Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1110008 BC LTD.
and [tenant name suppressed to protect privacy]
DECISION

Dispute Codes MNDL-S MNSDS-DR FFL FFT

Introduction

The landlord seeks compensation against its former tenant pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act"). By way of cross-application the tenant seeks the return of their security deposit pursuant to sections 38 and 67 of the Act. The tenant also seeks recovery of the application filing fee pursuant to section 72 of the Act.

Legal counsel and two agents for the numbered company landlord attended the hearing, along with the tenant's agent. The parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: Tenant's Service of Evidence

The landlord served their evidence on the tenant, by way of sending it to the tenant's agent, who confirmed its receipt. The tenant's agent testified that they had served their evidence (in respect of the tenant's application) on the landlord, but landlord's counsel was unable to confirm that they had ever received the tenant's evidence.

There is no documentary evidence submitted by the tenant of their agent confirming service of evidence. As such, pursuant to the *Rules of Procedure,* I am unable to accept or consider the tenant's evidence as it pertains to their application for the return of the security deposit.

That having been said, as I explained to the parties, the security deposit either in full or in part (depending on the success of the landlord's application) will be ordered returned to the tenant at the conclusion of this dispute. In doing so, the tenant's application and claim will be resolved along with the landlord's claim. However, any claim for a doubling of the security cannot not be made with respect to the return of that deposit.

Issue

1. Is the landlord entitled to compensation?
2. Is the tenant entitled to any return of their security deposit?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began at the beginning, or near the beginning, of November 2020. There was some disagreement about the exact start date. Monthly rent was $23,750.00, due on the first day of the month. The tenant paid a security deposit of $11,875.00, which the landlord currently holds in trust pending the outcome of this dispute. Submitted into evidence is a copy of the written *Residential Tenancy Agreement.* The rental unit is a 2600 ft² condominium overlooking Vancouver Harbour.

The landlord's evidence, provided by the witnesses' testimony and supported by documentary evidence, including invoices and photographs, is summarized as follows:

The tenant and the landlord's agent conducted a walk-through inspection at the start of the tenancy. A Condition Inspection Report (the "Report") was completed. Everything in the rental unit was marked as being in "Good" condition and recorded as such on the Report.

The landlord's agent attempted on multiple occasions to have the tenant attend to the inspection at the end of the tenancy, but they were unsuccessful in making contact or in arranging for a time to do the inspection. They undertook the inspection and completion of the Report with a witness. Four items in the rental unit were observed as being in a "Dirty" condition and recorded as such on the Report.

The condition of the rental unit was described by the witness as follows: (1) the rental unit was not professional cleaned, (2) there was pet hair throughout the rental unit, (3) the carpets needed to be professional cleaned as they were stained and dirty, (4) the floors were dirty, and (5) the bathrooms and showers were not clean. The cost of cleaning the carpets was $556.45.

In addition to this claim, the landlord seeks $3,360.00 for the cost of having a “COVID-19 DISINFECTANT” cleaning done on the rental unit. The landlord’s witness (E.) provided some context behind this particular claim.

He explained that the tenant left the rental unit, and left the country, after only residing in the property for several weeks. (The tenant noted that she left on December 8, 2020). She handed her keys to her brother, the agent. The brother arrived in Canada on January 10, 2021.

The building concierge soon became aware that the brother and his pregnant wife were quarantining in the rental unit. The landlord made the decision to take measures to reduce the risk of COVID transmission and did so for both the safety of the next tenants and for the large population of elderly residents in the residential property.

Last, the third claim made by the landlord is for BC Hydro power overage. The landlord’s witnesses (primarily T.) testified that the tenancy agreement was such that the landlord would pay up to $100.00 for monthly hydro. Any amount over the $100.00 would be the tenant’s obligation to pay. During the term of the tenancy the overage amount came to $758.39. Documentation to support this claim was in evidence.

The tenant’s agent testified that they never received a copy of a Form K (which would have presumably referred to a pets prohibition) and that the dog in question was only in the rental unit for a short period of time.

The tenant’s agent also testified about the concierge “harassing us and pounding on the door.” He further spoke variously about fob access issues and that he in fact handed over the fob to Mr. K. on January 13, 2021. As such, the tenant’s agent and his wife had no means of entry into the rental unit after January 13, 2021. And he therefore had no way to let cleaners into the rental unit. Last, he testified that he was not reimbursed any of the rent for the remainder of January, after he handed over the fob.

In respect of the claim for hydro, the tenant’s agent asked, perhaps rhetorically, how that amount could be so high for the short period of time in question. Indeed, he briefly speculated that perhaps someone else was in the rental unit whilst it sat empty.

In brief rebuttal, landlord’s counsel pointed out that the tenant was the only individual named on the tenancy agreement. And this might also explain the concierge’s confusion and concern as to the other occupants (that is, the tenant’s brother and his wife).

Counsel reiterated that the COVID disinfecting was absolutely essential to the health, safety, and sanitary requirements of the landlord. Both for the elderly residents of the residential property and to the incoming tenants.

As for the higher amount owed for BC Hydro, counsel submitted that the rental unit has heated floors, which in turn result in higher electricity consumption.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

1. Landlord's Claim for Carpet Cleaning

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate.

Based on the oral and documentary evidence before me, most importantly that being the Condition Inspection Report and the accompanying photographs, it is my finding that the carpets were not left reasonably clean at the end of the tenancy, and that the landlord suffered a loss as a result of having to clean them.

As such, the tenant breached section 37(2) of the Act, the landlord would not have suffered the loss of $556.45 but for the breach, and, last, the amount claimed is more than reasonable given the rental unit's square footage. There is nothing before me to conclude that the landlord did anything other than to minimize its losses by expending what is a reasonable amount on carpet cleaning. While the tenant submitted an estimate from another carpet cleaning company, this estimate – which appears to be an invoice – is for another residential property altogether, and I am not persuaded that this is a reasonable alternative in determining whether the landlord could have obtained a less expensive cleaning.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for $556.45 in compensation in respect of the carpet cleaning.

2. Landlord's Claim for COVID-19 Disinfecting

With respect of this claim, there is nothing in either the Act, the associated regulations, the tenancy agreement, or the Residential Tenancy Policy Guidelines that support a basis on which the tenant is somehow liable for the cost of a landlord-initiated COVID-19 disinfecting. In the absence of any Act- or tenancy agreement-mandated legal obligation on the tenant to pay for, or otherwise be responsible for, such disinfecting, the tenant bears no liability for such disinfecting.

A landlord certainly has the obligation, under section 32(1) of the Act, as follows:

> A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Likewise, a tenant is required under section 32(2) of the Act to "maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access."

In this case, however, there is no evidence that the tenant (or the occupant, that is, the agent and his wife) breached section 32(2) of the Act. That the agent and his wife had to quarantine in the rental unit is not evidence that their presence in the rental unit in any affected the health, cleanliness, or sanitary standards of the rental unit. Moreover, there is no evidence that either the agent or his wife carried the virus into the residential property. They cannot, I must conclude, be found to have breached section 32(2) of the Act, or any other legal obligation under the Act or the tenancy agreement. No basis for a claim made against the tenant may be made.

While the landlord is at liberty to employ whatever thorough COVID-19 disinfecting process it deems appropriate, such disinfecting goes above and beyond any obligation of the tenant under the Act or tenancy agreement. Indeed, the landlord is to be commended for wanting to ensure that the rental unit is virus-free, but it was the landlord's choice to have it so. But the cost of that is not for the tenant to bear.

For these reasons, the landlord's claim for compensation related to the cost of the disinfecting are dismissed.

3. Landlord's Claim for BC Hydro Electricity Overage

In respect of this claim, the tenant's agent did not dispute that this amount was owed, but rather, questioned the veracity of the amount. He wondered aloud how it would be so much. In my opinion, counsel's submissions that heated floors use significantly more electricity is a reasonable argument. It should also not be forgotten that the rental unit was an ocean-facing, 2600 ft² condominium on the nineteenth floor: it is reasonable to find by inference that such a property will consume a lot of electricity.

As such, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for $758.39 in compensation for unpaid hydro.

4. Landlord's Claim for Recovery of Application Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord largely succeeded in their application, I grant it $100.00 in compensation to cover the cost of the filing fee.

5. Tenant's Claim for Return of Security Deposit

Subject to the amount authorized to be deducted, below, the tenant is entitled to the return of a portion of the security deposit.

6. Tenant's Claim for Recovery of Application Filing Fee

As the tenant was mostly successful in her claim for the return of the security deposit, I award the tenant $100.00 in compensation to pay for the cost of the filing fee.

Summary of Award, Return of Security Deposit, and Monetary Order

In total, the landlord is awarded $1,314.84. This amount represents the cost of the carpet cleaning, the hydro overage, the application filing fee, minus the cost of the filing fee that must be paid to the tenant.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” Given the award granted, I order and authorize the landlord to retain $1,314.84 of the tenant’s security deposit in full satisfaction of the award.

The balance of the security deposit in the amount of $10,560.16 is ordered returned to the tenant within 15 days of the landlord’s receipt of this decision. To give effect to this order the tenant is granted a monetary order in conjunction with this decision.

Conclusion

The parties’ applications are both granted, in part.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 27, 2021

Residential Tenancy Branch