Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF (Landlord's Application)
MNSD, FF (Tenant's Application)

Introduction

This hearing was convened in response to an Application for Dispute Resolution (the "Application") made by the corporate Landlord on April 22, 2016 and by the Tenant on April 28, 2016.

The Landlord applied for a Monetary Order for: damage to the rental unit and to keep the Tenant's security deposit. The Tenant applied for the return of double the security deposit. Both parties also applied to recover the filing fee from each other.

An agent for the corporate Landlord (the "Landlord") and the Tenant appeared for the hearing and provided affirmed testimony. No issues were raised in relation to the service of the party's Application and documentary evidence prior to the hearing. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

- Is the Tenant entitled to double the return of the security deposit?

- Is the Landlord entitled to costs for damage to the rental unit?

Background and Evidence

Both parties agreed that this tenancy started on March 1, 2014 and was for a fixed term of one year which then continued on a month to month basis. A written tenancy agreement was completed and rent was established at $1,250.00 payable by the Tenant on the first day of each month. The rent was increased during the tenancy to $1,260.00 per month.

The Tenant paid the Landlord a $690.00 security deposit which the Landlord still retains. The parties confirmed that the tenancy ended on February 29, 2016 and that a move-in Condition Inspection Report ("CIR") was completed on February 28, 2014 and a move-out CIR one was completed on February 29, 2016. However, although the Tenant was present during the move-out condition inspection, he refused to sign the move-out portion as he did not agree with the damages that had been recorded by the Landlord's agent (who was different to the agent appearing for this hearing). The CIR was provided into evidence by the Landlord.

The Tenant testified that on July 27, 2016 he provided the Landlord's agent with a written letter detailing his notice to end the tenancy for the end of February 2016 and that the letter documented his forwarding address. The letter was provided into evidence for this hearing. The Tenant stated that he had served the letter by putting it in the mail box of the property manager where he paid rent. The Tenant submitted that because the Landlord had received his forwarding address on January 27, 2016, the Landlord was obligated to file his Application by April 15, 2016 which he did not. Therefore, the Tenant claims double the amount back.

The Landlord denied that the Landlord's agent or the property manager received the written notice that the Tenant had provided a copy of into evidence. The Landlord acknowledged that the Landlord's agent had received written notice of the Tenant's intention to end the tenancy at the end of February 2016 but that the written notice served by the Tenant did not contain the Tenant's forwarding address.

The Tenant refuted the Landlord's testimony stating that the Landlord's agent must have received his written notice because the next day he was sent a letter asking him to show the unit for re-rental which the Tenant provided into evidence.

The Landlord refuted the Tenant's evidence stating that if the Tenant had provided his forwarding address in January 2016, the Tenant would have completed the forwarding address section on the CIR. In addition, the Landlord referred to an email he had sent to the Tenant on April 15, 2016 after which he had a verbal discussion regarding the return of the security deposit in which the Landlord writes "*As discussed could you please provide me with your mailing address so I can process your security deposit refund*". The Landlord testified that the Tenant responded with his forwarding address on the same day and as a result, he filed the Application on April 22, 2016. This email was provided into evidence for this hearing.

The Tenant was asked why he had not recorded his forwarding address on the CIR and why he had not made mention in the April 15, 2016 email that he had already given the

property manager a forwarding address in January 2016, and why he would have provided it again. The Tenant replied that he did not see the box for the forwarding address on the CIR as it was located in the move-in section and not the move-out one. In relation to the email, the Tenant stated that in the verbal discussion he had with the Landlord he verbally mentioned to him that he had provided the Landlord with a forwarding address in January 2016 and that he only provided it again to make the process easier. The Landlord disputed this testimony.

The Landlord testified that he wanted to keep a portion of the Tenant's security deposit because the Tenant had failed to steam clean or shampoo the carpets at the end of the tenancy. This was a requirement of the Tenant pursuant to clause 11 of the addendum to the tenancy agreement which stated that the Tenant was to provide a receipt for the carpet and drape cleaning as evidence to show the Tenant had done this. The Landlord claims $193.00 as evidenced by an invoice for this cleaning which was performed.

The Landlord testified that the Tenant also caused damage to the wall, namely in the form of wall chips, which had to be repaired and repainted. In this respect the Landlord claimed $83.00 for painting costs as evidenced by an invoice. The Landlord pointed to the CIR as evidence of the damage to the living room and bedroom walls which was recorded as "poor". However, no details were provided in the comments section of the CIR.

The Tenant testified that he had cleaned the carpets and drapes but had not shampooed or steam cleaned them. The Tenant also confirmed that he had not provided any receipt to the Landlord for the carpet and drape cleaning. The Tenant denied the chips in the wall stating that these were picture hook holes that were present at the start of the tenancy and were reasonable wear and tear.

Analysis

I first turn my mind to the Tenant's Application and I make the following findings. Section 38(1) of the *Residential Tenancy Act* (the "Act") places the onus on a tenant to provide the landlord with a forwarding address in writing before the landlord is obligated to deal with the return of a security deposit pursuant to the Act. In this case, I must determine the date the Tenant complied with the Act in providing the Landlord with a forwarding address.

The Tenant stated that this was provided to the Landlord on January 27, 2016 in his written letter to end the tenancy. The Landlord stated that the Tenant provided his forwarding address in an email on April 15, 2016. Both parties provided convincing

arguments in this respect. However, I am inclined to accept the Landlord's evidence over the Tenant's evidence. This is because, while the Tenant provided evidence that he had ended the tenancy with written notice on January 27, 2016, there is insufficient evidence before me that can conclusively prove that the notice dated January 27, 2016 containing the Tenant's forwarding address and was the actual letter that was served into the property manager's mail box. The Tenant's evidence that the property manager sent him a letter the next day asking to do a viewing for re-rental is not sufficient evidence that the Landlord actually received a letter containing the Tenant's forwarding address.

Furthermore, while I accept the CIR did not provide for a clear area in the move-out section for the Tenant to document his forwarding address, I am confused as to why the Tenant provided his forwarding address in an email to the Landlord on April 15, 2016 without making reference to the fact that it had been already provided to the Landlord on January 27, 2016 or why the Tenant did not obtain confirmation from the Landlord that his address had been received after he served it to the property manager's mail box. It is this evidence that convinces me on a balance of probabilities that the Tenant had not provided his forwarding address on January 27, 2016. Therefore, I find that the most convincing and undisputable evidence before me is that the Tenant provided his forwarding address on April 15, 2016 and has not met the burden to prove that he served it in January 2016. As a result, I dismiss the Tenant's Application for the return of double the amount and deal with the Tenant's security deposit through the Landlord's Application as follows.

Section 37(2) of the Act requires a Tenant to leave a rental suite reasonably clean and undamaged when they vacate the rental suite. A party that makes an Application for monetary compensation against another party has the burden to prove their claim. In addition, Section 21 of the *Residential Tenancy Regulation* states that a CIR can be used as evidence of the state of repair and condition of the rental suite, unless a party has a preponderance of evidence to the contrary. Policy Guideline 1 to the Act states that in relation to carpet cleaning, a tenant is generally responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Based on the foregoing, I am satisfied by the parties' evidence that the Tenant failed to properly clean the carpets and drapes at the end of the tenancy. Therefore, I award the Landlord the $193.00 incurred to steam clean the carpets and drapes as evidenced by the invoice provided. In respect to the painting costs claimed by the Landlord, I find the Landlord has provided insufficient evidence of this damage. The Tenant argued that the wall chips were reasonable wear and tear and that they were present at the start of the tenancy. I have examined the move-out CIR in relation to this claim and I find that it

does not provide sufficient details, such as comments in the “Comment” section, of the wall chips the Landlord alleged the Tenant caused. Without convincing evidence such as photographs, I find the Landlord has not met the burden to prove this portion of the claim which I hereby dismiss.

As the Landlord had to file the Application and was successful on a portion of it, I award the Landlord the $100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is $293.00. Pursuant to Section 72(2) (b) of the Act, the Landlord may achieve this relief by deducting this amount from the $690.00 security deposit the Landlord currently holds.

This leaves a remaining balance payable to the Tenant in the amount of $397.00 which must be returned to the Tenant forthwith. The Tenant is issued with a Monetary Order for this amount. This must be served on the Landlord if voluntary payment is not made. The Tenant may then file and enforce the order in the Small Claims Court of the Provincial Court as an order of that court. Copies of the order are attached to the Tenant’s copy of this Decision.

Conclusion

The Landlords’ Application for damages to the rental unit is granted in the amount of $293.00. The Landlord may deduct this from the Tenant’s security deposit and return the remaining amount of $397.00. The Tenant’s Application is dismissed without leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 03, 2016

Residential Tenancy Branch