Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNSD, FF

Introduction

This was an application by the landlord under the *Residential Tenancy Act* (the Act) for a monetary order for damage and loss respecting the rental unit and to retain the security deposit in partial satisfaction of any monetary claim.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. It must be noted that the tenant did not join the conference call hearing until 22 minutes into the hearing at which time the tenant was brought current to matters and was given opportunity to respond to the evidence. Despite the abundance of 45 pages of evidence provided to this hearing by the landlord the tenant claims they only received 10 -12 pages of evidence containing the Application and Notice of Hearing documentation, all of which was disputed by the landlord whom provided evidence that they sent the tenant all of their evidence by registered mail on June 14, 2014, as provided to the Branch in September 2014. The tenant testified they did not send in evidence of their own as they did not receive information of how to go about the process of doing so – only that they could respond at the hearing. None the less the tenant was given opportunity to provide testimonial evidence in response. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The undisputed relevant evidence in this matter is that the tenancy started May 01,

2013 and ended May 31, 2014 when the tenant vacated upon giving the landlord a notice to end. The landlord currently holds the security deposit in trust – in the amount of $837.00. I have benefit of a tenancy agreement document signed by both parties at the start of the tenancy. The parties agreed in their tenancy agreement that there were to be no pets unless it was a “small pet” and a pet deposit was paid. The tenant acknowledged that during the tenancy they kept a dog unauthorized by the landlord, although during their tenancy they cleaned the carpeting on 2 occasions and that the rental unit suffered no pet damage or other damage other than normal wear and tear, which the tenant claims they corrected before they left.

I have benefit of a copy of a *move in* Condition Inspection Report dated before the tenancy took effect which the landlord testified was completed by someone other than them and later endorsed by the landlord’s signature. The parties agreed that at the end of the tenancy the respondent tenant and the *new incoming tenant* mutually conducted an inspection on June 01, 2014 devised to be a *dual move out and move in inspection.* The landlord testified they were not present for the dual inspection of June 01, 2014. The tenant claims they received a copy of that inspection by the *new incoming tenant* – signed by both of them (respondent and incoming tenant) and that the inspection indicated that the unit was, on June 01, 2014, in satisfactory condition. I do not have benefit of the *mutually signed* dual condition inspection report as claimed by the tenant.

Alternatively, the landlord provided 2 Condition Inspection Reports both conducted on June 01, 2014 by, solely, the *new incoming tenant* and signed solely by them, and it is relevant that both documents are diverse: with different inclusions and different signatures. The landlord testified that they received both reports from the *new incoming tenant* and relied on the information provided by them as factual and complete. The landlord testified that the incoming tenant stated in both reports that the unit required certain repairs to be completed such as *professional cleaning, carpet cleaning, plumbing work, replacement of closet doors and for all walls and trim to be repainted.* The landlord testified that they simply accepted the information and attended to the repairs and the costs because they trusted the incoming tenant and that they reside on the mainland and the rental unit is on Vancouver Island. The landlord claims a total of $4696.54 comprised primarily of $3150.00 for painting, $722.25 for cleaning and supplies, $265.75 for doors and other hardware, and $558.54 costs of loss of revenue due to claimed repairs at the start of the *new incoming tenancy.*

The tenant testified that they disagreed with the landlord's claim and assessment of damages in its entirety. The landlord relies on the information they were provided to them from the *new incoming tenant.*

It must be noted that the *new incoming tenant* vacated August 31, 2014, and the landlord has provided evidence a *second new incoming tenant* moved into the rental unit in September 2014 and that this *second new incoming tenant* has provided assistance to the landlord in preparing, advancing, and instructions as how to advance this claim. The evidence - dated September 06, 07 and 25, 2014, includes lengthy e-mails purporting to damage by the respondents of this matter, and a Strata Property Act Form K.

Analysis

The landlord relies on their information the tenant caused the alleged damage. The tenant relies on their argument that they did not cause the damage.

While I am troubled by information that the tenant may not have received all of the landlord's evidence, I am equally concerned that the tenant did not determine to take it upon themselves to provide their own evidence to this matter when they clearly did not agree with the landlord's claims and possessed evidence in rebuttal. None the less, the landlord, as applicant, bears the burden of proof for their claims and I must look to them first to support their application.

Section 7 of the Act states as follows.

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Under the *Act*, the party claiming damage or a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test as prescribed by the provisions of **Section 7** of the act:

1. Proof the damage or loss exists,

2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement

3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.

4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

When a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable or extravagant. I accept the landlord's evidence that they paid certain costs as requested by the *new incoming tenant*.

Sections 23, 24 and 25 of the Act deal with condition inspections at the *start* of the tenancy. **Sections 35, 36 and 37** deal with condition inspections at the *end* of the tenancy.

Part 3 of the Residential Tenancy Regulation deals with Condition Inspections and when complied are designed to lend credible and reliable information to condition inspections - to assist parties in administrating the security or pet damage deposits held in trust at the end of a tenancy.

Section 21 of Part 3 of the Residential Tenancy Regulation states as follows.

Evidentiary weight of a condition inspection report

21 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.

All of the above information may be accessed at **www.gov.bc.ca/landlordtenant.**

I find that the landlord testified and provided evidence they sent the tenant all of their evidence in June, 2014, yet they provided an abundance of evidence to this hearing dated September 2014. As a result, I find that the landlord's testimony respecting them having provided all of their evidence to the tenant - of 45 pages - is not credible. On balance of probabilities, I find the tenant was not provided evidence they required to dispute the landlord's claims, or advance rebuttal evidence.

I find the landlord did not conduct condition inspections in accordance with the requirements of the Act or Regulations. I find these reports, as a result are, at best, unreliable due to the multiplicity of the reports and varying inclusions, but moreover, because of the absence of involvement by the respondents and absence by the landlord and ultimately absence of a signature by the landlord or authorized agent. As a result, I am not able to assign the submitted condition inspection reports *any* evidentiary weight given their design to obtain certain repairs by subsequent tenants, after the respondents vacated.

Given all of the above, I find the landlord has not met the above test for damages. The landlord has not provided sufficient evidence to support their claims that the tenant in this matter caused damage to the rental unit. As a result, **I dismiss** the landlord's application in its entirety, without leave to reapply.

It must further be noted that Residential Tenancy Policy Guideline #17, in part, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

> The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
>
> - a landlord's application to retain all or part of the security deposit, or
> - a tenant's application for the return of the deposit
>
> unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for Arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the landlord's claim has been dismissed in its entirety without leave to reapply it is appropriate that I Order the return of the tenant's security deposit.

Conclusion

The landlord's claim **is dismissed**, without leave to reapply.

I Order the landlord to return the security deposit to the tenant. The landlord must use a service method described in Section 88 (c), (d) or (f) of the Act *[service of documents]* or give the deposit personally to the tenant.

I grant the tenant an Order under Section 67 of the Act for the amount of **$837.00**. *If necessary,* this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: October 16, 2014

Residential Tenancy Branch