Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rio Lane Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MND, MNDC, FF

Introduction

This hearing was reconvened from the original date of September 24, 2013. Neither party was permitted to amend their original claim. Recapping from the interim decision:

The tenant filed on June 18, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of the security deposit - Section 38
2. A monetary Order for loss - Section 67

The landlord filed on September 11, 2013 for Orders as follows,

1. A monetary Order for damages – Section 67
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application ($50) - Section 72.

Both parties attended both hearing dates. The parties provided testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on June 20, 2010. At the outset of the tenancy the landlord collected a security deposit in the amount of $575.00 which the landlord retains in trust. The tenant ceased to occupy the rental unit April 15, 2013 although they retained the unit with some of their belongings, in concert with their purported notification to the landlord they were legally ending their tenancy May 31, 2013 and having paid the rent to that date. The tenant testified that they removed the balance of their effects and returned the keys on May 31, 2013 – at which time the tenant claims the unit was under repair. At the legal end of the tenancy the landlord did not conduct a move out inspection, however, they testified that they noticed that the glass of the exterior sliding glass door to the balcony was broken when they initiated a new tenancy on June 01, 2013.

The landlord claims that they did not notice an issue with the sliding door prior to June 01, 2013, therefore attributed the breakage to conduct of the tenant prior to relinquishing the unit on May 31, 2013. The tenant's evidence is that they visited the rental unit on May 31, 2013 and the sliding door was not broken on that date and disputes they broke the door. The landlord claims the cost to replace the door and provided the requisite invoice for a used door and the ancillary costs in respect to its installation. In addition the landlord provided into evidence a signed narrative from the existing tenant stating they last viewed the rental unit on May 28, 2013 at which time the sliding door was not broken and there remained a large number of pots and plants on the balcony side of the sliding door, and in their opinion it appeared that the plants were being tended.

The parties agree that there was a water leak from the ceiling of the unit on April 08, 2013. The parties further agree that the landlord repaired the leak April 10, 2013. The tenant claims the repairs left an abundance of debris and an opening in the ceiling covered with plastic without clear indication from the landlord as to further remedy. A City inspector attended the following day April 11, 2013, following with a letter to the landlord 5 days later identifying the apparent leak-associated deficiencies as well as a flooring issue with the sundeck / balcony. The day following, on April 12, 2013, the tenant claims they created a Notice to End the tenancy effective May 31, 2013 and planned to vacate within days claiming potential health issues associated with the water leak. The tenant testified that 3 days later, on April 15, 2013, they moved the majority of their belongings into their current accommodations which were available to them as incoming *resident managers* of a residential property. The tenant seeks compensation for a loss of quiet enjoyment and moving costs, testifying that the rental unit was not

sufficiently or comfortably available to them following their partial move out from the unit to the legal end of the tenancy.

The tenant further seeks compensation of double the security deposit as the landlord did not return the deposit within the parameters established by Section 38 of the Act. The tenant claims that on April 24, 2013 they provided the landlord's office with their Notice to End, dated April 12, 2013, which included their forwarding address. The tenant submitted a copy of the Notice to End purportedly hand-delivered and received by an employee of the landlord, indicated by their signature and date stamp, which the landlord claims was not made available to them by the employee. The landlord claims that the envelope they received from the employee was empty. The landlord claims that in the absence of a Notice to End they were unaware of how or where to contact the employee.

Analysis

On the preponderance of the relevant document evidence and relevant testimony of the parties, I find as follows:

Tenant's claim

I accept the parties' evidence there was a leak in the rental unit. I find the landlord attended to its remedy and as a result of issues of the repair the tenant determined to no longer occupy the unit and several days after moved the majority of their belongings, but at the same time maintained possession of the unit until the legal end to the tenancy – May 31, 2013. I find the involvement of the City inspector simply confirmed what the parties already knew and notified the landlord to correct the apparent deficiencies without articulating any health issues. I find the tenant has not provided evidence establishing they had sufficient cause to permanently vacate the rental unit. It was available to the tenant to leave the rental unit temporarily; however they instead effectively chose to move and gave the landlord Notice to End. As of April 15, 2013 the tenant continued the tenancy to its legal end but did not endure any continuing conditions contributing to a loss of quiet enjoyment. As a result, **I dismiss** the tenant's claim of compensation for loss of quiet enjoyment and costs for moving.

I find that I prefer the tenant's evidence they provided the landlord with a Notice to End on April 24, 2013, dated April 12, 2013, which included the tenant's forwarding address.

Section 38(1) of the Act provides as follows **(emphasis for ease)**

> 38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and the tenancy legally ending on May 31, 2013 and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit,** pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of $575.00 and was obligated under Section 38 to return this amount. The amount which is doubled is the original amount of the deposit, with no applicable interest. As a result I find the tenant has established an entitlement claim for **$1150.00.**

Landlord's claim

If a claim is made by the landlord for damages to property, the normal measure of damage is the cost of repairs or replacement whichever is less. The onus is on the tenant to show that the expenditure is unreasonable, and the landlord is required to mitigate their costs accordingly. It must further be emphasized that the landlord must provide sufficient evidence that the costs for which they claim compensation are for conditions beyond reasonable wear and tear, and are the result of the conduct or neglect of the tenant. On preponderance of the evidence I acept the landlord's evidence that on or about May 28, 2013 the rental unit remained mostly vacant except

for a quantum of pots and plants on the balcony of the unit, and that the sliding glass door was not broken. I further accept the tenant's evidence that on May 31, 2013 they were in the rental unit and removed the balance of all their items and returned the keys. On balance of probabilities, I prefer the landlord's evidence that the sliding glass door was somehow broken as a result of the tenant's conduct on or before May 31, 2013.

I find that the landlord acquired a used sliding glass door for $300.00 thus mitigating their claim, and I find the associated costs to replace the door are reasonable. As a result, I grant the landlord $825.00 for the broken glass door. As the landlord was successful in their claim they are entitled to recover their filing fee of $50.00 for a total award of **$875.00.**

Therefore, *Calculation for Monetary Order:*

Tenant's award	$1150.00
Landlord's award	-$875.00
Total Monetary Award for tenant	**$275.00**

Conclusion

I grant the tenant a Monetary Order under section 67 for the amount of **$275.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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 12, 2013

Residential Tenancy Branch