Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage to the unit, site or property / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

In response to applications by both parties, 2 previous hearings have been held:

> Files # 811246 & 810967
> Date of decision: September 13, 2013
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> Pursuant to the decision, the landlord's 1 month notice to end tenancy was set aside.
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> Files # 813142 & 813562
> Date of decision: November 18, 2013
>
> Pursuant to the decision, an order of possession was issued in favour of the landlord.

In response to the landlord's application for substituted service, a further decision was issued by date of July 11, 2014 (file # 821389).

Pursuant to a written tenancy agreement, the tenancy began on February 1, 2012. Monthly rent of $1,500.00 was due and payable in advance on the first day of each month, and a security deposit of $750.00 was collected. The tenants took early

possession of the unit and keys on January 20, 2012. A standard formal move-in condition inspection report was not completed, however, evidence before me includes a signed manual notation pursuant to which the parties agree broadly that the "carpets, walls, doors, locks, windows, electrical, plumbing, fences, storage bldg., and 4 appliances [are] all complete, clean & in good condition," and that the "kitchen flooring is damaged." The foregoing notation appears on a memo from the landlord to tenant "IBL" dated January 20, 2012 and titled: **Receipt and Acknowledgment Agreement of Early Possession Rental Value - $532.00** ("Receipt and Acknowledgement").

Following from the decision dated November 18, 2013, an order of possession was issued in favour of the landlord. The order was personally served on "DPH," an occupant of the unit. The tenants claim that they themselves had already vacated the unit in December 2013. Thereafter, the landlord filed the order of possession in the Supreme Court of British Columbia and obtained a Writ of Possession. Subsequently, the landlord engaged the services of the Bailiff, and on January 02, 2014 the Bailiff attended the unit. The tenants / occupant arranged for a moving truck and removed their possessions from the unit during that same day. The landlord undertook to have a detailed professional home inspection report completed on January 03, 2014.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.gov.bc.ca/landlordtenant

The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**
Section 24: **Consequences for tenant and landlord if report requirements not met**
Section 35: **Condition inspection: end of tenancy**
Section 36: **Consequences for tenant and landlord if report requirements not met**

Further, Part 3 of the Regulation addresses **Condition Inspections** (sections 14 to 21).

Additionally, section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

> 37(2) When a tenant vacates a rental unit, the tenant must
>
> > (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

Based on the affirmed testimony of the parties and the documentary evidence which includes, but is not limited to, invoices, receipts and photographs, the various aspects of the landlord's application and my findings around each are set out below.

$120.00: *filing for writ of possession*

Evidence submitted by the tenants includes a letter dated November 13, 2013, and signed by "DPH." In his letter "DPH" claims that even while the tenants asked him to vacate the unit, he refused. In his letter, "DPH" also states that while tenant "ERL" "rented a big box and cleaned up the yard," "DPH" refused to permit tenant "ERL" to remove anything from the unit that belonged to him ("DPH").

The tenants claim that they themselves had vacated the unit in December 2013, and that in January 2014 "DPH" was, in effect, a "squatter."

Following from the foregoing, the tenants take the position that they ought not to bear any responsibility for costs arising for the landlord in association with removing "DPH" and his belongings from the unit in January 2014.

I find that "DPH" was permitted on the property by the tenants, and that on a balance of probabilities the tenants had not removed all of their belongings from the unit in December 2013. I further find that the landlord had not ultimately acquired full and peaceable vacant possession and occupation of the unit, until after he had obtained a Writ of Possession and engaged the services of the Bailiff. In the result, I find that the landlord has established entitlement to the full amount claimed.

$2,642.08: *Bailiff services*

For reasons similar to those set out immediately above, I find that the landlord has established entitlement to the full amount claimed.

$260.00: *charges for dumping*

During the hearing the tenants testified that they do not dispute this aspect of the landlord's claim. Accordingly, I find that the landlord has established entitlement to the full amount claimed.

$215.04: *replacement of broken window*

I find on a balance of probabilities that the subject window was not broken at the time when tenancy began, as a broken window is not consistent with notations made about the "complete, clean & in good condition," status of the unit, including windows, made on the "Receipt and Acknowledgment" document signed by the parties near the start of tenancy. In the result, I find that the landlord has established entitlement to the full amount claimed.

$4,835.00: *labour & materials for repairs to shed*
$1,013.13: *labour and materials for removal / replacement of damaged fence*
$475.00: *labour and materials for electrical repairs*
$3,504.00: *labour & materials for repairs to unit*

Sub-total: $9,827.13

The tenants claim that certain of the works undertaken by the landlord which are set out above, go beyond repairs that may be required as a result of the tenancy and, instead, reflect improvements to the unit, shed and property.

I find that information included in the "Receipt and Acknowledgement" document falls far short of the detail required in a standard formal move-in condition inspection report pursuant to section 20 of the Regulation, which speaks to **Standard information that must be included in a condition inspection report**. In the result, there is an absence of the full comparative results which can be achieved when both, the standard move-in and move-out condition inspection reports are completed. Accordingly, I find on a balance of probabilities that the landlord has established entitlement limited to **$4,913.56**, or half the amount claimed.

$1,083.80: *replacement of carpet*

The parties dispute the age of the carpet at the time when tenancy began; the landlord claims it was approximately 1 year old, whereas the tenants claim it was far older than that. In the absence of any conclusive documentary evidence concerning the age of the carpet when tenancy began, in consideration of the effects of "reasonable wear and tear," and in the absence of more particular comparative results of the sort to be had from standard move-in and move-out condition inspection reports, I find that the landlord has established entitlement limited to **$270.95**, or 25% of the amount claimed.

$554.86: *appliance repairs / replacement parts*

The “Receipt and Acknowledgment” document speaks to the “complete, clean & in good condition” status of various aspects of the unit including “4 appliances.” While I find on a balance of probabilities that repairs / replacements arise from use which is beyond “reasonable wear and tear,” I also note that there is no documentary evidence around the age of the appliances at the time when tenancy began. Further, the landlord testified that this cost has not yet been incurred. In the result, I find that the landlord has established entitlement to nominal damages in the limited amount of **$100.00**.

$100.00: *filing fee*

As the landlord has achieved a significant measure of success with his application, I find that he has established entitlement to recovery of the full filing fee.

Total: $8,621.63

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **$8,621.63**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

As agreed between the parties during the hearing, the landlord is ordered that he may serve the monetary order on the tenants in care of the offices of the law group, out of which the Articling Student representing the tenants currently works.

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: September 19, 2014

Residential Tenancy Branch