



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rize Alliance (Broadway) Projects Inc. (208)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The tenants advised me there was an error in the last name of the female tenant as the female tenant's name has changed since signing the tenancy agreement. The parties did not raise any objections to the error being corrected and this has now been amended.

Issue(s) to be Decided

- Is the landlord entitled to monetary compensation for damage to the unit, site or property?
- Is the landlord permitted to keep the security deposit?
- Is the landlord entitled to monetary compensation for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on January 15, 2013 for a fixed term of one year. The tenancy ended on January 31, 2014. Rent for this unit was \$1,350.00 per month due on the first day of each month in advance. The tenants paid a security deposit of \$675.00 on January 14, 2013.

The landlord testified that when the tenants moved into the unit they signed the tenancy agreement and a form 'K' for the strata council rules. The tenant booked the elevator as required upon their move into the building. However, when the tenants vacated the building they did not inform the building manager that they needed to book the elevator or the day they intended to move from the unit. The strata rules require tenants to do this or the owner of the unit will be fined by the strata council. The landlord testified that the tenants also caused some damage to a wall in the hallway outside the unit. This was a hole approximately three to four inches long. The landlord testified that the strata council have sent an estimate to have this hole repaired at a cost of \$125.00. The landlord has not provided a copy of this estimate in evidence.

The landlord testified that the tenants were made aware that they had to book the elevator in an email from the property manager sent on January 02, 2014. As the tenants did not book the elevator the owner was sent an Official Bylaw Violation Fine

Letter for Unauthorized Move Out and Damages. This letter indicates that the strata lot is in violation of the following strata Bylaws:

4. Use of property

(4) An owner, tenant, occupant or visitor of a strata lot must not cause damage, other than reasonable wear and tear to the common property, common assets or those parts of a strata lot which the strata corporation must repair and maintain under these bylaws or insure under Section 149 of the Act.

47. Moving

(1) The strata corporation may regulate the times and manner in which any moves into or out of the strata lots may be made and require that such moves be coordinated with the property manager for the development at least seven days in advance of such moves, or such lesser period as the council may, in its sole discretion, permit, provided that if an owner carries out, or permits any tenant, occupant, visitor, employee, agent or invitee to carry out any move into or out of his or her strata lot otherwise in accordance with such prior arrangements made with the property manager of the development, the owner of such strata lot will be subject to a fine of \$100.00

(2) An owner of a strata lot must notify the strata corporation in advance of the date and time that the owner, tenant or occupant of his or her strata lot will be moving into or out of such strata lot.

The letter goes on to say that 'The strata council is responsible for enforcing the bylaws and rules, subject to the Strata Property Act. Your strata lot account has been fined \$500.00 for these bylaw violations: \$200.00 each for bylaws 4(4) and 47(2); \$100.00 for bylaw 47(1). In addition to these fines, the cost of the repairs for the damage caused during the move will be charged to the strata lot account'.

The landlord testifies that the owner has been fined \$500.00 and therefore seeks reimbursement from the tenants for these violations. The landlord also seeks to recover

\$125.00 for the estimated amount to repair the damage to the wall. The landlord agrees that the tenants were not seen doing this damage but it was noted on the wall after they had moved out. The landlord refers to their photographic evidence showing a wall with a small hole.

The tenant NF testified that they did not cause any damage to the wall when they moved from the building. The tenant testified that they actually moved out on January 28, 2014 and did the final move out inspection on January 30, 2014. The tenant refers to the landlord's documentary evidence in the form of a letter from the building manager which is dated January 29, 2014 prior to the move out inspection indicating damage caused to the wall. The tenant testified that this damage was not shown to the tenants and was not discussed with the tenants during the inspection. The damage has not been indicated on the inspection report.

The tenant NF testified that the landlord's photographic evidence showing this damage is not dated or time stamped and does not indicate which floor the photograph was taken on. The tenant testified that the building manager's credibility is in question as during the inspection the building manger indicated that \$125.00 was going to be charged for the glass stove top cleaning and now the report indicates that it is to be charged for a wall repair. The tenant testified that the report was altered after it was signed by the tenant. The tenant also refers to their dated photographic evidence showing some damage to the sink in the unit; however, on the move out report it has been included as damage caused by the tenants. The tenant testified that as they did not agree that the stove top was not cleaned they did not sign the move out report allowing the landlord to keep part of the security deposit.

The tenant NF testified that they had informed the building manager that they would be vacating the unit on January 31, 2014. The building manager asked the tenants for early access to the unit. The tenants contacted their new landlord and were able to move into their new unit a few days earlier. The tenant NF testified that she responded to the building manager's request and left a message for him on January 28, 2014 indicating

that they would be able to vacate the unit on that date as requested. The tenant testified that they did not hear back from the building manager but were not surprised as the same thing occurred when they moved into the unit. The tenants moved out and upon leaving the building the building manager passed the tenants and informed the tenant JF that they were going to be fined for not booking the elevator. The tenant NF testified that the building manager had been informed by telephone of their earlier date to move out as per his own request and therefore he should have booked the elevator for the tenants. The building manager had provided the tenants with a moving out form and this had no other contact person on it for the tenants to book the elevator with. The tenant testified that they assumed that by informing the building manager of their revised date this would be sufficient.

The tenant NF testified that they did sign the form "K" but were not provided with a copy of the strata rules and bylaws at the start of their tenancy. The owner should be responsible for notifying the strata council of the tenants intention to move out. The tenant NF testified that they dealt solely with the property management company throughout their tenancy. The tenants therefore dispute the strata fines and the fee charged for damage.

The landlord seeks an Order to keep the security deposit of \$675.00 to reimburse the landlord for the strata fines of \$500.00, the cost for repair to the wall of \$125.00 and the \$50.00 filing fee.

The tenants' dispute the landlord's claim to keep the security deposit and seek an Order to have the security deposit returned to the tenants.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim that the tenants caused damage to the wall in the hallway; this area is a common area and the landlord has agreed that the

tenants were not seen causing this damage but it was noted after the tenants moved from the unit. I am not satisfied that the landlord has met the burden of proof that the damage or loss happened solely because of the actions or neglect of the tenants in violation of the *Act* or agreement. This is a common area that other occupants have access to and the damage may have been caused by any number of other occupants. Furthermore, the claimant is required to provide evidence of the actual cost to repair the damage. In this case the landlord has testified that the strata council estimated the cost for the repair at \$125.00. Not only do I find this cost to be extravagant for a minor repair such as this; I also find there is no evidence to support the landlord's claim that the repair, even if it had been proven to be caused by the tenants' neglect, would cost \$125.00 to repair. Consequently, this section of the landlord's claim is dismissed.

With regard to the landlord's claim for fines imposed by the strata council of \$500.00; I have considered the wording on the letter sent by the strata corporation to the landlord or owner and find that this letter indicates that it is the owner of the strata lot who has the responsibility to inform the strata or building manager the date of the tenants move out. While I accept in common practice that tenants usually inform the building manager of their date to move out so the elevator can be prepared and booked; I am not satisfied that the landlord has sufficient evidence to prove that this was not done. The tenants have testified that the building manager was informed that they were moving on January 31, 2014; however' after the building manager requested an earlier date the tenants obliged this request and moved out on January 28, 2014 after informing the building manager by leaving a message on his telephone. If the building manager did not either get his messages or did not book the elevator then the tenants cannot be held responsible for any fines imposed upon the owner as per the strata bylaws. Consequently, this section of the landlord's claim is dismissed.

With regards to the landlord's claim to keep the security deposit; as the landlord has been unsuccessful with this claim, I find the landlord is not entitled to keep all or part of the security deposit and the security deposit of \$675.00 must be returned to the tenants.

The landlord must bear the cost of filing their own application.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

A Monetary Order has been issued to the tenants for the amount of \$675.00. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial Court 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: May 27, 2014

Residential Tenancy Branch

