Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GRAMERCY ENTERPRI [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on November 12, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenancy Branch on November 16, 2015 were sent to the Tenant with the initials "N.H.", via registered mail, at the service address noted on the Application. The Landlord submitted Canada Post documentation that corroborates this testimony.

The Agent for the Landlord stated that on November 12, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenancy Branch on November 16, 2015 were sent to the Tenant with the initials "A.M.", via registered mail, at the service address noted on the Application. The Landlord submitted Canada Post documentation that corroborates this testimony.

The Agent for the Landlord and the Agent for the Tenant agree that the Agent for the Landlord provided the service address to the Landlord on November 06, 2015 for the purposes of having the security deposit returned.

The Agent for the Tenant acknowledged receipt of both packages mailed to the service address. He stated that he does not know the whereabouts of the Tenant with the initials "A.M.", so he returned his package to the Landlord. He stated that at these proceeding he is acting on behalf of his son, who is the Tenant with the initials "N.H.".

Section 89(1)(d) of the *Act* authorizes a landlord to serve a tenant with an Application for Dispute Resolution by sending it, by registered mail, to a forwarding address provided by the tenant. As the Agent for the Tenant provided the Landlord with a forwarding address for the purposes of returning the security deposit and the Landlord mailed the Application for Dispute Resolution to that address, via registered mail, I find that the Tenant with the initials "N.H." has been served with the Application in accordance with section 89(1)(d) of the *Act*.

As the Tenant with the initials "A.M." has not provided the Landlord with a forwarding address and there is no evidence that the forwarding address provided by the Agent for the Tenant was provided on behalf of this Tenant, I cannot conclude that he has been served with the Application for Dispute Resolution. As the Agent for the Tenant stated that he does not know the whereabouts of the Tenant with the initials "A.M." and that he has not forwarded the hearing package to him, I cannot conclude that the Tenant with the initials "A.M." has been served with the Application for Dispute Resolution.

As the Landlord has failed to establish that the Tenant with the initials "A.M." has been served with the Application for Dispute Resolution, I dismiss the Landlord's application for a monetary Order naming this party.

As the Landlord has established that the Tenant with the initials "N.H." has been served with the Application for Dispute Resolution in accordance with section 89(1)(d) of the *Act*, I must consider the Landlord's application for a monetary Order naming this party.

The Agent for the Landlord and the Agent for the Tenant were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord and the Agent for the Tenant agree that:

- the tenancy began on August 01, 2015;
- one of the Tenants occupied the rental unit prior to the start of this tenancy on August 01, 2015;
- the Tenants agreed to pay monthly rent of $1,300.00 by the first day of each month;
- the Tenants paid a security deposit of $650.00;
- a condition inspection report was completed by the parties on August 01, 2015;
- the rental unit was vacated on October 31, 2015; and
- the Tenants did not pay rent for November of 2015.

The Agent for the Landlord stated that:

- on October 09, 2015 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause;
- the One Month Notice to End Tenancy for Cause declared that the Tenants must vacate the rental unit by November 30, 2015;
- neither party gave any other notice to end the tenancy; and
- the Landlord was not aware that the Tenants would be vacating the rental unit on October 31, 2015.

The Agent for the Tenant stated that he does not know the details of how the Tenants were served with a Notice to End Tenancy, but he is aware they were given notice that they were required to vacate the rental unit. He stated that he does not know if the Tenants gave written notice of their intent to vacate the rental unit on October 31, 2015.

The Landlord is seeking compensation for unpaid rent for the month of November due to the fact the lack of notice resulted in the Landlord losing revenue for the month of November of 2015.

The Landlord submitted a copy of the One Month Notice to End Tenancy for Cause that declares the Tenants must vacate the rental unit by November 30, 2015.

The Agent for the Landlord stated that the Tenants did not leave a forwarding address when they vacated the rental unit; that she was unable to contact them for the purposes of scheduling a final inspection of the rental unit; that she inspected the rental unit in the absence of the Tenants on October 31, 2015; and that she completed a condition inspection report in the absence of the Tenants on October 31, 2015.

The Agent for the Tenant stated that the Landlord had his contact information and the Landlord made no attempt to contact him for the purposes of conduction a final inspection of the rental unit.

The Landlord is seeking compensation, in the amount of $462.00, for cleaning the rental unit. The Landlord submitted photographs, which the Agent for the Landlord stated depict the cleanliness of the rental unit at the end of the tenancy. She stated she took the photographs on October 31, 2015.

The Agent for the Tenant stated that the rental unit may have required some cleaning but he contends the photographs submitted do not accurately depict the cleanliness of the rental unit.

The Landlord submitted a cleaning invoice which indicates the Landlord was charged for 17 hours of cleaning, in the amount of $462.00. The Agent for the Tenant estimated that it would have only taken 5 hours to complete a "deep cleaning" of the rental unit.

The Agent for the Landlord contends that the rental unit was not particularly clean at the start of the tenancy; that it was not in good condition at the start of the tenancy; and that the Tenants should only be required to leave it in a state that is similar to the condition at the start of the tenancy.

The Landlord is seeking compensation, in the amount of $100.00, for replacing lightbulbs in the rental unit. The Agent for the Landlord stated that she cannot recall exactly, but she estimates that approximately 20 light bulbs needed to be replaced.

The Agent for the Tenant stated that he does not know if lightbulbs needed replacing at the end of the tenancy.

The condition inspection report that was completed on October 31, 2015 declares that all lightbulbs in the entry, hall, and dining room had been removed.

The Landlord submitted an invoice that shows the Landlord was charged $100.00 to replace lightbulbs. The invoice declares that the Landlord was charged for 10 hours of labour at $10.00 per hour. The Agent for the Tenant argues that this claim is excessive for replacing lightbulbs.

The Agent for the Landlord stated that the claim of $10.00 per hour for replacing lightbulbs is an administrative error. She interprets the invoice to mean that the Landlord was charged $10.00 for replacing 10 lightbulbs.

The Landlord is seeking compensation, in the amount of $150.00, for repairing damage to the walls. The Landlord submitted photographs, which the Agent for the Landlord stated depict the condition of the walls at the end of the tenancy. She stated she took the photographs on October 31, 2015.

The Agent for the Tenant stated that he was in the rental unit at the end of the tenancy and did not notice any damage to the walls.

The Landlord submitted an invoice that shows the Landlord was charged for 6 hours of labour for repairing the walls, in the amount of $150.00. The Agent for the Tenant contends that it would not have taken 6 hours to repair the damage depicted in the photographs.

The Landlord is seeking compensation, in the amount of $300.00, for repainting rental unit. The Landlord submitted photographs, which the Agent for the Landlord stated depict marks of the walls at the end of the tenancy and graffiti on the exterior side of the front door. She stated she took the photographs on October 31, 2015.

The Agent for the Tenant stated that he was in the rental unit at the end of the tenancy and did not notice any marks on the walls, with the exception of the graffiti on the exterior side of the front door.
The Landlord is seeking compensation, in the amount of $700.00, to replace the carpets. The Agent for the Landlord stated that the carpets needed to be replaced because they were stained and there were several burns in the carpet. The Landlord submitted photographs, which the Agent for the Landlord

stated depict the condition of the walls at the end of the tenancy. She stated she took the photographs on October 31, 2015.

The Agent for the Tenant stated that he vacuumed the carpet at the end of the tenancy and did not notice any burns in the carpet.

The Landlord submitted an invoice that shows the Landlord was charged for $700.00 to replace the carpet.

The Agent for the Landlord stated that the carpet was approximately 3 years old at the end of the tenancy. The Agent for the Tenant stated that he cannot estimate how old the carpet was at the end of the tenancy but he believes it was "old".

Analysis

Section 23(1) of the *Act* requires a landlord and a tenant to inspect the condition of the rental unit at the start of the tenancy. On the basis of the undisputed evidence I find that the Landlord and the Tenants complied with section 23(1) of the *Act* when they inspected the rental unit on August 01, 2015.

Section 23(4) of the *Act* requires a landlord to complete a condition inspection report at the start of each tenancy. On the basis of the undisputed evidence I find that the Landlord complied with section 23(4) of the Act when a condition inspection report was completed on August 01, 2015.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act.*

The undisputed evidence is that the Landlord gave written notice to end the tenancy on November 30, 2015. As the Tenants vacated the rental unit on October 31, 2015, I cannot conclude that the tenancy ended on the basis of the written notice provided by the Landlord. There is no evidence to show that the Tenants gave proper notice to end this tenancy. I therefore find that the tenancy did not end on October 31, 2015 pursuant to section 44(1)(a) of the *Act.*

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act.*

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act.*

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. On the basis of the undisputed evidence I find that the Tenants abandoned the rental unit on October 31, 2015 and that this tenancy ended on October 31, 2015 pursuant to section 44(1)(d) of the *Act.*

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act.*

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act.*

I find that the Tenants failed to comply with section 45 of the *Act* when they failed to provide the Landlord with proper written notice of their intent to end the tenancy on October 31, 2015. I find that the Tenants' failure to comply with section 45 of the *Act* made it difficult, if not impossible, for the Landlord to find another occupant for November of 2015, as the Landlord did not know the rental unit would be vacated. I

therefore find that the Tenants must pay $1,300.00 to the Landlord for the loss of revenue that the Landlord experienced in November.

Section 35(5) of the *Act* requires a landlord to inspect the rental unit at the end of the tenancy and complete a condition inspection report at the end of a tenancy if the tenant has abandoned the rental unit. On the basis of the testimony of the Agent for the Landlord I find that the Landlord complied with section 35(5) of the *Act* when a condition inspection report was completed on October 31, 2015.

In concluding that the Landlord complied with section 35(5) of the *Act* I have placed no weight on the Agent for the Tenant's testimony that the Landlord had his contact information and that the Landlord made no effort to contact him to arrange a final inspection of the rental unit. The Agent for the Tenant is not a party to this tenancy agreement and the Landlord had no obligation to contact him to arrange a final inspection of the unit. In the absence of any evidence to show that the Tenants directed the Landlord to contact the Agent for the Landlord for the purposes of arranging a final inspection, I find that the Landlord had no obligation to do so.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report that is completed in accordance with the legislation is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

As the condition inspection report that was completed at the start of the tenancy in accordance with the legislation does not indicate that the rental unit required cleaning and the Agent for the Tenant has not submitted evidence that corroborate his testimony that the rental unit was not in reasonably clean condition at the start of the tenancy, I find that I must rely on this report and conclude that the rental unit was in reasonably clean condition at the start of the tenancy.

Section 37(2) of the *Act* requires tenants to leave a rental unit undamaged, except for reasonable wear and tear, and in reasonably clean condition at the end of a tenancy. Residential Tenancy Branch Policy Guideline #1, with which I concur, suggests that I must determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As the condition inspection report that was completed at the end of the tenancy in accordance with the legislation indicates that the rental unit required cleaning and the Agent for the Tenant has not submitted any evidence that corroborates his testimony that the rental unit was left in reasonably clean condition at the end of the tenancy, I find that I must rely on this report and conclude that the rental unit was not left in reasonably clean condition at the end of the tenancy.

In determining that the rental unit was not left in reasonably clean condition at the end of the tenancy I was heavily influenced by the photographs submitted in evidence. I find that these photographs clearly establish that additional cleaning was required to bring the unit to a reasonable standard of cleanliness.

Although the Agent for the Tenant contends that the photographs do not accurately reflect the cleanliness of the rental unit at the end of the tenancy, he submitted no evidence to corroborate that testimony or to refute the Agent for the Landlord's testimony that they were taken at the end of the tenancy and that they accurately depict the cleanliness of the rental unit. As the photographs are consistent with the information in the condition inspection report, I accept that they accurately reflect the condition of the rental unit at the end of the tenancy.

On the basis of the photographs submitted in evidence I cannot concur with the Agent for the Tenant's submission that it would only take 5 hours to complete a "deep clean" of the rental unit. I note that the Agent for the Tenant submitted no evidence to support this submission. After viewing the photographs I find it reasonable to conclude that it would have taken 17 hours to restore the unit to a reasonable state of cleanliness and I find that the Landlord is entitled to the claim of $462.00.

On the basis of the testimony of the Agent for the Landlord and the condition inspection report that was completed at the end of the tenancy I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to leave functioning lightbulbs in the light fixtures and that the Landlord is entitled to compensation for the cost of replace those lightbulbs.

On the basis of the invoice submitted in evidence I find that the Landlord was charged $100.00 to replace lightbulbs and I find that the Landlord is entitled to compensation in that amount. In reaching this conclusion I accept the Agent for the Landlord's testimony that there is an administrative error and that the Landlord was not charged for 10 hours of labour for replacing lightbulbs. I find that the claim of $100.00 is reasonable when the cost of the lightbulbs and the cost of labour for installing them is considered.

As the condition inspection report that was completed at the start of the tenancy in accordance with the legislation does not indicate that there was any significant damage to the walls in the rental, I find that I must rely on this report and conclude that the walls rental unit were undamaged at the start of the tenancy.

As the condition inspection report that was completed at the end of the tenancy in accordance with the legislation indicates that the walls in the rental unit were damaged at the end of the tenancy and the Agent for the Tenant has not submitted any evidence that corroborates his submission that the walls were not damaged, I find that I must rely on this report and conclude that the walls were damaged at the end of the tenancy.

Although the Agent for the Tenant does not recall the walls being damaged I find that the photographs submitted in evidence support the Landlord's claim that the walls were damaged. As the photographs are consistent with the information in the condition inspection report, I accept the Agent for the Landlord's testimony that they accurately reflect the condition of walls at the end of the tenancy.

On the basis of the photographs submitted in evidence I cannot concur with the Agent for the Tenant's submission that it would not take 6 hours to repair the damage to the walls. I note that the Agent for the Tenant submitted no evidence to support this submission. After viewing the photographs I find it reasonable to conclude that it would have taken approximately 6 hours to repair the walls, taking into consideration that there are several stages to drywall repairs. I therefore find the Landlord is entitled to the claim of $150.00.

As there is no evidence the Tenants and/or their guests wrote the graffiti on the exterior side of the front door, I cannot conclude that the Tenants are responsible for painting over the graffiti. With the exception of the graffiti, I find that the marks on the walls that are depicted in the photographs are minor and that they constitute normal wear and tear. As tenants are not obligated to repair damage that is normal wear and tear, I dismiss the Landlord's claim for repainting the walls in the rental unit.

As the condition inspection report that was completed at the end of the tenancy in accordance with the legislation indicates that there were burn holes in the carpet and the Agent for the Tenant has not submitted any evidence to refute this claim, other than he did not notice any burns, I find that I must rely on this report and conclude that the carpet was damaged at the end of the tenancy.

Although the Agent for the Tenant did not notice any burns in the carpet I find that the photographs submitted in evidence support the Landlord's claim that there were burns in the carpet. As the

photographs are consistent with the information in the condition inspection report, I accept the Agent for the Landlord's testimony that they accurately reflect the condition of carpet at the end of the tenancy.

On the basis of the testimony of the Agent for the Landlord, I find that the carpet was approximately 3 years old at the end of the tenancy. I did not find the Agent for the Tenant's testimony particularly helpful in this regard, as he was unable to provide an estimated age of the carpet, other than it was "old". In my view the photographs submitted in the evidence are more consistent with the testimony of the Agent for the Landlord than the Agent for the Tenant.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. As the carpet is estimated to have been 3 years old at the end of the tenancy, I find that the carpet has depreciated by 30%, and that the Landlord is entitled to 70% of replacing the carpet, which in these circumstances is $490.00.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $2,552.00, which is comprised of $1,300.00 in lost revenue, $462.00 for cleaning, $100.00 for replacing lightbulbs, $150.00 for repairing the walls, $490.00 for replacing the carpet, and $50.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenants' security deposit of $650.00, in partial satisfaction of this claim.

Based on these determinations I grant the Landlord a monetary Order for the amount $1,902.00. In the event that the Tenant does not voluntarily comply with this Order, it may be served on the Tenant named on the monetary Order, filed with the Province of British Columbia 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: June 06, 2016

Residential Tenancy Branch