Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, 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 rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that on July 23, 2015, she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail. Both parties also confirmed that they had received one another's written evidence packages. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with the above documents.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested? 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, including photographs, miscellaneous documents, e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

On March 24, 2009, the parties signed a periodic tenancy, which took effect on April 1, 2009. According to the terms of the Residential Tenancy Agreement entered into

written evidence by the landlord, monthly rent was set at $860.00, payable on the first of each month. The landlord continues to hold the tenant's $430.00 security deposit.

The landlord's application for a monetary award of $500.00 for damage arising out of this tenancy included the following items identified in an emailed estimate from a contractor entered into written evidence by the landlord:

Item	**Amount**
Repairs to 2 Drywall Holes	$285.00
Painting of Wall to Repair Drywall Holes	130.00
Replacement of Damaged Bi-Fold Door	85.00
Total Monetary Order Requested	**$500.00**

The tenant entered into written evidence a letter outlining her concerns about the landlord's claim, noting that the landlord had been chiefly unsuccessful in two previous dispute resolution hearings. The tenant provided a copy of one of the decisions, a March 4, 2015 decision issued by Arbitrator NM (the previous Arbitrator). She maintained, as she had at the hearing presided over by the previous Arbitrator, that the damage to the drywall in one of the bedrooms had occurred prior to the commencement of her tenancy. In this regard, she noted that the previous Arbitrator's decision reviewed the circumstances surround two conflicting versions of the March 24, 2009 joint move-in condition inspection report. At the hearing, the tenant also noted the following wording of the previous Arbitrator regarding the joint move-in condition inspection report:

> *…I accept the evidence of the Tenant that no such inspection occurred when her tenancy began and as such the Condition Inspection Report was not completed in accordance with the Act and Regulations and is therefore not evidence of the state of repair and condition of the rental unit at the start of her tenancy. Further, I find that the emails submitted by the Tenant, particularly those dated in 2010, to be such a "preponderance of evidence" and to support her contention that the carpets were not cleaned when her tenancy began…*

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual

monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, the legal principle of *res judicata* applies to the following finding reached by the previous Arbitrator:

> *…(The landlord's representative) stated that to her knowledge the holes did not exist prior to the tenancy beginning and that as a consequence she believed the Tenant caused the damage.*
>
> *Notably, the email sent November 19, 2014 is the only email in evidence which mentions the holes in the master bedroom. While I find that the Tenant repeatedly raised the issues of mould, the carpet, missing trim and transition pieces, as well as the toilet, I am unable to find, on a balance of probabilities that the holes existed prior to the beginning of the tenancy…*

Consequently, the previous Arbitrator declined the tenant's request for an order requiring the landlord to repair the holes in the bedroom walls, the same walls identified in the landlord's current application.

The legal doctrine of *res judicata* prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defence to defeat the enforcement of an earlier judgment. It also precludes relitigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy.

In considering the landlord's application for a monetary award to repair the holes in the drywall, the following three separate issues must be considered:

1. Did the holes occur during the course of this tenancy or before the tenancy began?
2. If the holes occurred during this tenancy, is the tenant responsible for them?
3. If the landlord is entitled to a monetary award for the repair of the holes, how much is that entitlement?

As noted during the hearing, the previous Arbitrator has already made a final and binding determination on the merits of the issue in which she was unable to find that the same holes identified in the landlord's current application existed prior to the beginning of this tenancy. The first question outlined above has already been the subject of a final

and binding decision by the previous Arbitrator and, as such, I am unable to re-adjudicate this portion of the matter before me.

At the hearing, the tenant did not dispute that there were holes in the drywall, nor did she provide any evidence or sworn testimony that would suggest that someone else entered her rental unit and created these holes during the course of her tenancy. I find that the tenant is responsible for the damage to the drywall that requires repair.

Turning to the final of the three questions outlined above, the tenant did question whether the person who submitted the emailed estimate is a qualified contractor and whether the work actually cost the estimated amount. The landlord's representative (the landlord) testified that the repair work to the drywall and the replacement of the bi-fold door has occurred. She said that she understood that the contractor charged the landlord the estimated amount for this work, also noting that there was other work to clean the rental unit that the landlord had chosen not to charge back to the tenant at the end of this tenancy.

The tenant also questioned the thoroughness of the joint move-in condition inspection report, remarking that not all portions of that report produced by the landlord at the beginning of this tenancy were completed. In this regard, I note that the system used by the landlord in the inspection report identified "check marks" for "clean items" and that there was a separate notation in the report for "damaged" or "missing" items. In both versions of the joint move-in condition inspection reports entered by the parties, there were no notations for damaged doors or damaged walls. The tenant signed both of these joint move-in condition inspection reports.

Having considered the sworn testimony, written evidence and photographs, I find on a balance of probabilities that the landlord has provided sufficient evidence to demonstrate that the estimate of the cost of repairing two large holes in the drywall represents is a reasonable estimate of repairing this damage. Although an actual receipt would have been helpful, I am satisfied that the landlord did incur costs of $285.00 to repair the holes in the wall and $130.00 to prime and paint the wall. I allow the landlord's application to recover these expenses.

The landlord's claim for the repair of the bi-fold door is not affected by the previous Arbitrator's decision. There was no dispute as to whether the door was damaged and required replacement. The issue once again is whether this damage arose during the course of this tenancy or whether it happened, as the tenant maintained, before her tenancy began. In this regard, I rely heavily on both versions of the joint move-in condition inspection report entered into written evidence by the parties. Neither of these

reports signed by both the tenant and the landlord indicated any damage to the bi-fold door when this tenancy began. Under these circumstances, and based on a balance of probabilities, I find it more likely than not that the damage to the bi-fold door occurred during the course of this tenancy and that the tenant is responsible for this damage. I find that the landlord's estimate of $85.00 is a most reasonable estimate for the time and effort it no doubt took to locate a replacement door, purchase that door and install it. For these reasons, I allow the landlord's claim of $85.00 for the replacement of the bi-fold door.

I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the $50.00 filing fee.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord a monetary award for damage and to recover the filing fee, and to retain the tenant's security deposit:

Item	**Amount**
Repairs to 2 Drywall Holes	$285.00
Painting of Wall to Repair Drywall Holes	130.00
Replacement of Damaged Bi-Fold Door	85.00
Less Security Deposit	-430.00
Filing Fee	50.00
Total Monetary Order	**$120.00**

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 01, 2015

Residential Tenancy Branch