Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hong Fa (No. 1) Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNR, and FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, for a monetary Order for the cost of emergency repairs, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant wishes to rely upon as evidence were sent to the Landlord at the service address noted on the Application for Dispute Resolution, via registered mail. The Agent for the Tenant stated that he does not know when the documents were mailed but he understands a copy of the Canada Post receipt was submitted in evidence, although he did not have a copy of that receipt with him at the time of the hearing.

The Tenant submitted a copy of an envelope addressed to the Landlord with Canada Post information on it that indicates the envelope was mailed on January 27, 2014 and that it was not claimed by the recipient. On the basis of the testimony of the Agent for the Tenant and the envelope submitted in evidence, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act);* however the Landlord did not appear at the hearing.

Issue(s) to be Decided:

Is the Tenant entitled to the return of the security deposit and compensation for repairs made to the rental unit?

Background and Evidence:

The Tenant submitted a copy of a tenancy agreement that names the female Tenant and the Landlord. The agreement indicates that this tenancy began on August 01, 2011; that the Tenant agreed to pay monthly rent of $3,000.00; and that the Tenant paid

a security deposit of $1,000.00. The Agent for the Tenant stated that he believes all of this information is accurate.

The Agent for the Tenant stated that he believes the tenancy ended on June 01, 2013 or July 01, 2013. He stated that he does not know if a condition inspection report was completed at the beginning or the end of this tenancy.

The Agent for the Tenant stated that his father provided the Landlord with a forwarding address, via email, although he is uncertain of the date the email was sent. The Tenant submitted a copy of an email, dated August 15, 2013, in which the male Respondent informs the recipient that the security deposit can be mailed to the rental unit. The Agent for the Tenant stated that the recipient of the email is an agent for the Landlord.

The Agent for the Tenant stated that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that he does not believe the Landlord filed an Application for Dispute Resolution claiming against the security deposit.

The Agent for the Tenant stated that on October 26, 2012 there was a sewage backup in the basement. He stated that he believes his father reported the problem to an agent for the Landlord, by telephone, on October 26, 2012, October 27, 2012, and October 28, 2012. He stated that the Landlord did not respond to the report of a problem so his father hired a plumber to repair the problem on October 28, 2012. The Tenant submitted a plumbing invoice that corroborates the testimony that there was a sewage backup and that the male Respondent was charged $798.00 to repair the problem.

The Agent for the Tenant stated that he believes his father provided the Landlord with a copy of the invoice and requested payment of the invoice, via email and registered mail, although he does not know the dates of these occurrences. In the email dated August 15, 2013 the male Respondent asks for “reimbursement” and the security deposit. A PDF file is attached to this email. The Agent for the Tenant stated that he believes this is a request for reimbursement for the plumbing costs and that a copy of the plumbing invoice was sent as an attachment to this email.

The Agent for the Tenant stated that sometime during the tenancy an oven element malfunctioned; that he believes the problem was reported to the Landlord; and that he does not know how or when the problem was reported to the Landlord, although he “guesses” it was reported by email. He stated that he believes an agent for the Landlord gave his father permission to repair the oven, and that he does not know how or when authorization for the repair was given, although he “guesses” it was provided by email. The Tenant did not submit an email in which the Landlord authorizes this repair.

The Tenant submitted a copy of an invoice for an oven repair, dated December 11, 2012, in the amount of $85.00 and a visa receipt for payment, in the amount of $95.20. The Agent for the Tenant “guessed” that his father provided this receipt to an agent for the Landlord, via email, although he does not know when that would have been.

Analysis:

On the basis of the written tenancy agreement and the testimony of the Agent for the Landlord, I find that the female Tenant entered into a tenancy agreement with the Landlord and that a $1,000.00 security deposit was paid to the Landlord.

In the absence of evidence from the male Applicant and/or the Landlord that shows the male Applicant entered into an oral tenancy agreement with the Landlord, I find that there is insufficient evidence to show that the male Applicant also entered into a tenancy agreement with the Landlord. In the absence of evidence that establishes these parties had a tenancy agreement, I am unable to grant a monetary Order that names the male Applicant.

On the basis of the testimony of the Agent for the Tenant and in the absence of evidence to the contrary, I find that this tenancy had ended by July 01, 2013.

On the basis of the testimony of the Agent for the Tenant and the email, dated August 15, 2013, I find that the Tenant provided the Landlord with a forwarding address, via email, on August 15, 2013.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act,* as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution within the legislated time period.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act,* the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit.

Section 33(1) of the *Act* defines emergency repairs, in part, as repairs to damage or blocked water/sewer pipes that are urgent and necessary for the health or safety of anyone or for the preservation or use of residential property. On the basis of the testimony of the Agent for the Tenant and the invoice from the plumbing company, I find that the sewage backup that occurred on October 26, 2012 constitutes an emergency repair. In reaching this conclusion I was heavily influenced by the fact there was still a large amount of water/sewage in the basement on October 28, 2012, which places the property and the health of the occupants at risk.

Section 33(3) of the *Act* stipulates that a tenant may have emergency repairs made only

when the emergency repairs are needed; the tenant has made at least two attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; and following those attempts, the tenant has given the landlord reasonable time to make the repairs. On the basis of the testimony of the Agent for the Tenant and the absence of evidence to the contrary, I find that the plumbing problem was reported to the Landlord on at least two occasions and the Landlord made no attempt to make repairs within a reasonable time.

Section 33(5) of the *Act* stipulates that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. On the basis of the testimony of the Agent for the Tenant and the email dated August 15, 2013, I find that the Tenant provided the Landlord with a copy of the plumbing invoice and that the Tenant asked for reimbursement. I therefore find that the Tenant is entitled to the $798.00 that was charged to make this emergency repair.

On the basis of the testimony of the Agent for the Tenant and in the absence of evidence to the contrary, I find that an oven element malfunctioned sometime during this tenancy. A malfunctioning oven is not an emergency repair as defined by section 33(1) of the *Act.* As the oven is not an emergency repair, a tenant is not entitled to reimbursement for repairing the oven in accordance with section 33 of the *Act*. A tenant would only be entitled to reimbursement for repairing the oven if the tenant had permission from the landlord to repair the oven and the landlord promised to reimburse the tenant for that repair, or the tenant had authorization from the Residential Tenancy Branch to make the repair.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord authorized the Tenant to repair the oven and that the Landlord promised to pay for the repair. In reaching this conclusion I was heavily influenced by the absence of evidence, such as direct testimony from the person who received permission to make the repair or an email in which the Landlord authorized the repair. I find that the testimony of the Agent for the Tenant is entirely lacking in detail regarding this repair and it does not cause me to conclude that the Tenant had permission to make this repair and/or that the Landlord agreed to pay for the repair. As the Tenant has failed to establish that the Landlord promised to pay for the repair, I dismiss the claim to recover the cost of repairing the oven.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion:

The Tenant has established a monetary claim of $2,848.00, which is comprised of double the security deposit ($2,000.00), $798.00 for an emergency repair, and $50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am

issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily 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: April 08, 2014

Residential Tenancy Branch