Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MNR, FF

Introduction

In the first application the former tenant seeks recover of his security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the "*Act*") and for compensation arguing that the landlord reduced his use of common area of the rental unit.

In the second application the landlord seeks recover of rent and for damages for repairs to the premises.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either party is entitled to any of the relief claimed?

Background and Evidence

The rental unit has been described by the tenant as a "two bedroom luxury condominium" and by the landlord as a "two bedroom and den luxury condominium."

The tenant rented a bedroom in the unit and shared kitchen, bathroom and common areas with other occupants. The tenancy started March 1, 2014 though the tenant moved in mid February on the understanding that he would paint a room or rooms.

The monthly rent was $650.00. The tenant paid and the landlord holds a $325.00 security deposit. The tenant had been a tenant of the landlord for a brief period at another shared accommodation in Surrey. The landlord did not prepare a written tenancy agreement as she is required to do under s. 13 of the *Act*.

Shortly after commencement of this tenancy the landlord rented out the "den" portion of the apartment to a Mr. J.C. and, around the first part of April, moved Mr. J.C. to the couch in the living room and rented the den to Mr. B.B. Mr. B.B. still resides there though it is not clear whether Mr. J.C. still does. Mr. B.B. says he does.

The tenant was not informed or consulted about either additional tenant.

The tenant vacated the premise June 1, 2014 and gave the landlord a forwarding address in writing at that time.

The landlord claims the tenant failed to paint as promised, splattered paint or a sticky substance on walls and on the balcony, broke the lock on a fourth tenant's door, stole his shoes, broke a door hinge and shot pellets into the fridge door.

The tenant denies all but says he did in fact paint as required. Mr. B.B. testified and confirmed the painting was done and that the landlord later hired Mr. J.C. to redo the work in a different colour.

Analysis

The landlord relies on an oral agreement for the tenant to paint certain disputed areas of the apartment.

Section 6(3) of the *Act* provides,

> (3) A term of a tenancy agreement is not enforceable if
> (a) the term is inconsistent with this Act or the regulations,
> (b) the term is unconscionable, or
> (c) **the term is not expressed in a manner that clearly communicates the rights and obligations under it**.
>
> (*my emphasis*)

Where a written tenancy agreement has not been prepared, the terms of the tenancy agreement are not expressed "in a manner that clearly communicates" the rights and obligations of the terms under the agreement, *Darbyshire v. Residential Tenancy Branch (Director),* 2013 BCSC 1277. The alleged term of the tenancy agreement that the tenant would paint parts of the rental unit was not in writing and is not enforceable.

The allegation of paint splattering damage was not proved at hearing. The photos presented by the landlord should have shown the splattering but did not. The allegations about a broken door knob and hinge, theft of shoes, firing of a pellet gun, are at best speculative with no persuasive evidence to support them. I can find no reasonable basis to grant the landlord any portion of her application.

The tenant argues that by renting out the couch in the living room the landlord significantly reduced the area available for his use. I agree with the tenant. The

landlord moving in a fourth tenant to occupy, basically, the living room, was well beyond what any person renting a room in the condominium might expect.

At the same time, s. 6(3)(c) above applies equally to the tenant. He may well have argued that there was an implied term of his tenancy agreement that no more than the two bedrooms and perhaps the den would be rented out. Nevertheless, such a term is not enforceable under the present law. I dismiss the "loss of use" portion of the tenant's claim.

That leaves only the matter of the security deposit of $325.00. As the landlord's claim against it has failed, the tenant is entitled to recover it. The landlord has also found herself subject to s. 38 of the *Act*. As stated at hearing, it provides that once a tenancy has ended and the tenant has provided a forwarding address in writing, then unless the landlord has the tenant's written authorization or an arbitrator's order permitting her to keep the deposit, she must either repay it or make application to keep it within 15 days. In default she must account to her tenant for double the deposit.

In this case the tenant vacated and gave his forwarding address in writing on June 1st. The landlord did not make her application until June 23rd. That is more than the 15 days allowed. She must account to the tenant for $650.00; double the deposit.

Conclusion

The landlord's application is dismissed. The tenant's application is allowed in part. The tenant will have a monetary order against the landlord in the amount of $650.00.

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 14, 2014

Residential Tenancy Branch