Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 12, 2014, by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlords and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on July 1, 2012 and ended August 31, 2013. The Tenant was required to pay rent of $1,295.00 on the first of each month and on July 1, 2012 the Tenant paid $647.50 as the security deposit. The parties conducted a walk through inspection and completed condition inspection report forms at move in September 3, 2012. A move out walk through was conducted by both parties on September 3, 2013; however no condition inspection report form was completed at that time.

The Landlord testified that during the walk through he pointed out the lack of cleaning and damages to the rental unit. When they were about 80% finished the Tenant became upset. The Landlord said he decided to change the focus and requested the return of the keys and garage door fobs. The Tenant could not find the garage fob and after searching her car for a few minutes she decided to leave.

The Landlord submitted that he communicated with the Tenant by email and negotiated a settlement agreement for the damages. On September 10, 2013, the Tenant agreed to deductions from her security deposit with the balance of $221.00 returned to her by email transfer, as supported by the email provided in the Tenant's evidence. The Landlord stated that he thought the matter was resolved until he received notice that the Tenant had filed an application for dispute resolution seeking the return of double her deposit. The hearing was held February 27, 2014. The Tenant's application was dismissed as being premature as she had not provided her forwarding address in writing before making the application. In the decision the Landlord was given until March 14, 2014 to either apply to keep the security deposit or return it to the Tenant.

The Landlord argued that because the Tenant reneged on their original agreement and the orders issued in the February 27, 2014 he has applied to recover the costs for all of the losses, as listed in his original September 9, 2013 email and supported by his evidence and photos which were taken on September 3, 2013. His claim includes the following:

1) $300.00 cleaning costs The Landlord submitted that the Tenant demanded that the Landlord used the cleaner of the Tenant's choosing and that she had arranged the date and time for the cleaning and was supposed to pay the cleaners. When the cleaners arrived they were upset because the unit was dirtier than they were told so they demanded payment in cash. The Tenant did not show up to pay the cleaners and when the Landlord called her she requested that the Landlord pay them and deduct the money from her security deposit.

2) $50.00 garage key fob This is the fee charged by the strata to replace the garage fob which the Tenant was unable to find or return.

3) $50.00 strata door key This key was bent at the time it was returned by the Tenant. The Landlord was not aware that it would not work until he attempted to use it and found out it was twisted to a point that it could not be used and had to be replaced.

4) $175.00 drywall repair Drywall in the master bedroom and bathroom were damaged, as per the photos provided in the Landlord's evidence. This work has not been completed and the amount claimed is based on an estimate provided by a handyman the Landlord has used in the past. This rental unit is about 30 years old and the Landlord has managed it for about three years.

5) $300.00 use of bed The Landlord argued that the owner had stored his personal possessions in a locked room which were not to be accessed by the Tenants. The

Tenant used the owner's brand new bed without his permission so they are seeking compensation for this unapproved usage. The Landlord noted that there was some other furniture that had been left behind in the suite which they offered to the Tenants to use but the Tenants chose not to accept that offer and the furniture was removed. The offer was never extended to the articles that were stored behind the locked door.

6) $431.67 loss of rent The Tenant provided notice to end her tenancy August 31, 2013 but she did not complete the cleaning until September 10, 2014, which delayed the owner's friends from moving into the unit.

7) $221.00 refund return The Landlord argued that he had paid the Tenant a partial refund of $221.00 and now that she has reneged on their mutual agreement he is seeking to have this refund returned to him.

The Tenant testified and confirmed that she had originally agreed to the partial refund of $221.00 but argued that she felt pressured into agreeing to the arrangement. She is disputing the claim as follows:

1) The Tenant confirmed she had scheduled the cleaners of her choice but argued that she had only agreed to pay $200.00 for cleaning.

2) The Tenant did not dispute the claim for the garage key fob.

3) The Tenant denied the second key was bent or broken and argued that the first time she heard about it was on the Landlord's application for dispute resolution.

4) The Tenant argued that the unit was very old and there was a lot of damage on the walls. When describing which bathroom had the damaged wall the Tenant argued that she did not know the difference between a main bathroom and an ensuite; she then stated that the damage was in the main bathroom. Upon further clarification she stated that she calls the ensuite the main bathroom because that is the bathroom she uses and the other one she refers to as the guest bathroom. The Tenant could not explain why the damaged wall was not listed on the move in inspection report and stated that it was her former partner/spouse who completed the move in inspection.

5) The Tenant pointed to her email evidence to support that she was given permission to use the owner's bed on August 27, 2012. She argued that there was never any agreement that the owner would store his possessions behind a locked door as that room was not locked. She confirmed that some of the furniture was removed and the other was left behind.

6) The Tenant pointed to her email evidence which confirms that she was told no one else was going to be moving into the rental unit so she could take her time in cleaning up after she moved out. She is not responsible to pay extra when she was given permission to take her time.

7) The Tenant confirmed that she agreed to the partial refund and argued again that she felt pressured because she needs the money. She made application for double her deposit because there was no condition inspection report form completed at move out, therefore, the Landlord should have given her all of her deposit back.

In closing, the Landlord clarified that the offer was to use furniture that was left outside of that room in the main part of the suite. There was a second bed and dining table which were removed when the Tenants declined his offer. The door to the room which stored the owner's property was initially locked and the Tenants clearly understood that those possessions were not to be used. The Landlord pointed to the August 29, 2014 e-mail which informed the Tenant that the owner's friend would be moving into the unit. He noted that the damaged wall was in the ensuite and not the main or guest bathroom and he questioned the receipt submitted by the Tenant for carpet cleaning. He noted that the receipt was for $96.00 which may have included three rooms, based on that company's normal special offer, but that price would certainly not have included hallway, staircase and the loft. He pointed to his evidence which included a carpet cleaning bill from the beginning of the tenancy which was $278.00 for the entire carpet.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

The February 27, 2014 Decision found that the Tenant's application for double her deposit was premature, as she had not proven that she provided the Landlord her forwarding address in writing. The Landlord was ordered to either file an application for dispute resolution or return the deposit no later than March 14, 2014. He filed his application for dispute resolution on March 12, 2014. Notwithstanding the Tenant's argument that a move out condition inspection report form was not completed, I find that when considering the foregoing, the security deposit doubling provision under section 38 of the Act does not apply in this case.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

As per the above, I accept the Landlord's photographs and September 9, 2013 email as evidence of the condition the rental unit was left in at the end of the tenancy.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

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

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

As per the foregoing I find the Landlord has met the burden of proof and I award him damages in the amount of **$575.00** which is comprised of $300.00 for cleaning costs; $50.00 garage key fob; $50.00 common key; and $175.00 for drywall damages.

Upon review of the remaining claim for $300.00 for the use of owner's bed and $431.67 for lost rent, I find there to be contradictory evidence that supports that the Tenant was initially told she could use a bed left by the owner and that she could have possession of the rental unit past the end of the tenancy.

When one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the presence of the contradictory evidence, I find the Landlord has provided insufficient evidence, and the claims for use of the bed and lost rent are dismissed, without leave to reapply.

The Landlord has primarily succeeded with their application; therefore, I award recovery of the **$50.00** filing fee.

The Landlord previously returned $221.00 of the security deposit to the Tenant by email transfer on approximately September 10, 2014; therefore, the Landlord is currently holding a deposit of $426.50 ($647.50 - $221.00).

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Cleaning, damages, key replacement	$575.00
Filing Fee	50.00
SUBTOTAL	$625.00
LESS: Security Deposit $426.50 + Interest 0.00	-426.50
Offset amount due to the Landlord	**$198.50**

Conclusion

The Landlord has been awarded a Monetary Order for **$198.50**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: July 03, 2014

Residential Tenancy Branch