the unit because the floor had not been replaced; that the floor has now been replaced; that the rental unit is still not rented; and that the Landlord delayed replacing the floor because the Landlord wished to contact the Landlord prior to initiating repairs.

Analysis

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord submitted insufficient evidence to establish that the laminate floor in the living/dining room was damaged beyond what would be considered normal wear and tear. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the floor was damaged when he inspected the rental unit on July 06, 2012 or that refutes the Tenant/Guarantor's testimony that the floor was not damaged at that time.

It is important to note that I did not consider any photographs of the floor when making this determination, as those photographs were not served to the Tenant in accordance with the *Act.* It is also important to note that I did not consider the condition inspection report that was completed on July 06, 2012, as the Tenant did not participate in the inspection and the Tenant was not given written notice of a time for the inspection, as is required by the *Act.*

As the Landlord has failed to establish that the laminate floors were damaged during the tenancy, I dismiss the Landlord's application for compensation for repairing the floors.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the door that was broken during the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. As the Landlord has submitted evidence that the door could be repaired for between $100.00 and $150.00, I find that the Landlord is entitled to compensation in the amount of $125.00 for the repair.

I find that the Landlord submitted insufficient evidence to establish that the painting done in the rental unit by the Tenant was inadequate. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that it was inadequate or that refutes the Tenant's testimony that it was well painted. As the Landlord has failed to establish that the painting completed by the Tenant was inadequate, I dismiss the Landlord's application for compensation for repainting.

As the Landlord has failed to establish that the Tenant is responsible for repairing the floors, I dismiss the Landlord's claim for revenue lost as a result of the need to replace the floor.

I find that the Landlord's application has some merit and that the Landlord is entitled to recover the fee from the Tenant for filing this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of $175.00, which is comprised of $125.00 in damages and $50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount $175.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: January 24, 2013

Residential Tenancy Branch