Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advent Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company and the tenant attended the conference call hearing and each gave affirmed testimony.

At the outset of the hearing the tenant indicated that the landlord's evidence had not been provided to the tenant. The landlord's agent stated that the documentation was provided at the address given by the tenant on the move-out condition inspection report. The tenant did not have a copy of that report to refer to, but advised that the apartment number was incorrect. The landlord served the tenant with the Landlord Application for Dispute Resolution and notice of hearing at the address contained in the move-out condition inspection report, and the tenant acknowledged having received those documents. In the circumstances, I find that the landlord has provided the tenant with the evidence at the address the tenant gave to the landlord.

The tenant also argued that the style of cause in these proceedings is incorrect, in that the name of the landlord on the application is not the same landlord noted on the tenancy agreement. The landlord's agent argued that the landlord named in the tenancy agreement contracted the services of the landlord company named in the application for dispute resolution. The parties were advised that I would consider the arguments, the result of which is contained in this Decision.

The tenant also argued that a Decision from a previous hearing between the parties resulted in an order permitting the tenant to claim loss of quiet enjoyment, however the tenant was not permitted to raise that application in this hearing. The Decision was

referred to in this hearing, which clearly says that the tenant's application was dismissed with leave to reapply. The tenant has not reapplied, and although the tenant argued that it was thought this hearing would deal with that issue, the only issues this hearing focused on was the landlord's application that was properly before me.

The hearing did not conclude on its first day, and was adjourned for a continuation of testimony.

The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on November 17, 2011, expired on November 30, 2012 and then reverted to a month-to-month tenancy which ultimately ended on February 6, 2013. Rent in the amount of $1,695.00 per month was payable in advance on the 1st day of each month. On November 4, 2011 the landlord collected a security deposit from the tenant in the amount of $847.50 which is still held in trust by the landlord and no pet damage deposit was collected. A move-in condition inspection report was completed by the parties and the move-out condition inspection report was completed on February 6, 2013 upon which the tenant provided a forwarding address in writing.

The landlord's agent further testified that the tenant was issued a notice to end tenancy for unpaid rent and the landlord was successful at a previous hearing in obtaining an Order of Possession, but the landlord had not applied for a monetary order. A copy of the notice was provided for this hearing and it states that the tenant failed to pay rent in the amount of $1,720.00 that was due on January 1, 2013 and failed to pay utilities in the amount of $435.52 following written demand on October 4, 2012. The notice is dated January 5, 2013 and contains an expected date of vacancy of January 19, 2013.

A previous notice to end tenancy was also issued by the landlord and a copy provided for this hearing. That notice is dated December 11, 2012 and states that the tenant failed to pay rent in the amount of $1,720.00 that was due on December 1, 2012 and contains an expected date of vacancy of December 26, 2012. The Landlord's Application for Dispute Resolution states that the tenant failed to pay rent for December, 2012 and January, 2013, and evidentiary material shows that the $1,720.00 for each of the notices includes a $25.00 late fee, which is included in the tenancy agreement, also provided.

The landlord's agent also testified that the utilities left unpaid for the tenancy total $537.35. A number of bills were provided for this hearing, and the landlord's agent testified that at a previous hearing the Arbitrator found that the bills were vague and the landlord has written on the bills for this hearing in order to make it clearer which part was included in the rent and which parts were not included.

The hardwood floor was damaged at the end of the tenancy, and the landlord's agent testified that the floors were only about a year old at the outset of the tenancy. The move-in condition inspection report shows that age. The cost for the repair is $616.00. During cross examination, the landlord's agent corrected the testimony stating that the floor is not hardwood, but laminate, and only 1 board was damaged.

The tenant agreed on the move-out condition inspection report to allowing the landlord to keep $50.00 of the security deposit for cleaning, and the landlord is content with that amount. However, the entry fob to the building was not returned at the end of the tenancy. The landlord has provided evidence showing that $50.00 was paid by the landlord, but no receipt has been provided.

The landlord's agent was hired by the landlord company about a month before the tenant moved in, and the agent was hired to obtain a tenant and then hired later to take over as property manager. The owner assigned the property management company.

The tenant testified that the application is not properly brought in that the tenant did not contract with the landlord company.

With respect to unpaid rent, the tenant stated that for 6 months during the tenancy the tenant attempted to get the landlord to deal with the tenant's loss of quiet enjoyment. The parties had attended a previous hearing wherein the tenant's application for rent abatement for loss of quiet enjoyment was dismissed with leave to reapply, and the tenant believed that portion of the application would be heard in this hearing.

The tenant also testified that one piece of the laminate flooring had a curling on the edging. Over time it enlarged. The tenant submitted that it is impossible to damage only one board, and therefore, the board was flawed. The tenant further testified that other tenants in the building told the tenant that the rental unit was previously inhabited by athletes for the Olympics.

The tenant returned the key fob to the landlord during the tenancy because it didn't work. The landlord didn't replace it for the tenant. The tenant argues that the tenant ought not to be held responsible for an unusable fob that was returned to the landlord during the tenancy.

The tenant further testified that a finding with respect to utilities was already made in the previous hearing. The tenant paid hydro and in May, 2012 received a text message from the owner of the rental unit asking for $500.00. The tenant then received a notice to end tenancy with utility bills attached. May, 2012 was the first that the tenant had heard about any request for payment of further utilities. The tenant further argued that the landlord's claim for utilities was dealt with at a previous hearing, and deciding that issue again would be standing in appeal of a previous Arbitrator's Decision.

Analysis

Firstly, with respect to the tenant's claim that this application is not brought by the landlord that the tenant contracted with, I refer to Section 1 of the *Residential Tenancy Act* which describes a landlord as:

> **"landlord"**, in relation to a rental unit, includes any of the following:
>
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> (i) permits occupation of the rental unit under a tenancy agreement, or
>
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
>
> (c) a person, other than a tenant occupying the rental unit, who
>
> (i) is entitled to possession of the rental unit, and
>
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this.

It is not uncommon for a landlord to contract to a property management company, and the *Act* permits it. The landlord's agent testified that the landlord company which entered into the tenancy agreement with the tenant contracted the services of the landlord company named in this proceeding. A security deposit is being held in trust by the named company on behalf of the tenant. In the circumstances, I find that the landlord company which brought this action exercised the rights of the landlord under the tenancy agreement and under the *Act* in relation to the rental unit.

I have reviewed the documentation provided by the landlord, and I find that the landlord has established a monetary claim as against the tenant for unpaid rent and late fees for the months of December, 2012 and January, 2013 in the amount of $3,440.00.

With respect to the landlord's claim for the key fob, the tenant has raised a defence stating that one of the fobs was returned to the landlord during the tenancy because it didn't work. The landlord's agent did not dispute that testimony, and I find that the tenant's defence is reasonable, and the landlord's claim for $50.00 to replace the fob is dismissed.

With respect to unpaid utilities, I have reviewed the Decision of the Arbitrator in the previous hearing, and I find that the issue of *res judicata* has been properly raised by the tenant. The Decision of the Arbitrator in that hearing states:

> "The written tenancy agreement clearly indicates that hot water and water supply are included in the monthly rent. **I find** that the new bills submitted as documentary evidence are vague and therefore, it is not clear what portion is the responsibility of the tenant, if any. Further, **I find** that the invoices refer to the strata with a strata number included, which provides supporting evidence that the bills are strata utilities versus utilities which the tenant expected to pay."

A finding has been made that the invoices for utilities are strata utilities, and I decline to make any further findings with respect to utilities, and therefore, the landlord's application in that regard cannot succeed.

With respect to the damaged floor board, the parties agree that only one board was damaged. The tenant argued that the board had to have been flawed for only one board to be curled, which became worse over time. The landlord suggested that perhaps a plant had been sitting on that board. I have reviewed the photographs and I find it difficult to accept that explanation. Further, the landlord has provided an estimate which I find to be excessive and I am not satisfied that the landlord has proven that the

damaged board is more than normal wear and tear or that the cost of repair would be over $600.00.

In summary, I find that the landlord has established a monetary claim as against the tenant for unpaid rent and late fees totaling $3,440.00. The landlord's claim for the key fob replacement, unpaid utilities and a damaged floor board are hereby dismissed without leave to reapply.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the $50.00 filing fee for the cost of the application, for a total award of $3,490.00.

The tenant agreed in writing on the move-out condition inspection report that the landlord could keep $50.00 of the security deposit for cleaning. I order the landlord to keep the security deposit of $847.50 and I order that $50.00 of that be applied to cleaning, leaving a balance of $797.50. I hereby grant a monetary order in favour of the landlord for the difference in the amount of $2,692.50.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed without leave to reapply.

I order the landlord to keep the security deposit and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $2,692.50.

This order is final and binding on the parties and may be enforced.

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: June 17, 2013

Residential Tenancy Branch