Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VRIEZEN ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties attended the hearing and the tenant confirmed he had received the Application/Notice of Hearing by registered mail. I find the tenant was legally served with the documents. The hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid rent and damages;
b) To retain the security deposit to offset the amount owing; and
c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in April 2004, that monthly rent was $1047 and a security deposit of $500 was paid March 30, 2004 as per the lease agreement.
The landlords said that the tenant did not give one month's notice to end their tenancy. Enclosed as evidence is Notice from the tenant dated July 25, 2015 to say they were moving out. The landlord responded with a letter advising them of the notice requirements of the Act and attached copies of them and the Strata move-out procedures. There is some disagreement as to when the tenant actually vacated the premises but it is undisputed that he did not return keys (and possession) to the landlord until August 15, 2015 when he and the landlord completed the condition inspection report. The landlord had no keys as the tenant had changed the locks over the years and did not provide duplicate keys to the landlord. The landlord claims $1047 rent for August 2015 and $7.50 for a returned cheque charge. The tenant had provided 3 post dated cheques on June 30, 2015 but stopped payment on the August cheque.
The tenant contended the landlord knew he was going to move. In a previous hearing in March, 2015, the Notice to End Tenancy for renovations was set aside but the tenant said he started looking for a new home. He just needed more time so he disputed the Notice. He also said his tenancy was arranged by a mutual friend and this friend called and urged him to move as soon as possible due to health concerns of the landlord. He said he also told the landlord that he

would be called for references by a new landlord and the landlord forwarded to him a Notice to End Tenancy which he enclosed as evidence Document #7.

The landlord said they knew nothing of the reported conversation and the mutual friend could not alter the legal requirements to give a one month notice to vacate. They said requests for references also do not alter the requirements and the landlord did not send him a Notice to End Tenancy. Document 7 is only a copy of the legal requirements for the Notice under the Act.

The tenant lived in the unit for 11 years and said most of the damage claimed was just reasonable wear and tear. The landlord claims as follows:

1. $1047: rent for August 2015
2. $7.50 returned cheque charge
3. $41.49 for photos for evidence
4. $800 for cleaning, removing belongings left behind, carpet cleaning, repairing excessive holes and door damage. The bill was for $2,220.00 for 'reno work' but the landlords said they were only charging $800 of this. They said the carpet was damaged beyond repair; it was 30 years old and they replaced it.
5. $728.18 for replacement of a damaged elevator mat. The tenants spilt clear oil on it and the Strata found they could not get it cleaned properly so it was replaced. It was not disputed that it was new in 2015. The tenant contended they would have been able to get it cleaned. The Strata gave Notice to the landlord to have it cleaned by August 25, 2015 as substances from the stain were being tracked through the hallways. On August 17, 2015, the landlord provided a copy of the Notice and a letter sent to the tenants asking what substance had been spilled and confirmation of what was used to clean it up. There was no reply from the tenants so the Strata handled the matter and billed the owners. An invoice and photograph is in evidence. The tenant said they offered to the Strata to have it cleaned professionally but their offer was declined. There is no evidence of a written offer to the Strata or of their refusal.

The tenant provided a list of complaints regarding repairs that had not been made over the years. The landlord is not claiming compensation for any of those repairs. In reply, the landlord said they had attempted after the March 27, 2015 letter from the tenant to go into the unit to fix a fan but the tenant used every bit of available space in the unit for storage and they could not get enough space to fix items.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

I find that there are rental arrears in the amount of $1047.00 for August 2015. Sections 44 and 45 of the Act set out the requirements for Notices to End Tenancy. As this was a month to month tenancy, the tenant was required to give a full month's notice. I find the Notice he gave on July 25, 2015 would not be effective until August 31, 2015. I find he is responsible for rent for the month of August. Although the tenant contended that he just wanted more time when a

landlord's Notice to End Tenancy was set aside in May 2015, I find he cannot rely on this Notice. When the Notice was set aside and cancelled, it was of no effect. Although the tenant also contended the landlord knew he was leaving, I find conversations with the landlord or other parties do not change the legal requirement for the tenant to give one month's Notice. Furthermore, I find the fact he gave 3 post dated rent cheques to the landlord on June 30, 2015 was an indicator to the landlord that he was continuing his tenancy. In any event, I find the tenant did not return possession of the unit until August 15, 2015 when he returned the keys. I find the landlord entitled to $1047 rent arrears and $7.50 for the returned August rent cheque.

As discussed with the parties in the hearing, I have authority pursuant to section 72 of the Act to award compensation for filing fees but not for the production of evidence for the process. Therefore I decline to award $41.49 for the production of the photographs in evidence.

Awards for compensation for damages are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused damage as it is supported by the move out report and photographs.

Section 37 of the Act provides that when a tenant leaves a rental unit, the tenant must leave the unit reasonably clean and undamaged. I find the weight of the evidence is that this unit was not cleaned at move-out. The condition inspection report and photographs support the landlord's testimony. The landlord had a cleaning estimate (not including carpet) of $360 from a firm to do a two bedroom unit including oven and windows. In addition, I find the tenant had left many items that had to be removed and their parking stall was stained with oil and grease. The landlord also notes excessive holes and door damage had to be repaired. I find the charge of $800 from the renovation firm for cleaning and repairing these items is not unreasonable. The landlord is not seeking compensation for the 30 year old carpet and I find they would not be entitled to any as it was beyond its useful life according to the Residential Policy Guideline. I find the landlord entitled to recover $800 based on the above evidence.

In respect to the elevator mat, it is undisputed that the tenant damaged it by spilling oil on it. While the tenant said he could have had it professionally cleaned and made this offer to the Strata, I find he provided no documentary evidence of such an offer or their comments. I find

the landlord informed the tenants that they had until August 25, 2015 to deal with this but the landlord received no reply. The evidence is that this was a new elevator mat in 2015 and the Strata found the oil stains could not be removed so they replaced the mat and charged the landlord $728.18 which was their invoiced cost. I find the landlord entitled to recover this cost from the tenant who caused it.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit with interest to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Rent arrears August 2015	800.00
Returned cheque charge	7.50
Cleaning, removal of discarded items and repair	800.00
Replacement of damaged elevator mat	728.18
Filing fee	50.00
Less security deposit with interest	- $517.70
Total Monetary Order to Landlord	**$1867.98**

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 07, 2016

Residential Tenancy Branch