Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MNR, MNSD, MNDC, FF

Tenant's application: MNDC, MNSD, FF, O

Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The hearing was conducted by conference call. The named landlord and the tenant called in and participated in the hearing. The parties exchanged documents prior to the hearing. Before the hearing the tenant submitted a demand for production of documents. He requested the attendance of the both of the landlords at the hearing and requested that the hearing be adjourned until the landlord provided documents demanded by the tenant. I declined to allow the tenant's requests and advised him that requirements for production of any specific documents would be addressed during the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss of rental income for April?
Is the landlord entitled to a monetary award for cleaning and repairs and if so, in what amount?
Is the landlord entitled to retain all or part of the tenant's security deposit?

Is the tenant entitled to a monetary award for compensation or loss and if so, in what amount?
Is the tenant entitled to the return of his security deposit?
Is the tenant entitled to any other relief?

Background and Evidence

The rental unit is a strata title apartment in West Vancouver. The tenancy began October 1, 2012 for a one year term and thereafter on a month to month basis. The

monthly rent was $1,650.00, payable on the first of each month. The tenant paid a security deposit of $825.00 on September 17, 2012.

There was an earlier dispute resolution proceeding with respect to this tenancy. The tenant applied to cancel a one month Notice to End Tenancy for cause dated February 26, 2016. As set out in the April 5, 2016 decision of an arbitrator, the tenant was served with a Notice to End Tenancy that alleged the tenant had put the landlord's property at significant risk and that he caused extraordinary damage to the rental unit or the rental property. The Notice required the tenant to move out of the rental property by March 31, 2016. The tenant denied the landlord's allegations and applied to dispute the Notice to End Tenancy.

The tenant sent the landlord a handwritten notice dated April 1, 2016. The notice stated in part as follows:

> This is your formal notice that I will be vacating the premises as of April6/16 or before depending on completion of cleaning of the unit.
> I do not expect to be charged for overholding due to the following circumstances:
> a) Presence of Service Master equipment preventing quiet enjoyment of the unit for the past 2 weeks
>
> AND
>
> Hampering the move and preventing timely cleanup of unit
> b) Insufficient notice for terminating tenancy as I did not receive notice of termination for cause (which is specifically denied) until Mar 3/16
>
> c) Termination for cause (which is not admitted and specifically denied) was delivered in order to accommodate your relatives moving into the suite. In such case the landlord must give 60 days notice....

At the hearing on April 5, 2016 the tenant said that he had found alternative accommodation and was in the process of moving out of the rental unit. The arbitrator stated in his decision that:

> The tenant stated that he wished to withdraw his application to cancel the Notice to End Tenancy. As a result I ordered that his application be dismissed as withdrawn. I have not made any determination on the merits.

Having dismissed the tenant's application, the arbitrator granted the landlord an order of possession effective two days after service on the tenant.

The landlord testified that the tenant did not move out until after April 7, 2016. The tenant dropped off some keys on April 7th and returned the remaining keys several days

later. On April 7, 2016 when the tenant dropped off some keys he left a note to the landlord. He said:

> We believe the premises are in good & tenantable condition as good as when we moved in some 3 years ago exceptions can be attributed to reasonable wear & tear. We note your unannounced attendance at the residence on bot April 6 & 7 w/o notice to the writer. Kindly notify the writer as to your attendance regarding inspection of premises as I do wish to be present. (reproduced as written)

The landlord sent several emails requesting keys from the tenant and a forwarding address.

The landlord conducted a condition inspection in the absence of the tenant on April 8, 2016. The landlord did not agree that the rental unit was left in "good and tenantable condition". The landlord submitted photos of the rental unit. He said the carpets were never cleaned and had stains and spills as well as an area that appears to be bleached. The kitchen cupboards were not cleaned and were left with stain, spills and dirt everywhere. The stove and fridge were not cleaned. The oven was particularly dirty. One of the refrigerator drawers was missing. There were stains and spills running down the interior closet walls from the shelves. Walls, windows, doors and cupboards were not washed. There were many missing or burned out lightbulbs. In an April 10th e-mail to the tenant the landlord offered to meet with the tenant at the rental unit to confirm the condition of the unit. The tenant's e-mail response was: "See you at the next residential tenancy hearing."

The landlord testified that he advertised the unit for rent after the tenant moved out. He submitted a copy of an internet advertisement for the rental unit posted on April 11, 2016. The landlord did not re-rent the unit for any part of April. He said he did not receive significant responses to his ad. The landlord said that as the result of the lack of response and damage to the rental unit due to a water leak and damage caused by the tenant, including damage that required replacement of the carpets, the landlord decided to perform renovations to the rental unit.

In his application filed on April 19, 2016, the landlord claimed the following amounts:

• April rent:	$1,650.00
• Carpet cleaner rental:	$66.05
• Five replacement light bulbs:	$20.00
• Replacement fridge tray:	$73.42
• Cleaning by landlord 14 hrs @ $35.00	$490.00
Total:	$2,299.47

On August 25, 2016 the tenant filed an application in reply to the landlord's claim. He requested a monetary award in the amount of $5775.00 as follows:

• Loss of quiet enjoyment March/16	$1,650.00
• Damage deposit:	$825.00
• 2 month penalty for landlord's use of premises (false notice for cause)	$3,300.00
• Such other relief as is just:	?
Total:	$5,775.00

The tenant said that there was a water leak in the rental unit and for the last two weeks of the tenancy the landlord caused large industrial fans to be moved into the rental unit to dry it out. The noise from the fans and the space they took up in the rental unit prevented the tenant from using and enjoying the rental unit and they also interfered with his efforts to move out and clean up the rental unit at the end of the tenancy. The tenant said the fans were installed around March 12th to the 15th. He said they remained in the unit for several weeks and blocked access for moving and cleaning. Also the noise interfered with the occupants' quiet enjoyment of the unit. The tenant testified that the landlord's condition inspection was conducted in his absence and he was not afforded an opportunity to participate.

Although in the earlier proceeding the landlord alleged cause for ending the tenancy because the tenant was said to have failed to report to the landlord that there was a water leak from another unit and thereby caused extraordinary damage, the landlord did not advance any claim related to a water leak as part of his claims in this proceeding. The landlord disagreed with the tenant's testimony about the extent and severity of the disruption created by fans placed in the rental unit. According to the landlord there was a water shut down to perform some repairs to an upper unit on February 22nd. When the water was turned back on there was a leak that affected several units including the rental unit on the main floor.

The landlord disputed the tenant's testimony as to the placement of fans. He submitted a photo of a site safety assessment form; according to the landlord, the form documented that the fan/dehumidifiers were brought to the rental unit and installed on March 22, 2016 and the tenant objected because he was in the middle of moving at the time.

With respect to the tenant's claim that he was not contacted to arrange for him to be present for a condition inspection, the landlord referred to his April 10th email offering to

meet the tenant the following day. The landlord said the only response he received was an email from the tenant stating: “See you at the next residential tenancy hearing.”

The tenant made repeated submissions concerning his liability to pay April rent to the landlord. The tenant submitted that the order of possession issued by an arbitrator on April 5, 2016 operated to “extinguish” his contract with the landlord as did the landlord’s Notice to End Tenancy for cause and there was no longer a contract upon which to base an award.

The tenant also submitted that the landlord performed renovations to the rental unit and likely discarded the appliances. He submitted that he should not be liable for refrigerator repairs when the appliance may have been replaced after the tenancy ended.

Analysis

Although the tenant was served with a one month Notice to End Tenancy for cause and he applied to dispute the notice, the operative cause of the end of the tenancy was the tenant’s decision to move out of the rental unit. On April 1, 2016 the tenant gave the landlord a written notice that he intended to move out of the rental unit on April 6th or sooner. At the dispute resolution hearing on April 5, 2016, the tenant withdrew his application to cancel the one month Notice to End Tenancy for cause. He moved out on April 7th, but did not return all of the keys to the rental unit until several days later. The tenant’s submission that the issuance of an order of possession extinguished any contractual basis for an award of rent is without merit.

The landlord has claimed unpaid rent for April in the amount of $1,650.00. The landlord’s claim is based on his assertion that he was prevented from re-renting the unit for any part of the month due to the tenant’s overholding and the damaged condition in which the rental unit was left. Section 7 of the *Residential Tenancy Act* makes it plain that a party who claims compensation from the other must do whatever is reasonable to minimize their damage or loss. The landlord provided scant evidence of his efforts to re-rent the unit after the tenant departed. He had notice the tenant was moving as of April 1, 2016, but he did not post an ad until April 11th. The landlord abandoned efforts to re-rent the unit and performed repairs and improvements to the unit that continued for months after the tenancy ended.

If the tenant wished to end the tenancy it was incumbent upon him to give notice to end the tenancy on the last day of the rental period. Instead the tenant gave notice to end the tenancy on April 6th and did not actually move until April 7th. I find that the landlord is entitled to per diem occupation rent for the seven days the tenant remained in the unit

during April. The per diem rent is $55.00 and therefore the award for occupation for seven days amounts to $385.00.

The landlord has claimed amounts for carpet cleaning, for a missing fridge part and for lightbulbs. He supplied invoices for the claims for the carpet cleaning and the fridge part. I find these claims are justified and I allow them in the amounts claimed. The landlord claimed $490.00 for cleaning. The photographs supplied by the landlord and the condition inspection report substantiate the landlord's testimony that the rental unit was left without apparent efforts to clean it. The pictures show that the rental unit was astonishingly dirty and far from the "tenantable" condition alleged by the tenant. The cleaning work was performed by the landlord; he claimed for 14 hours of cleaning at $35.00 per hour. I find the cleaning to be justified and necessary, but I find the hourly rate charged to be excessive. The landlord could have hired a cleaner who would have charged a lower rate. I allow the landlord's claim for cleaning in the amount of $250.00, based on a more appropriate hourly charge. The total award to the landlord is the sum of $724.47.

Turning to the tenant's claim, he requested compensation for loss of quiet enjoyment for March in the full amount of rent for the month due to noise and inconvenience caused by the fan/dehumidifier placed in the unit. The landlord's evidence supported by a submitted document is that the equipment was not placed in the rental unit until March 22, 2016. The tenant was unable to state with precision when the equipment was brought into the unit. I accept the landlord's testimony as to the date, buttressed as it is by documentary confirmation. The landlord and the tenant disagree as to the intrusiveness of the equipment. If the tenant's claim were accepted, it would amount to a determination that the disturbance caused by the equipment rendered the tenancy valueless for the entire month. Assuming the equipment remained in the unit for the remainder of the month, it was in the unit for 10 days in March. I find that the noise and presence of the fans did deprive the tenant of some of the utility of the rental unit for that period, but it did not make the tenancy valueless; the tenant continued to use and occupy the unit during that period. Although necessarily somewhat arbitrary I award the tenant one third of the rent for the rental unit for the 10 day period as compensation for loss of quiet enjoyment. The per diem rent for March was $53.23. One third of that is $17.74 and I allow the tenant's claim for loss of quiet enjoyment in the amount of $177.40.

The tenant claimed the amount of $3,300.00, said to be as a two month penalty for the landlord's use of the premises. I find that there is no merit to the tenant's claim for an award equivalent to two month's rent. The landlord served the tenant with a Notice to End Tenancy for cause. The tenant chose to dispute the Notice, but then gave his own notice to end the tenancy and withdrew his dispute. A landlord may become liable to pay a two month penalty when he has given the tenant a two month Notice to End

Tenancy for landlord's use and thereafter does not use the property for the purpose stated in the Notice to End Tenancy. The provisions of section 51 of the Act have no application to the circumstances here. The tenant's application for compensation equivalent to two month's rent is dismissed without leave to reapply.

The total award in favour of the landlord is the sum of $724.47. The landlord is entitled to recover the $100.00 filing fee for his application, for a total award of $824.47.

Conclusion

The tenant has been largely unsuccessful in his application; he has been awarded the sum of $177.40. I find that he is entitled to recover $50.00 of the $100.00 filing fee for his application, for a total award of $227.40. When the award to the tenant is set off against the award to the landlord there is a net amount due to the landlord of $597.07. I order that the landlord retain the said sum from the $825.00 security deposit that he holds in satisfaction of the award, leaving a security deposit balance of $227.93 to be returned to the tenant. I grant the tenant a monetary award in the amount of $227.93. All other claims by the tenant are dismissed without leave to reapply.

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: November 22, 2016

Residential Tenancy Branch