Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advent Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord testified each respondent was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on January 15, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

The landlord submitted testimony and documentary evidence that the hearing packages were returned to them after they had been opened. In addition, the landlord provided copies of email correspondence to the respondents confirming return of the opened packages and attaching copies of the documents to the email.

The landlord provided a copy of a response by a third party that I find confirms the respondents were aware of this hearing and the issues under consideration.

Based on the testimony and documentary evidence of the landlord, I find that each respondent has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing, the landlord acknowledged that only the respondent DD was named as a tenant in the tenancy agreement and respondent RD was named as an occupant. As such, I find RD is not a party to the tenancy and I amend the landlord's Application to exclude RD as a respondent.

The landlord also confirmed the tenant is no longer in possession of the rental unit and she no longer requires an order of possession. I amend the landlord's Application to exclude the matter of possession.

I note that the landlord's Application for Dispute Resolution indicated that they were seeking a monetary order in the amount of $2,500.00 for a number of reasons. I also note the Application was filed on January 12, 2016. The landlord's full evidence was

received by the Residential Tenancy Branch on August 8, 2016. The landlord's evidence includes a security deposit statement indicating total expenses related to the end of the tenancy in the amount of $4,462.88.

Residential Tenancy Branch Rule of Procedure # 4.1 states an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution form and filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC office. The Rule clarifies that an amendment may add to, alter or remove claims made in the original application.

As the landlord has not submitted an Amendment form I do not allow the landlord to amend the amount of their claim to higher than the amount stated on the Application for Dispute Resolution. This decision reflects my consideration of the landlord's total claim to a maximum of $2,500.00.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for lost revenue; for compensation for damage to and cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 44, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on November 30, 2014 for a 1 year fixed term tenancy beginning on December 1, 2014 and converting to a month to month tenancy on December 1, 2015 for a monthly rent of $1,550.00 due on the 1st of each month with a security deposit of $775.00 paid. The tenancy agreement included an addendum with 12 additional terms include Clause 4 that indicates a move in fee will be paid to the caretaker/concierge.

The landlord submitted that on January 2, 2016 they received notification from their bank that the tenant's rent did not go through and the landlord posted a 10 Day Notice to End Tenancy on the rental unit door on January 3, 2016. The agent submitted that between January 3 and 6 she attempted to contact the tenant with no response but that on January 5, 2016 the tenant contacted her by email telling her that they had moved out of the rental unit. The landlord seeks the payment of rent for the month of January 2016 in the amount of $1,613.00.

The landlord submitted that on January 7, 2016 she attended the property determined the tenant had vacated and completed an inspection of the property. The landlord submitted that the unit required cleaning ($420.00); carpet cleaning ($157.64); and junk removal ($67.00). The landlord also states that the condition was such that they could not have the unit suitable for showings to secure new tenants for the entire month of

February 2016. The landlord seeks compensation in the amount of $1,613.00 for lost revenue for the month of February 2016.

The landlord also seeks payment of a final utility bill ($298.79); recovery of plumbing costs for repairs during the tenancy ($93.45); and recovery of move out fee ($200.00) charged by the strata.

In support of their claim the landlord has submitted into evidence:

- Copies of email correspondence between the tenants and the landlord beginning December 9, 2015;
- A copy of a Condition Inspection Report;
- Several photographs;
- A copy of an invoice from a plumber for work completed in July 2015; and
- A copy of a tenant ledger.

The email correspondence shows that on December 9, 2015 the tenant had sent the landlord an email stating that they have found a place that they wanted to move into on January 1, 2016. Despite repeated attempts by the landlord, the landlord submitted, the tenant did not submit a notice of their intent to end the tenancy that was signed by the tenant or anyone else living in the rental unit.

I note that in an email response dated December 22, 2015 the landlord stated: "I understand you will be vacating on December 31 but understand there are consequences for doing so as we repeatedly requested your formal notice in writing with no response back."

The Condition Inspection Report records that at the end of the tenancy all rooms and floors of the rental unit required some degree of cleaning. The photographic evidence confirms the rental unit was left unclean with an abundance of garbage; food stuffs; and large sized furniture.

The tenant ledger shows that a total of 28 hours at a rate of $15.00 per hour was required to complete the cleaning; landfill and garbage removal costs of $35.00; $17.00; and $15.00 were paid; a hydro payment of $298.79 was made; a payment for carpet cleaning in the amount of $157.64; and 4 entries of monthly strata fees (3 in the amount of $328.11 and 1 in the amount of $203.65.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) of the *Act* stipulates that a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 52 of the *Act* requires that any notice to end tenancy issued by a tenant must be signed and dated by the tenant; give the address of the rental unit and state the effective date of the notice.

Based on the undisputed evidence before me I accept the tenant failed to provide the landlord with a notice to end tenancy in accordance with either Section 45 or Section 52 of the *Act*. As a result, I find the tenant is obligated to pay rent for the month of January 2016 subject to the landlord's obligation to mitigate any damage or loss.

Section 7 of the *Act* states if a party to a tenancy does not comply with the *Act*, regulations or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results.

The section goes on to state that the party who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Despite the landlord's submission that they were unaware the tenant and other occupants had moved out of the unit until they received an email on January 5, 2016 stating they had done so, I find the landlord had substantial warning from the tenant that they intended to be out of the unit by December 31, 2016.

In fact, I find the landlord was made aware that the tenant intended to end his tenancy on December 9, 2016. As such, I find it would be reasonable to expect the landlord should have been prepared for the possibility, at least, that the occupants would vacate the property on or before December 31, 2016.

I note the landlord has provided no evidence to suggest that despite being advised by the tenant they would be vacating the unit that the landlord scheduled a move out condition inspection for the end of December 2015 or that the landlord went to the rental property on December 31, 2015 or January 1, 2016 to confirm if the tenant was still there or had moved.

The landlord provided no evidence that at any time after December 9, 2015 did they advertise the rental property or show it to any potential tenants. The landlord also

submitted no other evidence of advertising the rental unit during the month of January 2016.

As such, I find the landlord has failed to take any steps, at all, to mitigate the loss of revenue for the month of January 2016 and I dismiss this portion of their claim.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept, from the landlord's undisputed testimony and documentary evidence the rental unit required a substantial amount of cleaning, including carpet cleaning and junk removal. Based on this evidence I find the landlord has established a need for at least 28 hours of cleaning. Despite the landlord's failure to provide documentary evidence of these actual costs such as invoices or receipts I find the amounts claimed are all reasonable and I grant the landlord $644.64.

While I have found the landlord has established the rental unit required substantial cleaning I am not satisfied that the landlord could not have attempted to rent the unit out during the month of January 2016 to be effective sometime in January or February 2016.

As I determined above that the landlord should have been prepared for the potential that the tenant was going to vacate the unit by December 31, 2015 and the fact that the clean up only took 28 hours I find the landlord has provided no reason the unit could not have been available for renting let alone showing within the first week of January 2016.

For these reasons, I dismiss the landlord's claim for lost revenue for the month of February 2016.

While I accept the tenancy agreement addendum included a clause requiring the tenant to pay a move out fee to the strata, I note that there is no indication in the addendum of the amount of the fee. Despite the provision of the tenant ledger, again the landlord has provided no evidence from the strata as to how much the fee was or even if the landlord had to pay it.

The tenant ledger submitted by the landlord does indicate 3 payments to the strata in the amount of $328.11 and 1 payment in the amount of $203.65. I find that each of these payments is listed as a "monthly" payment. Furthermore there is no payment identified as $200.00.

Based on the above, I find the landlord has failed to establish that they had to pay a move out fee as a result of the tenant moving out of the rental unit. I dismiss this portion of the landlord's claim.

In regard to the landlord's claim for a hydro bill I find the landlord has provided no evidence at all confirming that any amount of a hydro bill was unpaid by the tenant. I dismiss this portion of the landlord's claim.

Finally, I find the landlord has established that in July 2015 the landlord paid a plumber to auger out the kitchen sink and that this cost the landlord $93.45. In the absence of any evidence to the contrary to the landlord's submissions that the tenant was responsible for this repair, I grant the landlord $93.45.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$788.09** comprised of $644.64 for cleaning; $93.45 for plumbing and $50.00 of the $100.00 fee paid by the landlord for this application as they were only partially successful.

I order the landlord may deduct the security deposit and interest held in the amount of $775.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **$13.09**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 16, 2016

Residential Tenancy Branch