Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COZY SUITES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC FF
RPP MNSD MNDC FF

Preliminary Issues

The Landlord testified that she entered into an agreement with I.M.J. that he would be her tenant and he would be allowed to sublet the rental unit. They entered into consecutive written one year fixed term tenancy agreements starting from approximately May 2000, listing I.M.J.'s company name as tenant and signed by I.M.J. as "c/o" the limited company name.

The Tenants' legal counsel, herein after referred to as Counsel, stated that I.M.J. and his spouse, Z.J., are the principals of the limited company listed as Tenant on the tenancy agreements.

The Landlord filed her application for dispute resolution naming the individual I.M.J. as the respondent while the Tenants filed their application naming the limited company as the applicant Tenant. Neither party raised the issue of the named parties in these disputes.

After review of the evidence before me, I find that both I.M.J. and the limited company are proper named parties to this proceeding. There was ample evidence that I.M.J. took actions as a Tenant and exercised powers as a tenant subletting the unit in accordance with the *Act*, which related to the subject tenancies. My finding does not require piercing the corporate veil but rather the application of the commonly known definition of a person being a tenant.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed her application on November 1, 2013, seeking a Monetary Order for: damage to the unit site or property; for unpaid rent or utilities; to keep the security deposit; for money owed or compensation for damage or loss under the act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Tenant(s) filed their application on September 26, 2013, seeking an Order for the return of their personal property and a Monetary Order for: the return of double their security deposit; for money owed or compensation for damage or loss under the act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord for their application.

The Landlord and Counsel appeared at the teleconference hearing and acknowledged receipt of evidence submitted by the other. Counsel stated that he would not be providing evidence; rather, in the absence of his clients, he would simply be presenting their documentary evidence. The Landlord gave affirmed testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be granted a Monetary Order?
2. Should the Tenants be granted a Monetary Order?

Background and Evidence

It was undisputed that the parties executed consecutive written tenancy agreements for one year fixed term tenancies that commenced sometime in 2000. The most recent tenancy agreement commenced on July 1, 2012, and switched to a month to month tenancy after June 30, 2013. The Tenant was required to pay rent of $1,400.00 on the first of each month and in approximately May, 2000 the Tenant paid $700.00 as the security deposit.

The Landlord testified that after she received several complaints and bills from the strata corporation she inspected the rental unit and served the Tenant a 1 Month Notice to end tenancy. Then when rent remained unpaid she posted a 10 Day Notice to the door on August 3, 2013. She is seeking $1,450.89 which includes unpaid rent for August 2013, $500.00 in strata fines, and costs incurred to repair and clean the rental unit.

The Landlord stated that every six months the Tenant would give her post dated cheques but this time no cheques were provided. She was concerned about the

condition of her unit and feared that if the occupants flooded the unit she would be fined $50,000.00 from the strata corporation. The Landlord claimed that she received a call from the concierge sometime at the end of August to say the occupants had moved out and they left the key for her to pick up. She picked up the key September 5, 2013 and found her unit to be damaged. She changed the locks, hired cleaners to come to remove the junk and paint her unit.

After a brief discussion the Landlord stated that she did not know the exact dates when she entered the unit. She said she became so upset about the condition of the unit and the strata fines for noise and garbage that she "took her unit back". She admitted to changing the locks on August 14, 2013, without notice to her Tenant. She argued that the Tenant was out of town so she could not reach him. She said she hired a company to dispose of everything in the unit. She argued that all of the furniture was old and damaged, and was therefore considered garbage, as supported by the photos she provided in her evidence.

Counsel submitted that he did not have evidence as to when the Tenants first entered into tenancy agreements with the Landlord so he would accept the Landlord's submission that the tenancy began in 2000. He confirmed that his clients were served the 1 Month Notice directly but were not served a 10 Day Notice. He questioned why the Landlord chose to post the 10 Day Notice on the door for the occupants and not send it to the Tenant like she had done with the 1 Month Notice. He admitted that his client had been out of town in August but argued that his client was still accessible by email, which was an established form of communication used by the Landlord with his client in the past.

Counsel pointed out how the Landlord had admitted to changing the locks and throwing out the Tenants' possessions, contrary to her obligations set out in the Act. He argued that the evidence supports that the Tenant tried to gain access to the unit and when that failed they contacted the Landlord to make arrangements to enter the unit so they could conduct any required cleaning or repairs, but the Landlord refused them access. Given the circumstances they are seeking compensation of $11,550.00 which includes the replacement cost of their property and the return of double their deposit.

In closing the Landlord testified that she did not keep a list of the items that were left in the unit and subsequently discarded but she did take pictures. She questioned the validity of the invoice submitted by the Tenant and pointed to the date on the invoice provided by the Tenants. She pointed to her photographs as evidence to support that there was not as much stuff left in the unit as was being claimed by the Tenants. She stated that the tenancy ended at the end of July 2013, based on the tenancy agreement, so she was of the opinion that she had the right to remove everything from her property. She said she was disappointed and upset with the way he was using her property so she simply decided that she was not going to deal with the Tenant anymore and she changed the locks and threw out his property.

Counsel repeated the Landlord's statement that she "changed the locks and threw out the Tenant's property". He could not provide testimony as to the document provided in the Tenants' evidence or if it was in fact an actual receipt for replacement property. He stated that his client told him that was the document that was given to him from the company he purchased the replacement furniture from. He also noted that the Landlord did not complete condition inspection report forms and did not give the Tenant the opportunity to attend the property to clean or repair the unit.

Analysis

Section 47 of the Act provides that a landlord may issue a 1 Month Notice to End the Tenancy if the landlord has proven cause for ending the tenancy. The issuance of a notice under section 47 of the Act does not grant a landlord possession of the rental unit.

Section 55 (2)(b) of the Act provides that a landlord may request an order of possession of a rental unit if a notice to end the tenancy has been given by the landlord and either the tenant has not disputed the notice in accordance with the Act and has failed to vacate the property in accordance with the notice, or the landlord has met the burden of proof to obtain possession of the unit. In this case the Landlord did not make an application to obtain an Order of Possession.

The undisputed evidence before me describes what I find to be an egregious breach of the Act by the Landlord. The Landlord attended the rental unit, seized possession of the rental unit in breach of section 28(c) of the Act; entered the rental unit in breach of section 29(d) of the Act; and changed the locks to the rental unit without providing the Tenant with a copy of the key in breach of section 31(1) of the Act. These matters are not disputed by the Landlord.

As per the aforementioned, I find the Landlord ended this tenancy illegally, in breach of the Act, seizing exclusive possession and use of the rental unit as of August 14, 2013. The Landlord did so without providing the Tenant an opportunity to attend the unit to remove his possessions, clean or repair, and without giving the Tenant an opportunity to attend a move out inspection, which is a breach of section 35 of the Act. Therefore I find the Landlord is restricted in their ability to prove that damages occurred during the period of the tenancy, when the Tenant had exclusive possession of the unit. Accordingly, I dismiss the Landlord's claim for cleaning and repairs, without leave to reapply.

The Landlord submitted evidence that proves she was fined $500.00 by the strata corporation for noise and garbage complaints against the Tenants' occupants. The evidence further proves that the Tenants signed acknowledging receipt of a strata "form K". Accordingly, I award the Landlord recovery of the strata fines in the amount of **$500.00.**

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement. In this case the Tenant was required to pay $1,400.00 rent on the first of each month.

Having found the Landlord had seized possession of the rental unit on August 14, 2013, in breach of the Act, I find the Landlord is only entitled to payment of rent for the period of August 1 to August 13, 2013, and I grant the Landlord a monetary award in the amount of **$587.08** (13 days at the daily rate of $45.16).

The Landlord has only been partially successful with her application; therefore I award partial recovery of the $50.00 filing fee in the amount of **$15.00**.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item.

The fact that the Landlord threw out the Tenant's possessions is not in dispute; however, the quantity, description, and condition of the items that were discarded is in dispute. The Landlord submitted evidence consisting of photographs to prove the condition and quantity of items thrown out. The Tenants relied on four photos that were photocopied and illegible as the only evidence of the contents of the unit. There is no indication as to when the Tenants' photos were taken. The Tenants also relied on a hand written list of items that were allegedly purchased on August 31, 2013, which they submitted as being an invoice as proof of purchase of replacement furniture.

Upon review of the evidence before me, I find the Tenants submitted insufficient evidence to prove the actual value of their loss. That being said Section 67 of the Residential Tenancy Act states:

> *Without limiting the general authority in section 62(3) [director's authority], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

Based on the foregoing, I find that it is undeniable that the Tenants suffered a loss when the Landlord breached the Act and threw out their possessions. I accept that the Tenants attempted to mitigate everyone's loss by requesting permission to enter, clean and repair the unit. Furthermore, I accept the Landlord's photographic evidence that the Tenants' property was well used, worn, and of an age of at least thirteen years, the length of time that the Tenant had occupied the property. Therefore, I award the Tenants a depreciated amount of compensation for the loss of their possessions in the amount of **$5,000.00**.

The Tenants also seek recovery of double their security deposit. This tenancy ended August 14, 2013, as noted above, and the Tenants provided their forwarding address to the Landlord September 12, 2013.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than September 27, 2013. The Landlord did not return the deposit and did not file her application for dispute resolution until November 1, 2013.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenants have met the burden of proof to establish their claim for double the security deposit plus interest and I award them **$1,456.57** (2 x $700.00 + $56.57 interest).

The Tenants have been successful with their application; therefore I award recovery of the **$100.00** filing fee

Monetary Order – I find these claims meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Tenants' award	
Loss of possessions	$5,000.00
Double the security deposit	1,456.57
Filing Fee	100.00
SUBTOTAL due to Tenants	**$6,556.57**
LESS Landlord's Award	
Strata Fines	-500.00
Unpaid August 2013 rent	-587.08
Landlord's filing fee awarded	-15.00
Offset amount due to the Tenants	**$5,454.49**

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **$5,454.49**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order 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: February 18, 2014

Residential Tenancy Branch