Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gooch Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MND, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing. At the hearing, the landlord withdrew his claim for an order of possession as the tenancy has ended. The hearing proceeded to address solely the claim for a monetary order.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in 2011 when the tenant moved into the rental unit (one of several in a multi-unit building) at a time when it was owned by another party and managed by a property management company. There had been a series of roommates who first began living in the unit in approximately 2007 and the various roommates would come and go with the tenant arriving in 2011 and sharing the unit with another occupant. The current landlord purchased the building in 2013. At the time the tenancy ended, the rent was $1,732.00 per month.

The parties agreed that the tenant owes $1,732.00 in rent for the month of August 2015 as well as a $25.00 stop payment fee.

The landlord seeks to recover $130.00 as the cost of cleaning the carpet at the end of the tenancy. The landlord testified that the carpet was very soiled and provided an invoice showing that he paid this amount to a carpet cleaning company. The invoice provided a notation stating, “Carpet very dirty”. The tenant testified that at the time he moved into the unit, the carpet wasn’t clean and stated that he cleaned the carpet periodically throughout the tenancy and steam cleaned it more than once, although he could not recall the last date on which it was steam cleaned.

The landlord seeks to recover $60.00 as the cost of cleaning the rental unit at the end of the tenancy. The landlord testified that the unit was very unclean in mid-August when the tenant vacated the unit and stated that he contacted the tenant to request that he arrange to have the unit cleaned. The tenant retained a cleaning service to clean the unit and testified that when the service had completed its work, the resident manager advised that the cleaning was adequate and also offered to take away items which had been left on the balcony. The landlord acknowledged that additional cleaning was performed on August 25 but testified that there were still areas which required further cleaning, including windows and the area behind the oven. The landlord provided a photograph showing some debris on the floor in the area behind the oven and testified that the manager spent 4-5 hours cleaning the suite after the tenant's cleaning was completed.

The landlord seeks to recover $25.00 as the cost of filing a successful application for substituted service. The landlord filed his application for dispute resolution on August 13, 2015 and on August 24 filed an application for substituted service, in which he wrote that he wished to serve the tenant via email as the tenant had left no forwarding address. He testified that he had attended at the tenant's office but the tenant was not at the office at the time he was there and the tenant's manager was unsure of when he would return. The landlord stated that it was possible for the tenant to access the office without going through the front entrance and the landlord was not confident that he would be able to communicate with the tenant to serve him personally. The arbitrator who heard the landlord's substituted service application granted the request and permitted the landlord to serve documents via email. The tenant agreed that he was not always at his office, but argued that the landlord had never requested his address despite having his email address and telephone number through which he could be contacted. The tenant stated that the substituted service application was unnecessary as the landlord had not exhausted the means of service permitted under the Act.

The landlord seeks to recover the cost of registered mail to send the application for dispute resolution, notice of hearing and evidence to the tenant as well as the $50.00 filing fee paid to bring his application.

The parties also were in dispute over whether there was a security deposit which should be applied to any amount owing by the tenant. The tenant testified that he paid a security deposit to a former roommate at the time he moved into the unit but was unable to provide proof of that payment other than an email from that roommate in which the roommate stated to the tenant that "The damage deposit means that you pay me $375.00". The tenant was unable to provide proof either that he paid the roommate or that the roommate had paid any monies to the then owner. The tenant also provided

copies of emails from the then property manager in which the manager stated in 2011 “I trust that you guys are dealing with the security deposit amongst yourselves” and in another email of 2012 stated “The security deposits are held by the Owners directly and at no time did [the property management company] hold any security deposit. We assume that at the time the original tenancy was created with [the original owner] that the owners … collected a security deposit from the tenants renting [the subject unit]. We were not aware of any units where security deposits were not being held by the Landlord.” The tenant argued that this proves that the landlord has a security deposit.

The landlord testified that when he purchased the property, the statement of adjustments showed a list of the security deposits received from the various units in the building and there was no security deposit listed for the subject unit. The tenant argued that the fact that the place on the statement for the security deposit to be listed was left blank did not state that $0 was received, but was ambiguous. Further, the tenant argued that the statement of adjustments was incorrect with respect to the security deposits because the occupant of another unit had been able to prove that his security deposit was actually higher than what was listed on the statement by providing a copy of his cancelled cheque. The landlord acknowledged that the statement was in error with respect to the other unit but stated that the owner had acknowledged the error and paid the occupant the difference in the deposit.

Analysis

As the parties agreed that the tenant owes $1,732.00 in rental arrears and $25.00 as a stop payment fee, I award the landlord $1,757.00.

Section 37(2) of the Act provides that tenants are obligated to leave the rental unit in reasonably clean and undamaged condition, except for reasonable wear and tear.

The landlord claimed that the carpet was left soiled and provided an invoice in which the service technician had noted that the carpet was “very dirty.” The tenant claimed that he had steam cleaned the carpet during the tenancy, but could not recall the last time he did so. Residential Tenancy Policy Guideline #1 provides as follows: “Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.” This obligation remains regardless of the condition of the unit at the time the tenancy began. As the tenant has been unable to prove that the carpet was steam cleaned at the end of the tenancy and as the landlord evidence shows that the carpet required cleaning, I find that the landlord should recover the cost of carpet cleaning and I award him $130.00.

With respect to the claim for cleaning, the landlord alleged that the tenant left the unit in a condition that was not reasonably clean but provided just one photograph in support of his claim and that photograph appears to show a floor that could be swept clean with a few strokes of a broom. The landlord did not provide photographs of the windows nor did he provide a statement from the manager who performed the work in which the manager indicated that further cleaning was required after the tenant performed the cleaning on August 25. I find that the landlord has failed to prove that the tenant failed to leave the unit in reasonably clean condition and I dismiss the claim for cleaning.

In order to obtain the application for substituted service, the landlord had to prove on the balance of probabilities that he was unable to serve the application for dispute resolution and notice of hearing through any of the means permitted by the Act. The arbitrator was persuaded that the landlord required this order and it is not my place to disagree with her decision. I therefore find that the landlord is entitled to recover the $25.00 filing fee for that application and I award him that sum.

I dismiss the landlord's claim for the cost of sending documents to the tenant through registered mail. Under the Act, the only litigation-related expense I empowered to award is the cost of the filing fee paid to bring an application. As the landlord has enjoyed substantial success in his application, I find he should recover the $50.00 filing fee and I award him that sum.

The landlord has been awarded a total of $1,937.00 which represents $1,757.00 for rental arrears and the stop payment fee, $130.00 for carpet cleaning and his $50.00 filing fee. I grant the landlord a monetary order under section 67 for $1,937.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

In order for me to set off a security deposit against the amount awarded, I would have to be persuaded that a security deposit existed. The tenant has asked me to infer from a blank space in the statement of adjustments that a security deposit of an unspecified amount was paid to the landlord in 2007, a date when he had no interest in the subject rental unit. In order for me to make a finding of fact, I cannot infer an unspecified amount from a document which left a blank in an accounting column; rather, I can only make a finding based upon evidence of actual payment. It may be that the tenant paid a security deposit to his former co-tenant, but it is not within my jurisdiction to adjudicate disputes between tenants. There is absolutely no evidence before me whatsoever that the owner in 2007 received a security deposit from the tenants who occupied the unit prior to this tenant. The then manager stated that his company had no dealings with security deposits and rather than saying that he actively was aware that a security deposit was paid by the tenants who took possession in 2007, he simply stated that he

was unaware of any units which had not paid security deposits. This is not surprising given that he had no involvement with those deposits. There is persuasive evidence that the current owner has never received a security deposit which was transferred in trust from the previous owner for the benefit of this tenant. I find that no security deposit was received by this landlord for this rental unit and therefore decline to offset a deposit.

Conclusion

The landlord is awarded $1,937.00.

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: October 23, 2015

Residential Tenancy Branch