Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and damage to the rental unit, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

The tenants each were served with the Notice of Hearing and the landlord's application for dispute resolution by leaving the documents with the tenants.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and the tenants acknowledged receiving the landlord's written evidence; the tenants did not file any evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, authority to retain the tenants' security deposit, and to recover the filing fee?

Background and Evidence

The parties presented testimony that a tenancy began in 2008, with another tenant not named in this application and that a move-in inspection was conducted at that time, along with a condition inspection report being issued. This document was presented into evidence by the landlord, mentioning that the occupancy date for the named tenant was December 31, 2008, and the vacating date was November 30, 2012.

This document contained information about the condition of the rental unit at the beginning of the tenancy, listing the original tenant, and information about the condition of the rental unit at the end of the tenancy, listing the two tenants named in the landlord's application for dispute resolution, as sublet tenants.

The document was signed by the original tenant and the landlord's agent, but the document was not dated by either party.

The landlord conducted the move-out inspection without the tenants being present, as there was a notation that the tenants failed to attend the move-out inspection.

The landlord said that the rental unit was new at the beginning of the original tenancy in 2008.

There was also a tenancy agreement signed by the present tenants, also submitted by the landlord, which shows this tenancy beginning on July 1, 2012, monthly rent was $1750.00, and that a security deposit of $825.00 was paid on December 29, 2008.

In further explanation, I heard testimony that tenant JS moved into the rental unit in January 2011, and the other tenant JVS moved into the rental unit in 2012, and that these two tenants along with other previous tenants moved in and out of the rental unit without the knowledge of the landlord. The landlord explained that the original tenant, other tenants, and the two present tenants all worked at the same restaurant.

The landlord's monetary claim is $4222.18, comprised of the following:

Junk removal/repair of living room wall	$431.20
Refinishing hardwood floors	$1107.68
1 garage remote	$100
2 Fobs	$90
2 suite keys	$5.62

Carpet cleaning	$171.36
Cleaning of suite	$540
Repair to damaged balcony	$1232
Replacement of shower door	$544.32
TOTAL	**$4222.18**

The landlord's additional relevant evidence included a notice to the tenants for a condition inspection for November 30, 2012, an incident complaint, dated October 12, 2012, issued to the tenants regarding the tenants or their guests having vomited in the elevator, another incident report dated April 29, 2012, an incident report and communication regarding a fire on the balcony of the rental unit, on October 4, 2012, email communication between the landlord's agent and the building manager, and the landlord's agent and the tenant regarding the tenants' access to the rental unit on November 30, 2012, a quote from a floor refinishing company, a carpet cleaning receipt, an invoice from a contractor regarding drywall repair and cleaning, an invoice for rail and glass repair, a receipt for cleaning, with an explanation, a receipt for a shower door, and photographs of the rental unit.

In response to my question, the tenants agreed that they were responsible to compensate the landlord for the remote, the keys, the fobs, carpet cleaning, and repair of the living room wall.

I therefore conducted the hearing for the remaining claims.

#1- Refinishing hardwood floors-The landlord submitted that the hardwood flooring was so damaged and scratched that the floors had to be refinished.

The tenant argued that the floors were scratched when he moved in and that he was not aware that he would be responsible for all the scratches since 2008. The tenant agreed that he understood that as of July 1, 2012, when the tenancy agreement was signed, that the floors were under his control.

#2- Cleaning of suite-The landlord submitted that the rental unit had not been cleaned and cleared of junk at the end of the tenancy, and pointed out their photos which were taken on the day of the inspection, November 30, 2012.

The tenant responded that since April 2012, he had not had access to the rental unit through his fob, instead he used his phone since that time to access the rental unit. In

that regard, he attempted to access the rental unit using his phone on the last day of the tenancy to clean, but that the phone access had been disabled by that time. The tenant said he did not believe he would have cleaned everything, but would remove his junk.

In response to this submission, the landlord argued that JS never phoned the office or attempt to reschedule a move-out inspection, instead he communicated through an email just after midnight on November 30, 2012.

The tenant then responded denying telling the building manager that he did not require phone access entry to the rental unit, as suggested in the email communication, and that he could not attend the inspection due to work requirements.

#3-Repair to damaged balcony-The landlord said that on October 4, 2012, there was a fire on the tenants' balcony in a trash can, which prompted the fire department to attend the rental unit. The ensuing fire caused damage to the balcony floor, the glass, and the railings.

In response, the tenant argued that he received a call from another tenant asking if there was a fire on his balcony; shortly thereafter there was a knock on their door by the firefighters. The tenant contended that the firefighters knocked out the glass panels and when speaking with them for about 45 minutes, there was no determination as to how the fire started. The tenant also contended that only 1/3 of the glass had already shattered by the time the firefighters arrived.

The tenant said all repairs were done after they vacated the rental unit.

The landlord said new railings had to be ordered and that the glass shattered before the firefighters arrived.

#4- Replacement of shower door-The landlord said that at the inspection, the shower door was not there and that it had to be replaced.

In response, the tenant said the shower door broke on him one day when he was using it, saying that he had gripped the handle as usual and the door fell off. The tenant pointed out that the landlord never mentioned the door, which broke a long while before the end of the tenancy, on two previous inspections.

The tenant said the broken door was not reported to the landlord as he could still use the shower.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy. Section 24(2) of the Act extinguishes the right of the landlord to claim against the deposit for damages should the landlord fail to offer the opportunities for inspection.

In the case before me, I find the evidence shows that a new tenancy with the two listed tenants began on July 1, 2012, and I find that the landlord failed to conduct a move-in inspection for *this* tenancy. I do not accept the landlord's arguments that the tenancy began in December 2008, and that they were not responsible for entering into new tenancy agreements which each succeeding tenant or occupant. I do not find there was sufficient evidence to establish that the two listed tenants were ever sub tenants.

Additionally, the Residential Tenancy Branch Regulations, #20, requires that the condition inspection report contain the date of the condition inspection. I find that the condition inspection report supplied by the landlord is deficient as it does not contain such date.

Due to the above deficiencies, I found I could not rely upon the condition inspection report to accurately depict the state of the rental unit.

Even though the landlord lost the right to claim against the security deposit for damage to the rental unit for failure to conduct a move-in inspection, Residential Tenancy Branch Policy Guideline #17(9) grants the landlord the right to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

As to the landlord's monetary claim for the garage remote for $100, the 2 fobs for $90, the 2 suite keys for $5.62, and carpet cleaning for $171.36, as the tenants agreed these amounts were owed, I grant the landlord a monetary award in the amount of $366.98.

Repair to living room wall/junk removal-Although the tenants agreed that they were responsible for the repair to the living room wall, the landlord's evidence shows that the repair and junk removal were combined on one receipt, without a specific breakdown as to the cost of each item.

It was therefore necessary to consider further the landlord's monetary claim. In reviewing the evidence, the landlord supplied a copy of an email sent to the landlord's agent at 12:08 a.m. on November 30, 2012, informing the landlord's agent that he could not access the rental unit to "finish any details." The evidence shows that the landlord's agent notified the building manager, at 7:49 a.m., alerting him to the fact the tenants' access did not end until 1:00 p.m. that day.

The building manager did not respond until the following day; at any rate, the tenants denied talking to the building manager.

In the case before me I accept that the tenants did not have access to the rental unit via the tenant's usual method of entry until the official end to the tenancy at 1:00 on November 30, 2012, and therefore they were unable to remove all the junk left behind. Therefore I will not award the landlord compensation for junk removal.

In reviewing the landlord's photographic evidence, I find that it reasonable that the majority of the costs listed in the landlord's receipt was for repair to the damaged wall. I therefore find that a reasonable amount to award the landlord for damage to the wall is $300.

Refinishing hardwood floors-In the case before me, the landlord failed to conduct an inspection at the beginning of this tenancy and is therefore unable to submit conclusive proof of the state of the hardwood floors at the beginning of this tenancy. It is just as likely that any damage to the floor could have occurred when another tenancy began in December 2008, and thereafter when other tenants or occupants resided in the rental unit.

I was therefore unable to determine what, if any, damage was caused by tenants JS or JVS.

I also find that the landlord failed to submit proof that the amount claimed has been paid by them, as the proof of this expense was by way of a quote, not an invoice, receipt or cheque requisition, in contrast to the other items claimed by the landlord.

I therefore find that the landlord submitted insufficient evidence that the tenants caused any damage or that they have sustained a loss, and I dismiss their claim for $1107.68.

Cleaning of suite-I find the landlord submitted sufficient evidence through their photographs and receipts that the tenants failed to leave the rental unit in a state that met reasonable health, cleanliness and sanitary standards. I therefore find the landlord is entitled to a monetary award for $540.

Repair to damaged balcony-I find the landlord submitted sufficient evidence to establish that the tenants were responsible for the damage to the balcony due to a fire caused when they had possession of the rental unit and I therefore find the landlord is entitled to a monetary award for $1232.

Replacement of shower door-As the landlord failed to conduct a move-in inspection and the tenant disputed that his actions caused the shower door to break, I find the landlord submitted insufficient evidence to prove that the tenants are responsible for this expense. I therefore dismiss the landlord's claim for $544.32.

I grant the landlord recovery of the filing fee of $50.

Due to the above, I find the landlord is entitled to a monetary award of $2488.98, comprised of $366.98 for garage remote for $100, the 2 fobs for $90, the 2 suite keys for $5.62, and carpet cleaning for $171.36, $300 for repair to the living room wall, $540 for cleaning of the suite, $1232 for repair to the damaged balcony, and $50 for the filing fee.

Conclusion

The landlord's application was granted in part and they have been granted a monetary award of $2488.98.

I direct the landlord to retain the security deposit of $825 and interest of $.10 in partial satisfaction of their monetary award.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of $1663.88, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that the costs of such enforcement may be recoverable from the tenants.

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* and is being mailed to both the applicant and the respondents.

Dated: April 22, 2013

Residential Tenancy Branch