Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jacob Bros Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application made January 27, 2015 by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

At the onset of the hearing the Tenant was asked about the evidence package containing an apparent application from the Tenant but that holds Landlord's file number. The Tenant confirmed that an application had been made to claim return of the security deposit and a hearing on that matter is scheduled for October 29, 2015.

The Landlord confirmed that the application indicates a total amount of $2,000.00 being claimed, that the monetary worksheet contains no monetary amounts and that the application indicates that claims are being made for rental income of $2,000.00 and an unidentified amount for damages to a driveway. The Landlord states that the amount was not provided for the claim for damages to the driveway as the Landlord was waiting for the Tenants to inform the Landlord of the costs to repair. The Landlord states that the Tenant is in the business of paving.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that a claim is limited to what is stated in the application. As the application sets the total amount being claimed at $2,000.00, and as no amendment has been made to increase this amount, I find that the Landlord's monetary claim is limited to $2,000.00.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on July 1, 2014 on a fixed term to end December 31, 2014. The tenancy ended on September 30, 2014. Rent of $2,000.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected $1,000.00 as a security deposit. The Parties mutually conducted both a move-in and move-out inspection and reports were completed with copies provided to the Tenant. The Landlord has always had the Tenant's forwarding address.

The Landlord states that the Tenant broke a fixed term lease and claims $2,000.00 as a penalty. The Landlord states that the unit was rented for October 1, 2014 to a family friend and that a deal was given to this friend to rent the unit for $1,800.00. The Landlord provided a copy of the written tenancy agreement and it is noted that there is no addendum setting out any penalty clause and the tenancy agreement does not contain a liquidated damages clause.

The Landlord states that the Tenant damaged the driveway by parking a heavy truck in an area of the driveway that was not allocated to the Tenant. The Landlord states that the truck is a semi and weighs approximately 12,000 kg. The Landlord states that the driveway is likely as old as the unit which was built in 1994. The Landlord states that the damage was not there at the start of the tenancy and although the move-out condition report does not set out the damages to the driveway, the Landlord had earlier sent an email to the Tenant informing the Tenant of the damage. The Landlord states that no estimate was obtained for the cost of repairing the driveway and claims $5,000.00.

The Tenant states that the driveway was damaged at move-in. The Tenant states that the truck parked in the area was not a semi, is a single axle truck and weighs only approximately 5,000

kg. The Tenant states that the damaged area had mud and grass growing in the cracks and that it was likely in this shape for 5-6 years. The Tenant states that they are in the business of building roads and driveways although they contract others to lay the actual pavement. The Tenant states that the driveway has a poor base under the asphalt and is very old. The Tenant states that the paving stones alongside the driveway are also cracked and worn. The Tenant states that the damage to the driveway occurred prior to the tenancy and as a result of wear and tear over the years.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. As there is no provision in the tenancy agreement for any damages or penalty payable if the Tenant ends the tenancy prior to the fixed term end date, and I note that a written penalty clause would likely be found unconscionable, I find that the Landlord has not substantiated that the Tenant is required to pay any amount to the Landlord. As the Landlord has no evidence that any rental loss was experienced as a result of the Tenant's actions in ending the tenancy, I also find that the Landlord has not established any loss. For these reasons I dismiss the Landlord's claim for $2,000.00

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Whether the Tenant was authorized to park on, what I take to be the main driveway of the unit, I note that the move in condition report only indicates the presence of three parking spaces and not its condition. Given the Tenant's photos of the condition of those parking spaces I find that these areas were very old and of very poor quality. As a result I find it likely that little attention has similarly been paid to the state of the main driveway. Given the photos of the main driveway and considering the Tenant's credible evidence of the age and condition of the main driveway, I prefer the Tenant's evidence that the damages being claimed by the Landlord are pre-existing damages. I find therefore that the Landlord has not substantiated on a balance of probabilities that the Tenant caused damages to the driveway and I dismiss this claim. As the Landlord's claims have had no merit, I find that the Landlord is not entitled to recovery of the filing fee and in essence the application is dismissed.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

As the tenancy ended on September 30, 2014 and as the Landlord did not make its application until January 27, 2015, I find that the Landlord owes the Tenant $2,000.00 for the return of the security deposit. As the Landlord's application to claim against this security deposit has been dismissed, I order the Landlord to return **$2,000.00** to the Tenant forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$2,000.00**. If necessary, this order may be filed in the 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: August 07, 2015

Residential Tenancy Branch