Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CORDOVA BAY SENIORS LODGE SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC SS FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on July 10, 2014, to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for substitute service and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord, the Landlord's assistant, the Landlord's observer and the Tenant. The Landlord's assistant and the Landlord's observer did not submit testimony or evidence during this proceeding. The Landlord and the Tenant gave affirmed testimony and confirmed receipt of evidence served by the other.

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. Was an order required for substitute service of documents?
2. Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a tenancy that commenced in September 2010. The Tenant was required to pay rent of $481.00 and based on the Tenant's submission he had paid $150.00 as the security deposit.

The parties conducted a move-in inspection and signed the move in condition report on September 27, 2010. The Tenant provided the Landlord with his forwarding address on July 7, 2014.

The Landlord testified that they had previously been granted an Order of Possession. The Tenant filed for Judicial Review and on May 27, 2014 they attended the Supreme Court hearing which resulted in the Order of Possession being stayed and the matter being sent back to the Residential Tenancy Branch (RTB) to be reheard.

The Landlord submitted that sometime around the end of May beginning of June 2014 they noticed that a storage bin had been delivered to the property. Shortly afterwards they noticed the lights had been left on for two days, in the Tenant's unit and all of the windows were left open. The Landlord testified that on June 2nd or 3rd they entered the Tenant's unit and found that it had been vacated and a note was posted to the wall which stated "I have vacated #10 June 1 2014".

The Landlord argued that the Tenant moved out without providing proper notice, without cleaning the unit or the carpets, and he did not return all of his keys. The Landlord stated that they had attempted to cash the Tenant's June postdated cheque but it was returned as the Tenant had placed a stop payment on it. The Landlord filed their claim seeking compensation as follows:

1) $481.00 for June 2014 rent as the Tenant vacated the unit without notice and because the June postdated cheque had been returned by the bank.
2) $30.21 for the cost to replace a damaged toilet seat which the Tenant did not repair prior to moving out, as per the receipt provided in their evidence. The Landlord could not testify as to the age of the toilet seat; however, he did not recall it ever being replaced during the four years he has been a board member. He indicated that the building had been built in 1988 and although they had kept a file for maintenance completed on that unit, he did not have the file with him during the hearing.
3) $175.00 for cleaning the unit as per the receipt provided in evidence. The Landlord pointed to the photographs they provided in evidence as proof that the Tenant did not clean the rental unit.
4) $93.42 to replace the lock and keys as the Tenant did not return all of the keys that had been issued to him. The Landlord said he found one key inside the rental unit and that the Tenant had been issued two keys.
5) $110.25 for carpet cleaning, as per the receipt provided in their evidence which states that the carpet was badly soiled.
6) $500.00 for labor and paint to prep and paint the rental unit. The Landlord submitted that rental units are always painted each time a tenant moves out and argued that it would be the responsibility of the Tenant to pay for the painting because of the state that he left the unit in.
7) $481.00 for loss of rent for July 2014 because the unit was not re-rented until August 1, 2014. The Landlord stated that they do not advertise for tenants as they have a waiting list of applicants who want to occupy their building. He stated

that they went through a process of interviews and were able to find a new tenant effective August 1, 2014. They argued that because the Tenant did not give notice they should be compensated for the July rent.

The Landlord submitted that they thought they had the right to cash the July 2014 cheque as the unit had not been re-rented but shortly afterwards the Tenant approached them and told them they did not have a right to cash his July cheque because the tenancy had ended. The Landlord stated that after they checked into the matters further they determined that they should not have cashed the Tenant's July postdated cheque so they issued him a replacement cheque.

The Landlord pointed to their evidence which included proof that the Tenant had cashed their replacement cheque #2026 of $481.00 on July 17, 2014. The Landlord argued that despite the fact that the Tenant's bank initially allowed the July rent cheque to be cashed, the Landlord found out that the bank changed their mind and took the $481.00 back from their account on August 1, 2014, as supported by their evidence. As a result the Tenant was not only compensated from the Landlord's replacement cheque he was refunded the original $481.00 from the bank. Based on this submission the Landlord requested that his application be amended to include their request to be refunded the $481.00 from the Tenant.

The Tenant testified that he did not dispute the Landlord's claim for cleaning the unit nor did he dispute the claim for cleaning the carpets. He stated that he acknowledged that those items had to be cleaned; however the Tenant questioned the amounts that were being claimed and argued that he felt the amounts were on the high side.

The Tenant did not dispute that he applied for Judicial Review and was granted a stay to the Order of Possession until such time as the matter was reheard by the RTB. The Tenant submitted that prior to the May 27, 2014 Supreme Court appearance the Landlord had told his daughter that he would be allowed to stay in the unit until May 31, 2014. The Tenant argued that because of that conversation he decided to pack up his possessions in case he was required to leave. He stated that he had the storage bin delivered to the property on May 28, 2014 and that no one approached him to ask him about it because he was not on speaking terms with any of the staff or board members.

The Tenant confirmed that he had not told the Supreme Court Judge or any of the Landlord's representatives of his intention to move out at the end of May 2014. He stated he had vacated the property on or around May 29, 2014 and confirmed he had posted the note inside the unit.

The Tenant stated that he returned the two keys he had in his possession, the common area key and the one key for his unit. He stated that his daughter had the other key in case of an emergency but she could not find it. The Tenant argued that he should not have to pay to rekey the lock as a landlord should be required to change the locks each time a tenant moves.

The Tenant disputed the claims for June and July rent and argued that he should not have to pay June rent due to the harassment he suffered during the tenancy and because of his daughter being told he had to move by May 31, 2014. He argued that the evidence provided by the Landlord indicated all the work had been completed prior to the end of June and questioned why the Landlord had not re-rented the unit by July 1, 2014, if they had a waiting list of people wanting to live there.

The Tenant argued that he should not have to pay to replace a broken toilet seat that was 25 years old. He argued that there was no evidence to prove the seat was not 25 years old and that repair should be the Landlord's responsibility.

The Tenant testified that the windows in his unit had recently been replaced and that the paint had been touched up around the windows shortly afterwards. He stated that on or around May 5, 2014 his unit had been inspected after the window work and there was no mention of disrepair at that time. He argued that the Landlord automatically paints each unit when someone moves out and that work is done in house. He stated he should not have to pay for painting and thought the amount being claimed was excessive.

The Tenant did not dispute the Landlord's request to amend their application to include their request for the return of the $481.00 that had been reimbursed to him after the Landlord attempted to cash his July postdated cheque. The Tenant confirmed that in June 2014 he had put a stop payment on his July 2014 postdated cheque and that his bank made an error in cashing that cheque, which caused him financial hardship. The Tenant acknowledged that he had cashed the Landlord's reimbursement cheque and shortly afterwards his bank refunded his $481.00 that had been taken to cover his July postdated cheque. He has not returned the reimbursement $481.00 to the Landlord, despite being refunded by his bank.

In closing, the Landlord submitted that immediately following the Supreme Court hearing he had asked the Tenant's legal counsel if the Tenant was moving out and she told the Landlord that she did not know if the Tenant was moving.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case the Tenant filed for judicial review and requested an interim order to stay the Order of Possession that had been granted to the Landlord. The parties attended

Supreme Court on May 27, 2014, and the stay was granted while the matter was being sent back to the RTB to be reheard. The evidence supports that the Tenant proceeded with his Supreme Court Application without advising anyone of his intention to vacate the property two days later.

Based on the above, I find that this tenancy was still in full force and effect until such time as the RTB reheard the matters and determined if the original Order of Possession would stand or be set aside. Therefore, the Tenant was required to provide the Landlord proper notice to end the tenancy, in accordance with section 45 of the Act. Therefore, as the evidence supports that the Tenant vacated the unit on or before June 1, 2014, without 30 days written notice, I find the Tenant ended this tenancy in breach of section 45(1) of the Act, which caused the Landlord to suffer a loss of rent for June 2014. Accordingly, I award the Landlord lost June 2014 rent in the amount of **$481.00.**

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37 of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, undamaged except for reasonable wear and tear and the Tenant must return all of the keys to the rental unit.

The Tenant did not dispute the Landlord's claims for cleaning of the rental unit and cleaning of the carpet. The Tenant did however question the actual amounts being claimed. Upon review of the photographic evidence and receipts for worked performed, I find the Landlord's claim to be reasonable amounts given the work that was required. Accordingly, I award the Landlord monetary compensation for cleaning and carpet cleaning in the amount of **$285.25** (175.00 + $110.25).

It was undisputed that the Tenant had not returned all of the keys he had been issued for the rental unit, which I find to be in breach of section 37 of the Act. Accordingly, I find the Landlord had no choice but to have the locks changed for the safety of following tenants; therefore, I grant the Landlord's claim of **$93.42.**

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. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40.*

Residential Tenancy Policy Guideline 40 provides that the normal useful life of interior paint is 4 years. There was no evidence before me that proved the unit required painting for any other reason other than it had not been fully repainted during this 4 year tenancy or that it was repainted because it was the Landlord's policy to repaint a unit after each tenant moved out.

Upon review of the claims to replace the toilet seat and to repaint the entire rental unit I find the Landlord provided insufficient evidence to prove the Tenant would be responsible for that work. I make this finding in part because there was no evidence to prove the age of the toilet seat other than to say it was more than 4 years old. Also, there was no evidence before me that would indicate the damage to the toilet seat was anything more than normal wear or tear. Based on the aforementioned I find there to be insufficient evidence to prove the Landlord's claim for costs to replace the toilet seat and to repaint the rental unit. Accordingly, I dismiss those claims, without leave to reapply.

Section 7 of the Act stipulates that the party making the application must do whatever is reasonable to minimize any damage or loss.

The Landlord has claimed $481.00 for loss of rent for July 2014 on the grounds the Tenant did not provide proper notice and the Tenant left the unit requiring repairs and cleaning. The evidence supports that all repairs and cleaning were completed by June 30, 2014 and the Landlord did not advertise for new tenants as they have a waiting list of prospective tenants.

Based on the forgoing, I find that had the Landlord done their due diligence and started interviewing prospective tenants as of June 2nd when they knew that the Tenant had vacated the unit, they would have been able to re-rent the unit by July 1, 2014. Therefore, it is my finding that the Landlord did not do what was reasonable to mitigate their loss, and their claim for loss of July 2014 rent is dismissed, without leave to reapply.

Upon review of the Landlord's request to amend their application, I approved the amendment to the application to include the Landlord's request to order the Tenant to return the $481.00, pursuant to section 64(3)(c) of the Act.

The evidence was undisputed that the Landlord paid the Tenant $481.00 to compensate him for the $481.00 that was given to the Landlord after they cashed the Tenant's postdated cheque, without having proper authorization to do so. I accept the Landlord's submission that they attempted to correct the situation when they found out they had erred. The Landlord's evidence was undeniable that the Tenant had been reimbursed the $481.00 by both the Landlord and his bank when the Tenant's bank retrieved the money back from the Landlord's account and refunded the Tenant. Accordingly, I find the Tenant ought to have returned $481.00 back to the Landlord once his bank corrected the error. Accordingly, I hereby order the Tenant to return the reimbursement amount of **$481.00** to the Landlord forthwith.

Neither party raised service as an issue. Testimony was not submitted regarding the Landlord's application for substitute service. Accordingly, the request for substitute service is dismissed, without leave to reapply.

The Landlord has primarily been successful with their application; therefore I award recovery of the **$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of June 2014 Rent	$ 481.00
Cleaning and carpet cleaning	285.25
Locks and keys	93.42
Return of July reimbursement	481.00
Filing Fee	50.00
SUBTOTAL	$1,390.67
LESS: Security Deposit $150.00 + Interest 0.00	-150.00
Offset amount due to the Landlord	**$1,240.67**

Conclusion

The Landlord has been awarded a Monetary Order for **$1,240.67**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant 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: December 03, 2014

Residential Tenancy Branch