

DECISION

Dispute Codes: MNDC, MND, MNSD and FF

Introduction

This application was brought by the landlord on September 14, 2010 seeking a Monetary Order for damage or loss under the legislation or rental agreement, damage to the rental property, recovery of the filing fee for this proceeding and authorization to retain the remaining portion of the security deposit in set off.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the damage, damage or loss, recovery of the filing fee and authorization to set off the remain portion of the security deposit.

Background, and Evidence

This tenancy in a 180-unit strata titled high rise began on August 1, 2009 under a 12-month fixed-term agreement and ended on August 31, 2010. Rent was \$1,725 per month and the landlord held a security deposit of \$862.50. By previous agreement, the landlord retained \$673.38 from the tenants' security deposit and \$189.12 remains to be disposed of.

During the hearing, the property manager gave evidence that two items remained in dispute: a claim for a \$200 fine imposed on the landlord by the strata council because the tenant had not reserved the elevator for the move-out and a claim for \$854 to repair damage alleged to have been caused by a guest of the tenant in the common area.

On the failure to book the elevator claim, the landlord submitted into evidence a copy of the Form K – Notice of Tenant's Responsibilities (to the Strata Corporation). The notice advises that tenants must abide by by-laws and that a contravention by a tenant or guest may be subject to penalties, including fines. The form, signed by the tenants also notes that the bylaws and rules are attached.

The landlord also noted that clause 6 of the Rental Agreement signed by the tenants includes the provision that the tenants will abide by the bylaws and rules and that they will compensate the landlord for any fines resulting from their breaches.

The property manager stated that the claim for damage to the common area of the rental building arose from an incident on August 10, 2010 when a guest of the tenant opened two doors so carelessly that it knocked out the door stops and left holes in two walls.

The landlord submitted an Incident Report from one of the caretakers in which she wrote:

"While doing my final rounds for the day in the exercise rooms, I watched three men (one was the tenant of 2506) acting very aggressive with the door to the men's washroom and the door to the exercise room to the point where the walls in both rooms were damaged. It was not the tenant of 2506 but one of his guests. At this point I asked the two guests to leave the building."

The property manager submitted still pictures from a video surveillance camera showing the man he believed to be the tenant and others in the area. He stated the time on the video system was out about 35 or 40 minutes, but the video coincided with the use of the subject tenants fob at 10:25 that night.

The tenant denied his guests had caused the damage and stated he was not the person in the picture. The property manager said the resemblance was remarkably strong.

The property manager gave further evidence that the other caretaker had approached the tenant the following day, and at his suggestion, the tenant had conducted a makeshift repair some days later and of which the landlord submitted photographs.

The property manager said the caretaker had wanted to give the tenant an opportunity to repair the damage himself to avoid having to pay. The tenant said he did the repair merely to assist the caretaker who knew that the tenant had a construction background and would competently complete the work. In any event, the repair was found to be unsatisfactory and the strata council ordered the repair done professionally, resulting in the receipted claim of \$854.

Analysis

On the question of the elevator fine, section 7 of the *Act* provides that if either party to a rental agreement suffers a loss due to the non-compliance with the rental agreement or legislation, the non-complaint party must compensate the other.

In this matter, I find that by signing the Form K and by virtue of clause 6 of the Rental Agreement, the tenants are obliged to compensate the landlord for the loss by strata fine arising from their failure to reserve the elevator.

As to the damage to the spa/gym area, I find the preponderance of evidence strongly in favour of the property manager's belief that the guest of the tenant caused the damage. There was the witness statement by one caretaker and the fob use data showing that the tenant's fob was used at that time. Moreover, I do not accept the evidence of the tenant that he made the initial repair simply to assist the caretaker.

Section 32(3) of the Act provides that, "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

As the tenant's attempted repair was not sufficient, I find that the strata council was entitled to have the damaged walls restored to their original condition and the tenants is responsible for the repair.

I further find that the landlord is entitled to recover the filing fee for this proceeding and to retain the remainder of the security deposit in set off against the balance owed and calculated as follows:

Fine for failing to reserve elevator	\$ 200.00
Cost to repair holes in wall in gym/spa	854.00
Filing fee	50.00
Sub total	\$1,104.00
Less remaining portion of security deposit	- 189.12
TOTAL	\$ 914.88

Conclusion

The landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$914.88 for service on the tenants.

October 20, 2010