Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GROSVENOR CANADA LTD. and ADMNS CAMBIE INVESTMENT CORP. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit or property. The tenant did not appear at the hearing. The landlord submitted that the Application for Dispute Resolution was sent to the tenant on June 17, 2014 and the landlord's evidence package was sent to the tenant on June 19, 2014. Both registered mail packages were returned as unclaimed. The address used for service for the tenant appears on the move-out inspection report prepared on January 2, 2014. Since the landlord filed this Application six months later, I further enquired as to whether the address is still current. The landlord testified that the tenant's forwarding address is actually the address of a different rental unit the tenant rented from the landlord and continues to do so as of the date of this proceeding. I was satisfied the landlord used a service address that is either the tenant's forwarding address or the tenant's current address of residence as required under section 89 of the Act.

Section 90 of the Act deems a person to have received documents five days after mailing even if a person does not accept or pick up their registered mail so that a person cannot avoid service. On this basis, I found the tenant deemed served with notice of this proceeding and I continued to hear from the landlords' agents without the tenant present.

Preliminary Issue - Jurisdiction

I noted that the tenancy agreement provided for payment of HST in addition to rent and HST was charged on the security deposit, or portion thereof. As the Act does not require tenants to pay tax in addition to rent and residential rent is not subject to sales taxes I determined it necessary to determine whether the Act applies to this tenancy agreement and that I have jurisdiction to resolve this dispute.

The landlord explained that the rental unit is a "live/work unit". I heard that the majority of the area of the rental unit consists of residential living space but there is office space

that tenants may work from. The landlords submitted that Canada Revenue Agency has required the owner to charge federal sales tax on the value of the office space. In this case, the rent was pro-rated based on the office area in relation to total area and the HST was calculated on the portion of rent attributable to the office space. The landlords further submitted that the tenant used the entire rental unit as living accommodation.

Section 4 of the *Residential Tenancy Act* provides that the Act does not apply to

> (d) living accommodation included with premises that
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> i) are primarily occupied for business purposes, and
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> (ii) are rented under a single agreement

Residential Tenancy Policy Guideline 27: *Jurisdiction* provides policy statements with respect to jurisdiction. With respect to commercial tenancies the policy guideline states that

> "…where the premises are used primarily for residential purposes and the tenant operates a home-based business from the premises, this does not mean the premises are occupied for business purposes. The distinction is whether the premises are business premises which include an attached dwelling unit or whether the premises are residential in nature with a lesser business purpose. The bylaws of a city may be a factor in considering whether the premises are primarily occupied for a business purpose.
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> For example, if a tenant uses part of the residential premises as an art studio, or operates a bookkeeping business from the home, the Act would apply as the premises are not primarily used for business purposes. However, if the primary purpose of the tenancy was to operate a business, then the Act may not apply and the RTB may decline jurisdiction over the dispute. See also Guideline 14 on this topic."

Residential Tenancy Policy Guideline 14: *Type of Tenancy: Commercial or Residential* also provides that some factors used to determine residential or commercial tenancies are: "relative square footage of the business use compared to the residential use, employee and client presence at the premises, and visible evidence of the business use being carried on at the premises.

Based upon the undisputed submissions of the landlords in this case, I am satisfied the rental unit was used primarily for residential purposes and I find the Act applies to this

tenancy. However, I make no finding as to whether HST should have been paid on the rent or security deposit as that is beyond the scope of this decision and not necessary in order for me to make a decision with respect to damage to the property in this matter. It shall remain up to the tenant to determine if federal sales tax was payable on his rent and security deposit and pursue that issue as appropriate.

Issue(s) to be Decided

Did the landlords establish an entitlement to compensation for damage to the unit or property in the amount claimed?

Background and Evidence

The tenancy commenced August 23, 2010 and ended December 31, 2013. The tenant authorized a deduction of $605.00 from his security deposit, in writing on the move out inspection report, and the balance of the security deposit was transferred to his subsequent tenancy agreement with the landlord.

The landlord recorded the damage to the rental unit or property for which the tenant was responsible as being: "3 gauges, faucet, stains, closet, current rod, cleaning & oven/freezer, 3 lights, fireplace panel, toilet not flushing." The tenant indicated on the move-out inspection report that he agreed with the landlord's assessment.

The landlord explained that the authorized deduction of $605.00 largely related to cleaning, wall damage and faucet damage since the landlord anticipated at the move-out inspection that the problem with the non-flushing toilet would be resolved with plunging. This turned out not to be the case and extensive and expensive efforts were made to eventually determine the root cause of the non-flushing toilet: which was a deodorant bottle flushed into the sewer line.

The landlord described the rental unit as being a townhouse style unit and that the property consists of townhouse units over top of commercial space. The landlords testified that the sewer line from which the deodorant bottle was removed services the rental unit only. The landlords submitted that since the toilet was not flushing at the end of the tenancy and the sewer line servicing the rental unit is used exclusively by the rental unit, it is evident that the deodorant bottle was flushed into the sewer line during the tenancy by the tenant, or a person permitted on the property by the tenant, and the tenant is responsible for the cost associated to the flushing of the deodorant bottle.

I heard that despite efforts to plunge the toilet, in late January 2014 the new tenants of the rental unit complained to the landlord that the toilet was not flushing and that sewer water was backing up in the tub. A plumber was called and attended the property on January 31, 2014. An auger line was run but 15' was not long enough, requiring a larger machine. Fabric was pulled from the line and the toilet reinstalled and flush tested. The plumber billed the landlord $623.79 for this service call.

On February 24, 2014 the plumber attended the rental unit a second time in response to the same complaint that the toilet was not flushing. Baby wipes were pulled from the line and the large auger was run again which came back clear. The toilet was re-installed and flush tested. The plumber billed the landlord $404.09 for this service call.

On March 8, 2014 the plumber returned to the property in response to the same complaint that the toilet was not flushing. After nothing came from running the cable down the sewer line the plumber ran a sewer camera and found a bottle stuck in the 3" sewer line located in the ceiling cavity below the bathroom. An access hole was cut in the ceiling of the kitchen below the bathroom but an attempt to grab the bottle resulted in it falling further down the sewer line. The bottle then had to be accessed by detaching the service line from the commercial retail property located below the rental unit. This required the plumbers to have to wait until the retailer closed for business, paying for security personnel in the commercial retail establishment while repairs were underway after business hours, and installing scaffolding. The sewer line was then opened up and the bottle located. The bottle, which turned out to be a deodorant bottle, was removed and the sewer line re-attached. The toilet was then reinstalled. The plumber billed the landlord $1,585.76 for this service call.

In addition to requesting recovery of the plumber's invoices referred to above, the landlords requested recovery of $22.10 to purchase drain cleaner and $472.50 paid for repairing the ceiling drywall in the kitchen of the rental unit.

The landlords provided copies of the invoices and receipts referred to above as well as photographs of the efforts described above.

The landlord also provided copies of emails exchanged between the parties with respect to this issue, including an email the tenant wrote on April 3, 2014 whereby the tenant questions the landlord's request for payment after the move-out inspection report was completed and an email sent to the landlord from the tenant on April 10, 2014 where the tenant offered to split the cost 50/50 as a compromise. The landlord pointed to the April 10, 2014 email from the tenant as acknowledgement of responsibility for the deodorant bottle being flushed into the sewer line.

Analysis

Under the Act, a tenant is responsible for repairing damage the tenant, or person permitted on the property by the tenant, causes by way of their actions or neglect. Where a tenant does not repair damage for which they are responsible, the landlord may pursue the tenant to recover repair costs from the tenant.

Based upon the move-out inspection report signed by both parties, it was recorded that at the end of the tenancy the toilet was not flushing. Based upon the plumber's invoices and photographs provided by the landlord, I am satisfied that a deodorant bottle was introduced in to the sewer line and was the root cause of the multiple blockages in the sewer line. I also accept the landlord's undisputed submission that the sewer line in which the deodorant bottle services the rental unit only. Therefore, I found I was satisfied that a deodorant bottle was flushed into the sewer line of the rental unit during the tenancy and that the deodorant bottle lodged in the sewer line was the cause of multiple and extensive efforts by the plumbers to clear the line.

Although the tenant did not appear at the hearing, I have considered his position as communicated in his email of April 3, 2014. In his written communication to the landlord he points to an authorized deduction of $605.00 at the end of the tenancy in recognition of damage to the unit. Upon review of the move-out inspection report, I find there is no indication that the authorized deduction was in full or final settlement of all damages and loss. I find the landlord's explanation that at the time of the move-out inspection the landlord estimated damages and that at that time costs associated to plunging of the toilet was the anticipated loss to be reasonable. Therefore, I find the landlord entitled to recover from the tenant the costs of the plumber's invoices, the drain cleaner, and the drywall repair costs incurred after the move-out inspection report was completed.

As the landlord was successful in this Application, I further award the landlord recovery of the $50.00 filing fee paid for this Application.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Plumber's invoice: January 31, 2014	$ 623.79
Plumber's invoice: February 24, 2014	404.09
Drain cleaner receipt: February 24, 2014	22.10
Plumber's invoice: March 8, 2014	1,585.76
Drywall repair invoice: March 20, 2014	472.50
Sub-total	$3,108.24
Filing fee	50.00
Monetary Order for landlord	$3,158.24

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The landlord was successful in this Application and has been provided a Monetary Order in the amount of $3,158.24 to serve and enforce.

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: November 6, 2014

Residential Tenancy Branch