Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding I.B.J. Holdings 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 by the Landlord on October 7, 2015 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

The Parties attended a previous hearing and a Decision dated September 8, 2015 (the "Decision") was issued. In these past proceedings the Landlord had claimed, inter alia, damages to the unit, compensation and retention of the security deposit. The Decision finds that the Parties settled all the disputes that were brought forward with the exception of the Landlord's claim for the security deposit. The Landlord confirmed that several of the claims made in the current application had been made in the previous application.

Section 77 of the Act provides that a decision is final and binding on the Parties. The legal principle of ***Res judicata*** prevents a party from pursuing a claim that has already been decided. Where a disputed matter is identical to or substantially the same as the earlier disputed matter, the application of res judicata operates to preserve the effect of the first decision or determination of the matter. Given that several of the claims contained in the current application have already been settled by mutual agreement, I

dismissed those claims. The proceedings continued on remaining claims that both Parties agreed were not the subject of the previous application.

The Tenant indicated that the Landlord's evidence package received by the RTB on April 11, 2015 was only received by the Tenant about 4 days prior to the hearing. The Landlord confirms that this evidence package was sent to the Tenant in April 2016 but cannot recall the date the package was mailed or what type of mail service was used. The Landlord states that although its application was made in October 2015 and repairs to the unit were done, several of the receipts had still not been received by the Landlord at the time of the application. The Landlord also states that it was pregnant and simply did not get the package out sooner.

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure (the "Rules") provides that, to the extent possible, a Party must submit evidence to be relied on at the hearing at the same time as the application is submitted. Rule 3.1 of the Rules provides that if a party has unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence. The repairs and costs being claimed were completed and incurred shortly after the end of the tenancy and would have reasonably been available to the Landlord then. As the Landlord waited until the last moment to file its evidence and considering that being pregnant would not restrict the Landlord from ensuring that the package is provided as soon as possible, I find that the Landlord unreasonably delayed the service of the evidence to the Tenant and I therefore refuse to consider the evidence package.

Issue(s) to be Decided

Is the Landlord entitled to compensation?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on July 1, 2015 and ended on September 30, 2015. Rent of $2,600.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected $1,300.00 as a security deposit. The Landlord received the Tenant's

forwarding address on September 30, 2015. The Parties mutually conducted both a move-in and move-out inspection with completed condition inspection reports.

The Landlord states that the Tenants were given one set of three different keys to the unit at move-in and the Tenants returned 3 keys at move-out. The Landlord states that they believe the Tenant made additional copies of the keys and did not return those at the end of the tenancy. The Landlord states that the Landlord locked the house after the Tenants' move out however the next day the doors were open and unlocked. The Landlord states that nothing was missing or damaged in the unit and the matter was reported to the police. The Landlord states that the new tenants were nervous about someone having the keys to the unit so the Landlord changed the locks. The Landlord believes that the Tenants had other keys that were used to enter the unit. The Landlord claims the cost of the new locks. The Tenant states that no keys were retained at the end of the tenancy, all the keys were returned and the Tenants did not enter the unit after their move-out.

The Landlord states that the Tenant left oil stains on the floor of the carport and the concrete in the back. The Landlord states that the Tenants told the Landlord during the tenancy that one of the vehicles did leak oil and that they would clean the oil before moving out. The Landlord states that there were previous stains but not as many as now. The Landlord states that the stains left by the Tenants were numerous and both large and small in size. The Landlord provides an invoice for the work done and claims $500.00. The Tenant states that the move-out report notes that the concrete was noted as clean on the move-out report and that the front driveway is only gravel.

The Landlord states that the Tenants rented the entire house that contained two kitchens and sublet the upper part of the house to other persons. The Landlord states that the Tenants asked the Landlord for permission to sublet the upper part but the Landlord refused as this was a single family home and they were in arbitration at the time. The Landlord states that they do not know when the sublet started and that when the Landlord raised the matter the Landlord was told that the persons in the unit were

friends. The Landlord states that they had been in the unit about 7 or 8 times during the tenancy but were not allowed into the upper part of the house. The Landlord states that although a locked door separated the upper and lower part of the house at the onset of the tenancy, the locks were supposed to be removed by the painters who were working on the unit at the time. The Landlord states that the Tenants were the painters. The Landlord states that the day after the Tenants lost the arbitration the city was informed of an illegal suite in the house. The Landlord states that they had to decommission the suite by removing a stove, stove hood, and door. The Landlord claims the costs to decommission the suite. The Tenant states that they did not sublet the upper part of the house and that the Tenants had friend with them for the last couple of weeks of the tenancy but that the friends did not live there. The Tenant states that they did not report anything to the city

The Tenant does not dispute the Landlord's claims of $50.00 for cleaning up dog feces and $50.00 for the removal of grass clippings.

Analysis

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, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. 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 the Tenants returned the keys to the unit and considering that the Landlord has no evidence that the Tenants kept any keys to the unit, I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenant breached any term of the tenancy agreement or Act. I therefore dismiss the claim for new locks. Given the move-out report and considering that the driveway is gravel I find on a balance of probabilities that the Landlord has failed to substantiate that the Tenant left the unit with damages from oil and I dismiss this claim.

Even if the Tenants did report an illegal suite to the city, there is nothing in the tenancy agreement or Act that does not allow such reporting and therefore the Landlord has not provided evidence of a breach. Further, the decommissioning of the suite was caused by the presence of the illegal suite and not by the act of the Tenants. I find therefore that the Landlord has failed to substantiate its claim for the costs of decommissioning and I dismiss this claim.

Given the Tenant's acceptance of liability for the Landlord's claims in relation to the dog feces and grass clippings I find that the Landlord has substantiated an entitlement of **$100.00**. As the Landlord's application met with minimal success I decline to award recovery of the filing fee. Deducting the Landlord's entitlement of **$100.00** from the security deposit of **$1,300.00** plus zero interest leaves **$1,200.00** to be returned to the Tenants.

Conclusion

I Order the Landlord to retain $100.00 from the security deposit plus interest in the amount of $1,300.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for the amount of **$1,200.00**. 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: May 3, 2016

Residential Tenancy Branch