Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the unit pursuant to section 67; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1421 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent confirmed she had full authority to act on behalf of the landlord.

Preliminary Issue – Evidence After Hearing Commencement

The agent testified on 16 Jun 2015, an employee of the landlord emailed the Ministry of Social Development and Social Innovation (MSDSI) to confirm the tenant's address. The landlord and the MSDSI have an information sharing agreement for the purposes of managing subsidized tenancies. The MSDSI confirmed the tenant's address on 17 June 2015. The agent asked to send in a copy of this email to substantiate the tenant's address for service.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing. In making this order, I must consider the relative prejudice to the parties.

In making this decision I considered the process of *ex parte* application for substituted service that is available to the landlord. As this information would be available on an *ex parte* application for substituted service, there is limited undue prejudice to the tenant in my consideration of this evidence in this hearing. Furthermore, the issue is a procedural issue and not substantive. If the tenant is able to establish that she was not adequately served by using the address provided, the procedure for review is available as a remedy. Accordingly, I order that the landlord submit the tenancy agreement by fax.

I received the email before the conclusion of the hearing.

Preliminary Issue – Service

The agent testified that the landlord served the tenant with the dispute resolution package on 17 April 2015 by registered mail. The landlord provided me with Canada Post tracking information that showed the same. The tracking information shows that the mailing was returned to sender as the mailing went unclaimed.

The agent testified that the mailing address used was the tenant's post office box that she used for the duration of the tenancy. The agent testified that if the tenant remained in the municipality, she would retain the same mailing address as there is no home delivery in that municipality. Further, the landlord provided an email from the MSDSI that indicates that confirmed this address. The agent testified that the MSDSI would have the tenant's most recent address as the address is required to send the tenant her social assistance cheques. The agent submitted that I should infer from the fact that the mailing went "unclaimed" rather than "refused" or "moved", that the post office box is still in the tenant's control. The agent testified that the tenant has several yet unsatisfied monetary orders against her and submits that the tenant has attempted to avoid service.

Service of the dispute resolution package in an application such as the landlord's must be carried out in accordance with section 89 of the Act:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;…

(c) by sending a copy by registered mail to the address at which the person resides…;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;…

The landlord has not complied with the subsection 89(1) by sending the dispute resolution package to the tenant's post office box as that the tenant cannot reside at a post office box and the tenant did not provide the address as a forwarding address. However, paragraph 71(2)(c) allows me to order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

On the evidence before me, I find that it is more likely than not that the tenant's current mailing address is the post office box to which the landlord sent the mailing. On this basis, I order that the dispute resolution package was sufficiently served for the purpose of this Act. Pursuant to paragraph 90(a), the mailing was deemed served on 22 April 2015.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began on or about 1 July 2007. The tenancy ended 10 June 2014. Monthly rent was geared to income. The landlord does not hold a security deposit in respect of this tenancy.

I was provided with a condition move-in inspection report and a condition move-out inspection report. The condition move-in inspection occurred on 9 July 2007. The report notes that the carpet and linoleum were dirty. The condition move-in inspection report also notes that the door in the entry was not on its hinges. The condition move-out inspection report notes that:

- cleaning was required in all rooms;
- there was debris in the rental unit;
- there were large holes in the walls;
- the first bedroom window was broken; and
- the window screens in the first and second bedrooms were torn.

The agent testified that the rental unit was left very dirty. The landlord provided photographs of the rental unit at the end of the tenancy. There is considerable debris

remaining in the unit. The freezer is full of items. The floors are visibly unclean. The contracted site representative provided an invoice for their cleaning costs. The invoice was dated 5 January 2015 and was in the amount of $635.25. The site representative charges an hourly rate of $55.00.

The agent testified that two screens were torn. The agent testified that the screens were not new at the beginning of the tenancy, but that they were intact. The agent testified that the landlord has not claimed the full amount of the cost of replacement to account for depreciation for wear and tear. The landlord provided me with an invoice for the screen repair dated 30 December 2014 in the amount of $58.24.

The agent testified that the glass in a window was broken. The agent testified that the window was not broken at the beginning of the tenancy. The agent testified that she did not know the age of the windows, but that the building became part of the landlord's housing stock in 1997 or 1998. The landlord provided me with an invoice for the window repair dated 23 December 2014 in the amount of $312.09.

The landlord claims for damage to the walls. In particular, the agent testified that there were large holes that appeared to be kick or punch marks in the wall. These sections had to be cut out and repaired with new drywall. The agent testified that over $17,000.00 of restoration work was required on the rental unit. The agent testified that of that amount the landlord determined that $2,520.00 was in excess of normal wear and tear. The landlord provided me with an invoice for the repairs to the rental unit dated 25 November 2014 in the amount of $17,772.80. The invoice particularizes a charge of $9,450.00 for "drywall, texture, paint, walls, ceilings" and a charge of $1,260.00 for "install new doors 3 passage, 2 bifold". The landlord has apportioned $1,575.00 of the drywall repairs to the tenant and $945.00 of the door repairs to the tenant.

I was provided with photographs of the wall damage. The photographs show that the wall edges are badly scraped, many large holes in the wall as well as an excessive number of holes in the wall from affixing items to the walls.

The landlord claims for $3,496.46:

Item	**Amount**
Cleaning (11h x $55/h)	$635.25
Window Replacement	312.09
Window Screens Replacement	29.12
Door and Drywall Repair	2,520.00
Total Monetary Order Sought	**$3,496.46**

Analysis

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline, 1. Landlord & Tenant – Responsibility for Residential Premises" (Guideline 1) sets out the tenant's responsibilities:

> The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act…*
>
> [footnote removed]

Guideline 1 sets out the responsibility for garbage removal from a rental unit:

> Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

On the basis of the agent's sworn and uncontested testimony that is corroborated by photographic evidence, I find that the tenant has failed to clean the rental unit in a manner that satisfied her obligations pursuant to 37 of the Act and Guideline 1. On the basis of the agent's sworn and uncontested testimony that is corroborated by photographic evidence, I find that the tenant has failed to remove all her belongings from the rental unit in a manner that satisfied her obligations pursuant to 37 of the Act and Guideline 1. I find that by breaching section 37 of the Act, the tenant caused the landlord to incur costs in the amount of $635.25. I accept that these costs represent the landlord's reasonably incurred expense to bring the rental unit into compliance with section 37 of the Act.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

The landlord provided photographs of the extensive damage done to the rental unit. There were an excessive number of holes in the walls from where the tenant attached items. There are large holes in the walls. The plaster on the corners of the walls is completely removed in some areas. The doors have holes in them. This damage to the walls and doors is far beyond damage that could possibly be attributable to wear and tear. I find that this wall and door damage was caused by the tenant or persons she permitted to be in the rental unit. On the basis of the agent's testimony corroborated by photographic evidence, I find that the tenant breached subsection 32(3) and section 37 of the Act by leaving the walls and doors in the rental unit in a damaged condition that was beyond normal wear and tear.

By leaving the walls in a noncompliant condition, the tenant caused the landlord to incur expenses to fix the walls. The landlord provided a receipt for the extensive repairs to the walls. The drywall repairs were $9,450.00. Of this $9,450.00, the landlord has apportioned $1,575.00 to the tenant as an amount of damage in excess of wear and tear. I find that the landlord is entitled to the full amount of $1,575.00 as its reasonable costs of repairing the damage to the walls in excess of normal wear and tear.

By leaving the doors in a noncompliant condition, the tenant caused the landlord to incur expenses to fix the doors. The landlord provided a receipt for the repairs to the doors. The door replacement was $1,260.00. Of this $1,260.00, the landlord has apportioned $945.00 to the tenant as an amount of damage in excess of wear and tear. *Residential Tenancy Policy Guideline* "40. Useful Life of Building Elements" (Guideline 40) provides me with guidance in determining damage to capital property. The useful

life of a door is twenty years. The landlord provided evidence that the interior doors were in new condition at the beginning of the tenancy, which lasted seven years old. The purpose of damage is to return the claimant to its original position. As the value of the interior doors had depreciated by 35%, the tenant is responsible for 65% of the cost of repair, that is, $819.00.

The landlord provided me with a photograph of the damage to the window. The window is cracked. Although a window cracking could be part of normal wear and tear, based on the damage caused to rest of the rental unit, I find that it is more likely than not that the tenant caused this damage to the window and that it was not regular wear and tear. By causing this damage to the window, the tenant breached subsection 32(3) and section 37 of the Act.

By leaving the window in a noncompliant condition, the tenant caused the landlord to incur expenses to fix the window. The landlord provided a receipt for the repair to the window. The window repair was $312.09. Guideline 40 sets out that the useful life of a window is fifteen years. The landlord provided evidence that the window was in new condition at the beginning of the tenancy, which lasted seven years old. The purpose of damage is to return the claimant to its original position. As the value of the window had depreciated by 46.67%, the tenant is responsible for 53.33% of the cost of repair, that is, $166.45.

The landlord provided me with a photograph of the screen that purportedly required replacement. There is no visible damage in the photograph. The agent testified that the window screens were torn. Guideline 40 does not establish a specific lifespan for window screens; however, by their nature, window screens are not durable. On this basis, I assign window screens a lifespan at the lower end of the scale of Guideline 40 and select a lifespan of five years. As the tenancy lasted over five years, the value of the window screens had fully depreciated and therefore had a capital value of $0.00. I find that the landlord is not entitled to recover the cost of the window screen repairs from the tenant as the screens had exceeded their useful life.

As the landlord has been successful in this application, I find that it is entitled to recover its filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of $3,245.70 under the following terms:

Item	**Amount**
Cleaning (11h x $55/h)	$635.25
Drywall Repair	1,575.00
Door Repair	819.00
Windows	166.45
Filing Fee	50.00
Total Monetary Order	**$3,245.70**

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: October 14, 2015

Residential Tenancy Branch