Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Duttons & Co. Real Estate Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the landlord: MNSD, MNR, MND, MNDC, FF
For the tenant: MNSD, FF

Introduction

This hearing was reconvened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act"). The original hearing on the landlord's application was scheduled for July 17, 2013; however, due to technical difficulties and due to the tenant having filed a cross application which was not set for July 17, 2013, the hearing was adjourned to consider both applications at the same hearing.

An Interim Decision was issued on July 17, 2013, and is incorporated herein by reference only.

The landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent, alleged damage to the rental unit and for money owed or compensation for damage or loss, and for recovery of the filing fee.

The tenant applied for a return of their security deposit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of this hearing, the evidence was discussed and neither party raised any issues regarding service of the applications or the other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, to further monetary compensation, and to recover the filing fee?

Is the tenant entitled to a monetary order comprised of their security deposit and to recover the filing fee?

Background and Evidence

The tenancy agreement provided into evidence shows that this tenancy began on August 1, 2012, for a fixed term ending on May 31, 2013, monthly rent was $1000, and the tenant paid a security deposit of $500 on or about July 23, 2012.

The landlord is a property management company representing the owner and the listed tenant is the father of one of the occupants of the rental unit, who signed the tenancy agreement on the occupants' behalf, but did not reside there.

The tenancy ended prior to the fixed term, with the landlords contending that the tenancy ended on April 30, 2013, and the tenant contending that the occupants had fully vacated by April 24, 2013.

The tenant also contended that the occupants began paying rent on August 1, 2012, but did not move into the rental unit until later in August.

Each party submitted documentary evidence, as follows:

Landlord's evidence-A tenancy agreement, a copy and coloured copy of a move-in and move-out condition inspection report, notices of entry to the rental unit, copies of email communication between the parties, a notarized statement from the landlord's inspector, an invoice for cleaning the rental unit, a carpet cleaning invoice, an invoice for blinds cleaning and plumbing, a maintenance log and photographs of the condition of the rental unit.

Tenant's evidence-A copy of an email from occupant CE, the tenant's daughter, regarding long black hair in the carpet of the rental unit at the beginning of the tenancy, a written response to the application package of the landlord, an addendum prepared by the tenant for inclusion with the condition inspection report, and a written statement from the other occupant, KS.

Landlord's application-

The landlord is seeking monetary compensation in the amount of $1010, which is comprised of carpet cleaning of $250, suite cleaning of $210, loss of rent revenue for ½ of May for $500, and the filing fee of $50.

Carpet cleaning-The landlord submitted that the carpet was professionally cleaned prior to the tenancy and that pursuant to clause 23 of the tenancy agreement, the tenant was responsible for a professional cleaning at the end of the tenancy.

The landlord agreed that the claim of $250 could be reduced by $50 due to the complaints of the tenants that they had to vacuum the carpet when they moved in.

The tenant responded by pointing out that the receipt provided by the landlord was dated 1 ½ months prior to the occupants moving into the rental unit.

CE submitted that the carpets were not clean when they moved in, as noted in an email to the landlord, pointing out that a significant amount of long, black hair was in the carpet.

The tenant stated that neither occupant had long or black hair, and therefore the carpet could not have been professionally cleaned.

Suite cleaning-The landlord submitted that the rental unit required cleaning at the end of the tenancy and that the photographs proved that the occupants did not provide a thorough cleaning.

In response, the tenant pointed out that the condition inspection report shows that the rental unit was not pristine when the tenancy began and further pointed out that the photos were dated on May 2, 2013, after workers had been in and out of the rental unit.

The tenant further contended that a plumber removed a large amount of black hair from the bathtub drain at the beginning of the tenancy, which would not be visible at an inspection. As proof, the tenant pointed out the plumbing invoice supplied by the landlord.

Loss of rent revenue-The landlord contended that as the tenancy ended prior to the end of the fixed term, the tenant is responsible for rent through the end of the fixed term. The landlord submitted that on March 20, 2013, they sent the tenant an email that the owners were moving back into their home and that the tenancy would not be renewed. On April 12, 2013, the tenant sent an email informing them the tenancy was ending on April 30. The landlord denied receiving official written notice that the occupants were vacating.

The landlord is requesting half a month's rent for May, as agreed upon by the owner as she was moving back into the rental unit, if the tenant or occupants vacated by May 15.

In response the tenant submitted that he was forced to end the tenancy out of fear for his daughter's and the other occupant's safety. In explanation the tenant said that in December 2012, he sent an email to the landlord about incursions into the rental unit by the landlord's representatives, without phoning or ringing the doorbell.

The tenant submitted that even if there had been a notice of entry by the landlord, no one should enter the rental unit without first ringing the doorbell or phoning the occupants, especially in light of the living quarters being on the third floor of the 3 floor

rental unit. One instance resulted in the other occupant coming out of the shower and finding a strange person standing in the rental unit.

The tenant said that after such an incident in April, he gave the landlord their notice to vacate as the landlord did not respect his requests that the landlord's inspectors give notice by phone or door ringing prior to entering.

Tenant's application-

The tenant is requesting a return of his security deposit of $500 and recovery of the filing fee of $50.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Landlord's application-

*Carpet cleaning-*After reviewing the evidence, I am not convinced that the carpet was professionally cleaned immediately prior to the beginning of this tenancy, which would require the tenant to have the carpet professionally cleaned at the end of the tenancy pursuant to clause 23 of the tenancy agreement.

The landlord's invoice showed a steam clean of the carpet in June of 2012, at least a month prior to the beginning of the tenancy and there is no dispute that the occupants notified the landlord immediately after moving in that there was a large amount of black hair in the carpet. The landlord's response was to tell the occupant to vacuum the carpet, which indicates to me that the carpet was not clean by the time the occupants moved in.

I also note that the condition inspection report mentions repeatedly that the carpets were old and stained.

I am therefore unconvinced that the occupants left the carpet in a condition which required a professional clean or that it was left dirtier than when the occupants took possession and I therefore dismiss their monetary claim for $250.

Suite cleaning-I have reviewed the photographic evidence and the condition inspection report supplied by the landlord, which noted many deficiencies with the condition of the rental unit at the beginning of the tenancy, and I find that the tenant met their obligation under section 37 (2) of the Act to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I therefore dismiss the landlord's claim for $210.

Loss of rent revenue-The end of the fixed term was May 31, 2013, with no provision that the tenancy would continue thereafter on a month to month basis. The landlord contends that the tenants are obligated to pay $500 due to the early termination, which the owner had agreed to in return for the occupants vacating by May 15. Instead the tenancy ended on April 30, 2013, pursuant to the tenant's notice to the landlord.

The tenant claimed that he terminated the fixed term tenancy early due to the landlord's continuing breach of a material term of the tenancy; more specifically, the tenant cited that the landlord's inspectors continued to enter the rental unit without first ringing the door bell or calling the occupants prior to entering. The tenant, citing personal security concerns for his daughter and her roommate when unannounced visitors entered, notified the landlord on December 8, 2012, that the intrusions were unacceptable and must stop unless they called or rang the doorbell first.

The tenant then sent the landlord a written notice on April 12, 2013, informing the landlord the tenancy was ending on April 30, with the reason that the unannounced intrusions continued.

The landlord denied a breach of the Act or the tenancy agreement due to the written notices of entry to the rental unit supplied the occupants at least 24 hours in advance.

In reviewing the notices of entry supplied by the landlord, I find that these notices violated section 29 (1)(b)(ii) of the Act regarding the time of the entries into the rental unit. The landlord is required to give the tenant a date and time of entry, which I find denotes a specific time, not a broad range of hours for which the entry will be made. The specific time must be between the hours of 8:00 a.m. and 9:00 p.m. In the case before me, the landlord listed a range of time between 9:00 a.m. and 5:00 p.m., and I therefore find the tenant's request that the landlord's inspector phone or ring the door bell prior to entry to be reasonable, considering the range of hours listed in the notices. Instead, I accept the tenant's undisputed evidence that the inspector failed to phone or ring the doorbell prior to entry, as the landlord did not agree that the inspector would do so, and I find that the tenant had reasonable cause to fear for the safety of his daughter and her friend.

Section 45 (3) of the Residential Tenancy Act authorizes a tenant to end a tenancy by giving proper notice if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure.

In the case before me, I accept that the tenant considered clause 31 of the tenancy agreement to be a material term due to his written requests to the landlord, that he provided the landlord written notice of a breach of the material term, and the landlord failed to adequately address the problem.

I therefore find the tenant had grounds to end the tenancy and that the tenancy has ended, as of April 30, 2013.

I note that the tenant's notices to the landlord were via email and email attachment. I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the documentary evidence.

Although the Act does not recognize email transmission as an acceptable method of delivery of documents, I order that the delivery of the tenant's notices to the landlord, with the landlord's response, sufficiently served, pursuant to section 71 of the Act.

As I have found that the tenancy ended on April 30, 2013, I dismiss the landlord's claim for loss of rent revenue for May 2013.

Even had I not found that the tenancy ended as cited above, I would still make the decision to dismiss the landlord's claim for loss of rent revenue as the landlord failed to submit evidence that they made any attempt to minimize their loss by advertising or marketing the rental unit for rent for the month of May 2013, step 4 of their burden of proof.

As I have dismissed the landlord's monetary claim listed in their application, I dismiss their request to recover the filing fee.

Tenant's application-

As I have dismissed the landlord's application claiming against the tenant's security deposit and for monetary compensation, I find the tenant is entitled to a return of the security deposit of $500.

I also award the tenant recovery of the filing fee of $50.

I therefore find the tenant is entitled to a monetary award of $550, comprised of the security deposit of $500 and the filing fee of $50.

Conclusion

The landlord's application is dismissed.

The tenant's application for monetary compensation is granted.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of $550, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are subject to recovery from the landlord.

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 11, 2013

Residential Tenancy Branch