Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MND, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for loss of rent, compensation for damage to the unit and money owed or compensation for damage or loss under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages or loss?

Background and Evidence

The landlord testified that the tenancy began on October 18, 2011. The rent was $563.00 and no security deposit was paid. A move-in condition inspection report completed at the start of the tenancy.

The landlord testified that the parties signed a mutual agreement ending the tenancy effective 1:00 p.m., August 31, 2012. The tenant moved out sometime in August 2012.

The landlord testified that they had attempted to schedule the move-out condition inspection with the tenant, but did not send any written notification to mutually arrange the precise time. The landlord testified that they posted a written notice advising the tenant that a “pre-move out inspection” would be completed on August 1, 2012. This

pre-move out inspection was completed without the tenant's participation and a copy of the inspection report was submitted into evidence.

The landlord testified that, with respect to the final inspection, it was presumed that the inspection would occur on the final day of the tenancy, August 31, 2012 at 1:00 p.m. Although no verification was submitted to confirm that a written proposal to schedule the the date and time had ever been served on the tenant, according to the landlord, the parties had verbally discussed the inspection date and time.

The tenant denied that any verbal arrangements were ever made.

The landlord pointed out that, when the tenant failed to appear at 1:00 p.m. on August 31, 2012, the inspection proceeded and was completed in the absence of the tenant. A copy of the final move-out condition inspection report was in evidence and this report indicated that the unit needed cleaning, carpet cleaning, disposal of items left and painted.

The landlord is claiming compensation for the following costs:

- $20.00 for the laundry card that was not returned
- $664.60 pro-rated amount for the cost of painting
- $296.37 for garbage removal
- $162.40 for carpet cleaning
- $240.00 for general cleaning

In addition to the move-in and move-out condition inspection reports, the landlord also submitted invoices and photographs of the unit.

With respect to the tenant's non-participation in the move-out condition inspection completed on August 31, 2012, the tenant testified that the landlord had never approached them, nor had the landlord ever sent any written communications seeking to mutually set the date and time for this inspection.

The tenant stated that they disagreed with the landlord's allegation that the carpets had to be cleaned, because they had steam-cleaned them a month prior to vacating. No evidence was submitted to confirm this testimony. The tenant also disagreed with the landlord's position that the unit had to be repainted.

The tenant acknowledged that the unit was not left reasonably clean and that items were left to be disposed of. The tenant testified that, because they still had possession of the unit at 11:00 a.m. on August 31, 2012, they dutifully arrived with a truck and several helpers, fully intending to complete thefinal clean-up. The tenant testified that they had even left their vacuum in the suite, along with cleaning materials and supplies,

for this purpose and they were prepared to leave the rental unit in a reasonably clean condition as required under the Act..

However, the tenant testified that when they arrived to do the final clean-up, they were alarmed to find a large warning sign had been posted on their door stating:

"*Danger - Do Not Enter*"

The tenant testified that the sign made a reference to asbestos contamination. The tenant testified that, based on this warning, they believed that the unit was a safety hazard and felt that it was clear that they were legally prohibited from accessing the unit. As a result, according to the tenant, they were unable to finish up all of the cleaning and removal tasks and were forced to leave the rental unit in the condition it was in.

The tenant testified that they attempted to contact the building manager without success and they left the premises, even though some of their property still remained in the unit and has never been recovered.

The landlord acknowledged that the landlord's painters had prematurely posted the asbestos caution sign in anticipation of doing some painting work. The landlord acknowledged that the sign prohibiting entry was already posted on the unit on the morning of August 31, 2012, despite the fact that the tenants still had possession of the rental unit at that time. The landlord's witness stated that she later removed the painter's warning sign.

The landlord pointed out that the tenant could still have retrieved some of their items from the balcony, as it was accessible without having to go through the suite.

The landlord also disagreed with the tenant's testimony that the clean-up would have been completed if they were able to enter the unit at 11:00 a.m. on August 31, 2012. The landlord pointed out that the task would have involved more than 2 hours of work, as evidenced by the landlord's own cleaning invoice. The landlord disagreed that the carpets were sufficiently clean.

The landlord is claiming $1,383.37 in compensation.

Analysis

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,

2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

Section 37 (2) of the Act states, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged, except for reasonable wear and tear.

I find that the tenant's role in causing damage can normally be established by comparing the condition before the tenancy began with the condition of the unit after the tenancy ended through the submission of completed copies of the move-in and move-out condition inspection reports featuring both party's signatures.

In this instance, the move out condition inspection report was completed in the tenant's absence and there are some notations that were placed on the report by the landlord, with which the tenant disagrees, including the need for carpet-cleaning and the need for repainting.

With respect to move-out inspections, I find that section 35 of the Act states that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Part 3 of the Regulations goes into significant detail about the specific obligations about how and when Condition Inspections and Reports must be conducted.

In this situation, I find that the landlord's allegation that the tenant failed to cooperate with the landlord's attempt to schedule a move-out condition inspection, was not sufficiently proven. Section 17 of the Regulation states that:

> (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
>
> (2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The Act states that the landlord must make the inspection and complete and sign the report without the tenant if:

(a) the landlord has complied with subsection (3) above, and

(b) the tenant does not participate on either of the two dates mutually agreed-upon.

In this instance, I accept the tenant's testimony that they had never received proper written notification of the date and time tentatively scheduled for the landlord's final inspection and were also not given an adequate opportunity to mutually schedule or reschedule the proposed date or time of the inspection.

I find that the landlord did not provide sufficient proof that the landlord had ever tried to mutually schedule an alternate time for the tenant to participate.

Given the flaws in the process, I find that the evidentiary weight of the landlord's inspection report is affected by the fact that both parties were not present during the move out condition inspection. That being said, I accept the photographic evidence that shows the condition of the unit on the last day of the tenancy.

In regard to the cleaning and disposal of items left in the unit, I find that the unit was not left reasonably clean. However I accept the tenant's testimony that they were effectively prohibited from entering their unit. I find that the unclean state of the unit was due to the fact that the landlord had unintentionally impeded the tenants on their final day of possession, thereby preventing them from doing the work that was required.

Given the above, I find that the evidence submitted by the landlord to justify the cleaning and garbage removal costs does not sufficiently meet element 2 of the test for damages because the losses were not solely attributable to the noncompliant actions of the tenant. I also find that the landlord's cleaning claim fails to satisfy element 4 of the test for damages, as the landlord could have mitigated the losses by extending the time and

proposing a later date to allow the tenant to do the clean-up, once it was established that the painters had prematurely banned access to the unit on the final day of the tenancy.

I do find that the tenant was required to return the laundry card and this would entitle the landlord to be compensated $20.00. In addition, I find that the tenant did not sufficiently prove that they had already cleaned the carpets in July 2012. Therefore, I find that the landlord is entitled to be reimbursed for the carpet cleaning cost of $162.40. I further grant the landlord a portion of the cost of painting based on the evidence submitted showing significant damage to the paint surface of the door, in the amount of $60.00.

Based on the testimony and evidence, I find that the landlord is entitled to total compensation of $267.40, which includes $25.00 for half the $50.00 cost of filing.

I hereby grant a monetary order in favour of the landlord for $267.40. This order must be served on the tenant and may be enforced through Small Claims Court, if not paid.

The remainder of the landlord's application is dismissed without leave.

Conclusion

The landlord is partly successful in the application and is granted a monetary order for damages, including half the cost of filing.

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 04, 2013

Residential Tenancy Branch