Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sparling Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on July 12, 2013. She also received a copy of the landlord's written evidence package. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy was scheduled to begin on September 1, 2011 for a one-year fixed term. When the initial term ended, the tenancy continued as a periodic tenancy. Monthly rent was set at $855.00, payable on the first of each month. The landlord continues to hold the tenant's $430.00 security deposit.

The landlord entered into written evidence copies of the joint move-in condition inspection report of August 31, 2011 and the July 8, 2013 joint move-out condition

inspection report. Although the tenant testified that she did not move into the rental unit until September 1, 2011, she agreed that she was handed the keys and commenced moving in on the same day as the joint move-in condition inspection was conducted. As both the landlord and the tenant dated that move-in condition inspection August 31, 2011, I find that this tenancy began that day. The parties agreed that the tenant physically moved out of the rental unit on July 1, 2013, although the parties delayed conducting their joint move-out condition inspection until July 8, 2013.

The landlord's application for a monetary award of $336.00 was for damage that occurred to the balcony on the first day of this tenancy when the tenant's male friend ran into the balcony with the moving truck he had rented. The landlord said that she witnessed this incident as she was still in the parking lot after completing the joint move-in condition inspection when this occurred. She said that the tenant's male friend was particularly shaken and she attempted to calm his nerves and those of the tenant when she told them that the landlord would take care of the necessary repairs.

The landlord entered into written evidence a copy of the hand-written August 24, 2012 $336.00 invoice for "Repairs to balcony – Replace and Reinforced Boards – Painting". She said that she waited until August of 2012 to conduct these repairs to coincide with other work that was planned by the landlord to repair and paint balconies in this housing complex. She testified that by delaying the repairs until then, she was able to significantly reduce the costs passed onto the tenant. She said that despite the timing of the damage on the tenant's move-in date, security deposits are designed to recover these types of repairs and damage from tenants.

The tenant confirmed that her male friend ran into the balcony and damaged it on the first day of her tenancy as she was moving into the rental unit. However, she testified that the landlord told her and her male friend to not worry about this damage as the landlord would take care of it. The tenant gave undisputed testimony that she offered to repair the damage immediately. The tenant testified that the damage was minor, requiring the replacement of two boards. She obtained estimates from a local building supply company in which she learned that the wood would cost $4.00 each for the two damaged boards. She said that she also discovered that the hourly rate for a journeyman carpenter in B.C. is $27.50. She testified that the cost of repairs should not have exceeded $100.00. She gave undisputed sworn testimony that she had never been advised by the landlord that she would be expected to repair the damage until the day of her joint move-out condition inspection. At the joint move-out condition inspection and on the report of that inspection, the tenant noted her disagreement with the amount of the deduction to her security deposit the landlord was claiming as a result of this damage.

At the hearing, the tenant also raised many questions about the authenticity of the invoice entered into written evidence by the landlord. She noted that there was no HST number on the invoice, no work order number, the unit number appeared to have been changed on the invoice, and she was uncertain if this payment was made to the company that no longer appears be in business.

The landlord testified that the $336.00 charge was paid to the principal in the company, a long-time carpenter who had been running his business for 35 years. She said that shortly after the carpenter completed this work for the landlord, he became fatally ill, passing away in November 2013. She said that the company is no longer in business as the carpenter is deceased.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, there is no dispute as to whether the damage arose out of this tenancy, nor is there a dispute that it exceeded reasonable wear and tear. The issues in dispute are the timing of the landlord's notification that the tenant would be responsible for the landlord's repairs to this damage and the actual amount charged for these repairs.

I find that there may be validity in the understanding that both parties had with respect to the information conveyed by the landlord to the tenant when the balcony was first damaged. The landlord's statement that the tenant need not worry about this situation as the landlord would take care of it may have reasonably led the tenant to believe that she would not be held responsible for this damage. However, the landlord's agreement to take care of the situation did not necessarily mean that the landlord committed to absorb the costs of repairing this damage. When the tenant heard nothing further about this situation, even after the repairs were conducted in August 2012, the tenant may have legitimately believed that the landlord had no intention of attempting to recover the repair costs for this damage.

I find that the landlord provided an adequate explanation as to the delay in conducting the repairs from the date of damage on August 31, 2011 until August 2012. Although the tenant would likely have been aware that the balcony was repaired in August 2012, she provided undisputed testimony that the landlord never once advised the tenant that she would be held responsible for these repair costs until the joint move-out inspection. The tenant provided convincing sworn oral testimony that she would have asked many questions about the August 2012 invoice had she been alerted to this document in a more timely fashion.

Black's Law Dictionary defines the legal "doctrine of laches" in part, as follows:

> *[The doctrine] is based upon the maxim that equity aids the vigilant and not those who slumber on their rights.*
>
> *…neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity…*

In this case, I find that the landlord's delay in notifying the tenant of the repair costs incurred in August 2012 until the end of this tenancy in July 2013 affected the tenant's ability to challenge the validity of the charges claimed by the landlord at the end of this tenancy. Many of the questions raised by the tenant about the landlord's invoice may have been answerable had it been submitted to the tenant shortly after the expenses had been incurred. While this does not set aside the landlord's application for damage, I find that the tenant may have been able to successfully challenge some of the elements of the landlord's application had she been informed of the landlord's intention to pursue a claim for damage in more timely fashion.

At the hearing, the tenant testified that she believed that the repair work should have been no more than $100.00. I issue a monetary award in the landlord's favour in the amount of the $100.00, the amount of the tenant's estimate.

For the reasons outlined above, I also find that the landlord is also entitled to a monetary award equivalent to one-half of the difference between the $336.00 claimed by the landlord and the $100.00 identified as reasonable by the tenant. This results in an additional monetary award to the landlord of $118.00 {($336.00 - $100.00) / 2 = $118.00}. This reduction in the landlord's claimed monetary award takes into account the problems caused by the landlord's delay in alerting the tenant to her intention to pursue this damage claim.

As the landlord has been partially successful in this application, I allow the landlord to recover the $50.00 from the tenant.

I allow the landlord to retain $268.00 from the tenant's $430.00 security deposit. I order the landlord to return the remaining $162.00 of the tenant's security deposit to the tenant forthwith.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of $162.00 to return the remaining portion of the tenant's $430.00 security deposit once deductions are allowed to enable the landlord to recover a total of $218.00 for damage arising out of this tenancy and $50.00 for the recovery of the landlord's filing fee from the tenant.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 *Residential Tenancy Act*.

Dated: October 10, 2013

Residential Tenancy Branch