Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2225 Triumph Apt. Ltd
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes For the landlord: MNSD, MND, FF
For the tenant: MNSD, FF

Introduction and Preliminary Matters

On September 4, 2014, a hearing was convened to deal with the parties' respective applications for dispute resolution, a hearing at which only the tenant attended. A Decision of September 4, 2014, was entered by the original Arbitrator, granting the tenant's application and awarding him a monetary order for the amount of $3500, comprised of his security deposit and pet damage deposit of $850 each, doubled, the mailbox and key deposit of $50, and the filing fee paid for his application in the amount of $50. The original Arbitrator also dismissed the landlord's application as the landlord failed to attend the hearing.

Thereafter, the landlord filed an application for review consideration based upon their contention that the landlord was unable to attend the hearing due to circumstances beyond their control. That application resulted in the landlord being granted a new hearing and with the Decision of September 4, 2014, being suspended.

The new hearing was convened on November 20, 2014, before another Arbitrator, and neither the landlord nor the tenant attended. A Decision was entered by the other Arbitrator, dismissing the review hearing and stating that the Decision of September 4, 2014, stands.

The landlord then filed another application for review consideration of the November 20, 2014, Decision, based upon her contention the parties were provided the wrong hearing codes. On December 1, 2014, yet another Arbitrator granted the landlord's application for review consideration, and ordered that the original hearing of September 4, 2014, on both parties' applications for dispute resolution be reconvened. That Arbitrator also suspended the Decision of September 4, 2014, and November 20, 2014, be suspended.

This was the reconvened hearing on the parties' original applications for dispute resolution.

The landlord applied for authority to retain the tenant's security deposit and pet damage deposit, for monetary compensation due to alleged damage to the rental unit by the tenant, and for recovery of the filing fee paid for this application.

The tenant applied for a monetary order for a return of his security deposit and pet damage deposit, and for recovery of the filing fee paid for this application.

At this review hearing the parties appeared, the hearing process was explained and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

At the outset of the hearing, the evidence was discussed and neither party raised any issues regarding service of the applications, the landlord's applications for review consideration and material, or the evidence for this hearing.

I have reviewed the substantial amount of written evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the landlord entitled to retain the tenant's security deposit and pet damage deposit, monetary compensation, and to recovery of the filing fee paid for this application?
2. Is the tenant entitled to recovery of his security deposit, pet damage deposit, and to recovery of the filing fee paid for this application?

Background and Evidence

The evidence before me shows that this tenancy began on April 1, 2012, ended on or before April 15, 2014, monthly rent was $1700, and the tenant paid a security deposit and pet damage deposit of $850 each, both of which the landlord has retained. The landlord also collected a $25 fee for mailbox and keys, which has not been returned.

Landlord's application-

The landlord's monetary claim is comprised of carpet replacement in the bedrooms for $1280, carpet cleaning on the stairs for $35, and materials for touch up painting for $225.

In support of their application, the landlord submitted that everything in the rental unit was new, and that the tenant caused damage to such an extent that the carpets in the bedrooms required replacing as they were beyond repair. In further description, the landlord submitted that the tenant's cat left scratches and the carpet was stained and frayed beyond repair. The landlord submitted further that the landlord had to remove and replace drywall due to tenant damage and mould.

The landlord confirmed that although there was a move-in condition inspection and a report, there was no chance to conduct a move-out inspection with the tenant.

The landlord's relevant documentary and photographic evidence included, but was not limited to, photos of the rental unit taken after the tenant vacated, a written tenancy agreement, the move-in condition inspection report, and receipts.

Tenant's response-

The tenant submitted that he and his partner gave notice on March 2, 2014, that they were vacating the rental unit by April 15, 2014. When vacating, the tenant noticed a large strip of mould behind a dresser in the bedroom and they notified the landlord, according to the tenant.

The tenant submitted further after removing their personal property, he returned to have a walk-through in the rental unit and discovered that there had been large holes cut in the drywall, exposing a large amount of black mould and wood rot on the inside of the interior wall. The tenant submitted further that there was extensive renovation work being done in the rental unit and that none of the carpets were protected with a covering for the workers.

The tenant submitted further that he had asked, but was denied a chance to have a walk-through the rental unit before any work commenced and was not notified of the cat damage. The tenant also submitted that when he returned to the rental unit, the old carpet was still in place.

The tenant agreed that their cat did pull up some of the carpet, but not to the extent that the carpet needed to be replaced.

The tenant's relevant evidence included photographs of the rental unit while renovations were taking place.

Tenant's application-

The tenant submitted that he provided the landlord their written forwarding address on April 15, 2014, on the last official day of the tenancy.

In response to my question, the landlord stated she received the tenant's written forwarding address sometime in March 2014, or at least before the tenant vacated the rental unit by April 15, 2014.

Analysis

Landlord's application-

Carpet replacement and cleaning-

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result of their actions or neglect, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 35 and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting a final inspection and completing the condition inspections report, and in this case, there was not a final inspection report under which I may determine that the tenant caused damage during the tenancy which was beyond reasonable wear and tear. In this case, I find the landlord failed their obligation to conduct such an inspection.

I find the tenant's argument reasonable that workers in the rental unit performing what appears in the photographs to be major renovations on unprotected carpet could be as likely as not the source of carpet staining.

As the tenant was not offered the opportunity by the landlord to inspect the rental unit at the end of this tenancy, I therefore am unable to determine that the tenant was

responsible for damage to the carpet which required replacing. I also considered that the landlord did not provide proof from a professional that the carpet was damaged to such an extent it required replacement. I, however, accept that the tenant's cat did cause some damage to the carpet, as confirmed by the tenant, and although there is no such proof of what this particular damage may cost, I find a reasonable amount of compensation for such cat damage to be $350. I therefore grant the landlord a monetary award in this amount.

Touch up painting-

As to the wall damage, I find the landlord submitted insufficient and inconclusive evidence to support that the tenant caused the mould in the rental unit and I therefore dismiss their claim for $225.

Tenants' application-

Under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit and pet damage deposit or to file an application for dispute resolution to retain the security deposit or pet damage deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

In the case before me, I find the tenant submitted sufficient evidence, along with the landlord's confirmation, to show that the landlord received the tenant's written forwarding address on or before April 15, 2014, that the tenancy ended on or before April 15, 2014, 2014, and therefore the landlord had until April 30, 2014 to file an application for dispute resolution claiming against the tenant's security deposit and pet damage deposit or to return the deposits in full; however, the landlord did not file their application for dispute resolution claiming against the deposits until May 1, 2014.

Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit and pet damage deposit. I therefore find the tenant is entitled to a monetary award in this regard in the amount of $3400.

I also grant the tenant a monetary award of $25 for the return of his mailbox key deposit.
Due to the above, I find the tenant is entitled to a monetary award of $3425, comprised of his security deposit of $850, doubled to $1700, his pet damage deposit of $850, doubled to $1700, and the mailbox key deposit of $25.

Both applications-

As both parties have been granted a monetary award, I decline to award either party recovery of their filing fee paid for their applications.

Conclusion

The landlord has been granted a monetary award of $350.

The tenant has been granted a monetary award of $3425.

I set off the landlord's monetary award from the tenant's monetary award and grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the difference, in the amount of $3075, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after the order has been served upon them, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement may be recoverable from the landlord.

As I have granted the landlord a monetary award and granted the tenant a differing monetary award other than in the original Decision of September 4, 2014, I order that the Decision and Order of the Residential Tenancy Branch dated September 4, 2014 and November 20, 2014, should be and they are hereby set aside and are longer of force or effect.

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: January 12, 2015

Residential Tenancy Branch