Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROMLAND PROPERTIES (1997) LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MND, MNDC, FF
Tenant: O

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord and the Tenant. The Landlord applied for: a Monetary Order for damage to the rental unit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the cost of this Application from the Tenant.

The Tenant applied for 'Other' issues. However, on examination of the Tenant's Application, it appears that the Tenant had made the Application as a way to submit evidence in response to the allegations being made by the Landlord. Both Applications were scheduled to be heard together during this hearing.

Two Landlords, also representing the company named on the Application appeared for the hearing. They both provided affirmed testimony during the hearing as well as written evidence in advance of the hearing and confirmed receipt of the Tenant's Application.

The Landlords both testified that the Tenant was personally served a copy of the Application and the Notice of Hearing documents at the Victoria Residential Tenancy Branch office on March 14, 2014, shortly after being provided with the paperwork. As a result, I find that the Landlord served the documents to the Tenant in accordance with Section 89(1) (a) of the Act.

However, there was no appearance for the Tenant during the 42 minute duration of the hearing. In light of the fact that the Tenant did not need to make an Application in order to submit evidence only and the failure of the Tenant to appear for this hearing, I dismiss the Tenant's Application accordingly and consider his Application as written evidence in response to the Landlord's Application.

Issue(s) to be Decided

- Is the Landlord entitled to the replacement cost of damage to the front door window pane?

Background and Evidence

Both Landlords provided the following undisputed testimony during the hearing.

The tenancy started on May 1, 2013 for a fixed term of one year. Rent was payable by the Tenant in the amount of $775.00 on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of $387.50 on April 26, 2013 which the Landlord still retains.

The Tenant left the rental suite on April 2, 2014 and a move in and move out condition inspection report was completed. To date the Tenant has not provided the Landlord with a forwarding address in writing.

On July 26, 2013 the Landlord visited the rental suite at which point the Tenant made them aware that he had broken a window pane in the front door of the rental suite to affect entry because he had lost his keys, it was the middle of the night and he was drunk. The Landlords could not establish the exact date the damage occurred but provided photographic evidence of this damage.

The Tenant was going to be away for an extended period of time and in an effort to secure the rental suite, the Landlords arranged to have the window replaced. This replacement was communicated to the Tenant by e-mail and a letter provided as documentary evidence. The Landlord explained that the window pane was a specific ‘pie ‘shaped piece of tempered glass and the moulding around the glass also had to be repaired. The Landlord contacted a company who could manufacture such a specialised piece of glass and they attended the location two days later to take measurements and start the process of installment.

However, the manufacturing time took longer than anticipated and the Landlord provided documentary evidence from the glass company who explained the delay and apologised for the inconvenience.

The window was installed three weeks later and e-mail communication was provided as evidence in which the Landlords continued to keep the Tenant informed of the progress of the repair.

The Tenant was provided with the invoice for the cost of the replacement on September 11, 2013, which was also provided as evidence for this hearing, and asked to make the payment in due course.

The Landlord provided an e-mail dated September 30, 2013 from the Tenant which states "…will be in touch with you about giving you the money for the window."

The Landlord made a number of e-mail requests to the Tenant for the cost of the window pane but the Tenant failed to make this payment despite these requests and the Tenant's commitment to pay as above.

The Tenant then wrote back to the Landlord on February 18, 2014 explaining that he was not responsible for the payment because at the time the Landlords saw the damage he wanted to repair it himself but the Landlord told him not to because they wanted to do it by themselves and therefore he should not be held responsible. The Tenant sent another e-mail to the Landlords on March 10, 2014 stating that he had a quote to install the window from another company who quoted $55.00; despite informing the Landlords that he would provide them with a quote for this amount, no such quote was provided by the Tenant to the Landlord or as evidence for this hearing.

The Tenant's submission in the details section of his Application states that he had to break the window to affect entry into the unit at night because he had lost his keys. The Tenant states that he offered to repair the window at a cost of $55.00 but the Landlord refused and waited over three weeks to make the repair.

Analysis

The Tenant failed to appear for the hearing in order to make verbal submissions and dispute the Landlords' testimony. As a result, I have completed the following analysis of the Landlord's claim based on the undisputed testimony and written evidence provided by the parties prior to the hearing on the balance of probabilities.

When a party makes a claim for damage to a rental suite, the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

In this case, based on the evidence, I am satisfied that the damage caused to the window pane in the front door of the rental suite was caused by the Tenant effecting entry into the unit at night having lost his keys.

I also find that the submission of the invoice which was paid by the Landlord is sufficient evidence to verify the loss being claimed. The Tenant has not provided any supporting evidence to suggest that the cost incurred by the Landlord was excessive or unreasonable and in any case should have cost $55.00 as the Tenant suggested.

The Tenant claims that he was not given an opportunity to make the repair himself at a reduced cost and that the Landlord should bare all of the cost as they chose to do the repair themselves.

However, I do not accept the Tenant's written submissions. While there is no evidence to suggest that the Landlord made a formal written request to the Tenant to repair the damage, I find that the fact that this repair was specialised in nature and required a professional company to manufacture the tempered glass and complete the installation, this was sufficient reason for the Landlord to initiate the repair. The Tenant failed to provide contradictory evidence to suggest that this was a simple repair that could have been done by a lay person or another company at a cost of $55.00.

Furthermore, there is no written evidence to suggest that the Tenant made requests to the Landlord to complete the repairs of his own accord, rather the evidence suggests that by the lack of replies to the Landlords' multiple e-mails about the initiation of the repairs, that the Tenant was consensual in the Landlord doing the repair, even stating in his eventual e-mail reply to the invoice provided by the Landlord, that he will communicate with the Landlord in providing them the money for the window.

I find that in this case, the Tenant is not able to solely rely on the fact that the Landlord did not give him an opportunity to make the repair in order to absolve himself from paying for the repair altogether. I also find that it was no appropriate for the Tenant to raise this issue in an e-mail several months after the repair was realised by the Landlord. Furthermore, the Landlord provided sufficient evidence from the window installation company to explain the delay in installing the window which is another point that the Tenant had raised.

Therefore, it is my finding that the Tenant should be responsible for the payment of this repair in the amount of **$128.73** as per the invoice for this cost.

As the Landlord has been successful in this mater, the Landlord is also entitled to recover from the Tenant the **$50.00** filing fee for the cost of this Application pursuant to Section 72(2) (b) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is $178.73.

Conclusion

As the Landlord already holds $387.50 in the Tenant's security deposit, I order the Landlord to retain **$178.73** of this deposit in full satisfaction of the Landlord's Application, pursuant to Section 38(4) (b) of the Act.

The Tenant's Application is dismissed **without** leave to re-apply.

The Landlords explained that they also have a monetary claim for cleaning costs and unpaid rent which they were unable to put the Tenant on notice for as he has not provided a forwarding address.

As a result, I referred the Landlord to Section 39 of the Act which explains that a Tenant has one year from the date the tenancy ends to provide the Landlord with a forwarding address in writing for the return of the security deposit.

If the Landlord does receive the forwarding address from the Tenant, then the Landlords are at liberty to make a claim for the remainder of the security deposit using the address provided for the remaining issues associated with this tenancy, in accordance with Section 38 of the Act.

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 21, 2014

Residential Tenancy Branch