Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for a monetary Order for damage to the rental unit; to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The male Landlord stated that several months ago the Dispute Resolution Package was sent to the Tenant, via registered mail. The Tenant acknowledged receiving the Dispute Resolution Package.

In January of 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The male Landlord stated that this evidence was served to the Tenant, via registered mail, with the Dispute Resolution Package. The Tenant stated that this evidence was received in January of 2020, by mail, sometime after she received the Dispute Resolution Package. As the Tenant acknowledged receiving the Landlord's evidence, it was accepted as evidence for these proceedings.

In January of 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, in early January of 2020. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. All three participants affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began in 2017;
- the Tenant paid a security deposit of $575.00;
- a condition inspection report was completed at the beginning of the tenancy;
- on November 29, 2019 the Tenant gave the Landlord written authority to retain $100.00 from the Tenant's security deposit, via email;
- on November 27, 2019 the Tenant provided a forwarding address to the Landlord, via email.

The female Landlord stated that the parties jointly inspected the rental unit on November 23, 2019. The Tenant stated that this inspection occurred on November 25, 2019. They agree a final condition inspection report was not completed at the end of the tenancy.

The female Landlord stated that a condition inspection report was not completed at the end of the tenancy, in part, because the Landlord did not have the report with her when the unit was inspected in November of 2019. She stated the Landlord did not schedule another time to inspect the unit after the unit was jointly inspected in November of 2019.

The female Landlord stated that a condition inspection report was not completed at the end of the tenancy, in part, because there was damage to the ceiling of the unit.

The Tenant stated that the tenancy ended on November 27, 2019. The male Landlord was not certain of the date the tenancy ended, although he stated that date sounded accurate.

The Landlord is seeking compensation, in the amount of $1050.00, for repairing the ceiling in the rental unit. The Landlord submitted a photograph, which the parties agree fairly represent the condition of the ceiling at the end of the tenancy.

The Tenant stated that the damage occurred as a result of a pole she used to exercise. She contends the damage constitutes normal wear and tear. The female Landlord submits that the damage exceeds normal wear and tear.

The Tenant stated that the damaged area of the ceiling was approximately 1.5 feet by 1.5 feet or 1 foot by 1 foot. The female Landlord stated that the damaged area of the ceiling was approximately 4 feet by 4 feet.

The Landlord submitted a written estimate that indicates it will cost $1,050.00 to repair the ceiling. The female Landlord stated that the person who provided her with a repair estimate was a contractor that was referred to her by a realtor.

The Tenant stated that she has spoken with professionals, who said they would not repair the ceiling as the damage is too minimal. She stated that another tradesperson that the damage to the ceiling could be easily repaired.

Analysis

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that this tenancy ended on November 27, 2019 and that the Tenant provided the Landlord with a forwarding address in writing on November 27, 2019, when it was sent to him by email.

In determining that the Landlord received the Tenant's forwarding address in writing, when it was served via email I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that an email meets the definition of written as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As emails are capable of being retained and used for further reference, I find that an email can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act.*

Section 88 of the *Residential Tenancy Act (Act)* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act,* must be

served. Service by email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlord acknowledged receiving the email in which the Tenant provided her forwarding address, I find that the Landlord was sufficiently served with the Tenant's forwarding address on November 27, 2019.

Section 35(1) of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. On the basis of the undisputed evidence I find that the parties complied with section 35(1) of the Act when the rental unit was jointly inspected on November 23, 2019 or November 25, 2019 of the *Act.*

Section 35(3) of the *Act* stipulates that the landlord must complete a condition inspection report in accordance with the regulations. On the basis of the undisputed evidence I find that the Landlord did not comply with section 35(3) of the *Act* when the Landlord did not complete a final condition inspection report after the rental unit was inspected in November of 2019.

Section 36(2)(c) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with section 35(3) of the *Act.* As I have concluded that the Landlord failed to comply with section 35(3) of the *Act*, I find that the Landlord's right to claim against the security deposit and pet damage deposit for damage is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 36(2)(c) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find

that the Landlord did not comply with section 38(1) of the *Act*, as the Landlord has not yet returned the security deposit.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenant.

As the Tenant gave the Landlord written authority to retain $100.00 of the security deposit on the last day of the tenancy, I find that the Landlord was holding a security deposit of $475.00 when this tenancy ended. I therefore find that the Landlord must pay the Tenant double the amount still being held at the end of the tenancy, which is $950.00.

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act),* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Residential Tenancy Branch Policy Guideline #1 reads, in part:

> *Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.*

I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to repair the ceiling in the living room at the end of the tenancy. On the basis of the photograph submitted in evidence and the testimony of the Tenant, I find that the damage to the ceiling does not constitute “reasonable wear and tear”, as the damage was not the result of normal daily living activities. Rather, the damage occurred because the Tenant used exercise equipment in the unit without properly protecting the ceiling.

I find that the Landlord is entitled to compensation for the cost of repairing the ceiling. On the basis of the estimate provided in evidence by the Landlord and in the absence of any documentary evidence to support the Tenant's testimony that the ceiling could be repaired for less, I find that the Landlord is entitled to compensation for repairing the ceiling, in the amount of $1,050.00.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $1,150.00, which includes $1,050.00 for the damaged ceiling and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

The Tenant has established the right to the return double the amount of the security deposit being held at the end of the tenancy, which is $950.00.

After offsetting these two claims, the Tenant owes the Landlord $200.00. Based on these determinations I grant the Landlord a monetary Order for $200.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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 *Act*.

Dated: May 04, 2020

Residential Tenancy Branch