Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HIMALAYA RESTAURANT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with monetary cross applications. The landlord applied for a Monetary Order for damage to the rental unit; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant applied for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

I noted that the landlord had filed its Application for Dispute Resolution in August 2016 but the landlord's evidence was not submitted until January 2017. The landlord's evidence was also served upon the tenant in January 2017. Most of the evidence appeared to originate in the months of June and July 2016. Under the Rules of Procedure, evidence is to be submitted at the time of filing, where possible, or as soon as possible. Further, an unreasonable delay may be cause to exclude evidence. The landlord was asked to explain the reason for the delay in serving the evidence. The landlord submitted that there had been a change in property managers working for the property management company; and, the office of the property management company had moved and evidence was packed in boxes. The tenant stated that he was shocked to have received the landlord`s evidence so long after filing but confirmed that he had an opportunity to review the landlord's evidence and was prepared to respond to it. Given the landlord's explanation for the delay in serving evidence, which I accepted, and the tenant's preparedness to respond to the evidence, I permitted the evidence to be admitted. However, the landlord dis cautioned that evidence is to be submitted and served in a timely manner as provided in the Rules of Procedure and failure to do so in the future may result in exclusion of evidence.

The tenant had submitted evidence, including photographs, to the Residential Tenancy Branch; however, the tenant acknowledged that he did not serve his evidence upon the landlord. The Rules of Procedure require that evidence must be served upon the other

party as the other party is entitled to view and prepare a response to the evidence of the other party in keeping with the principles of natural justice. Since the landlord was not served with the tenant's evidence I did not admit the tenant's evidence. The tenant was informed of this at the start of the hearing and informed that he may provide his position orally during the hearing.

Issue(s) to be Decided

1. Has the landlord established an entitlement to receive compensation from the tenant in the amounts claimed?
2. Is the tenant entitled to doubling of the security deposit?
3. Disposition of the security deposit.

Background and Evidence

The tenancy started in January 2010. The tenant paid a security deposit of $425.00 and a key deposit of $50.00. The tenancy ended on June 30, 2016.

The parties were in dispute as to whether a move-in inspection report was prepared at the start of the tenancy. The landlord submitted that one was prepared but that it remained packed in boxes after the property manager`s office moved and had not been retrieved for this proceeding. The tenant testified that a move-in inspection report was not prepared at the start of the tenancy.

Both parties provided consistent testimony that a move-out inspection was performed together, although the tenant was of the position it was rushed by the property manager. The property manager prepared a move-out inspection report but the tenant would not sign it. The tenant pointed out that he did not sign it because there was mention of bed bug treatment that he did not agree he should have to pay for.

Both parties provided consistent submissions that the tenant did not provide written consent for any deductions from the security deposit.

The tenant testified that he wanted to provide his forwarding address to the property manager orally during the move-out inspection but the property manager would not take it. The property manager denied that the tenant offered his forwarding address orally. Both parties provided consistent testimony that the tenant provided his forwarding address to the landlord in an email dated August 8, 2016. The landlord made its application to claim against the security deposit on August 22, 2016.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

1. Carpet cleaning -- $84.00

The landlord submitted that the tenant did not have the carpets cleaned at the end of the tenancy and the landlord paid $84.00 to have this done. The landlord provided a copy of a carpet cleaning receipt to support the amount claimed.

The tenant was of the position that $60.00 was a reasonable amount to pay for carpet cleaning and that is all he is agreeable to paying. The tenant described the rental unit as being one bedroom plus a den.

2. Cleaning -- $330.00

The landlord submitted that the rental unit was in need of a lot of cleaning at the end of the tenancy. The landlord brought in a cleaning lady for four hours, at a cost of $210.00, but that the rental unit could not be sufficiently cleaned in that amount of time. As a result, the incoming tenant performed additional cleaning for which the landlord compensated the incoming tenant.

As evidence, the landlord provided a copy of the invoice for the cleaning lady and an email purported written by the cleaning lady describing the condition of the rental unit. The landlord also took pictures of the rental unit on June 30, 2016 that were submitted into evidence. The photographs depict a number of dirty areas including walls, baseboards, fridge, bathtub, hot water tank and mirror.

As for the amount the incoming tenant was compensated, I noted I was not provided any documentary evidence. The landlord explained that the incoming tenant's compensation was deducted from rent and that the amount had been a contentious issue that was finally resolved only three months ago. The landlord stated that the incoming tenant had ben compensated for cleaning and repair issues for approximately the amount claimed by the landlord with this application.

The tenant testified that he moved out of the rental unit on June 28, 2016 and spent the next two days cleaning the rental unit. The tenant stated the landlord had provided a cleaning list prior to the end of the tenancy and the tenant went through the landlord's list. The tenant also submitted that there had been issues with mice and bugs during the tenancy that were not addressed by the landlord. Again, the tenant stated that the

move-out inspection was very rushed and that the landlord took a number of pictures in his presence.

3. Wall damage -- $300.00

The landlord submitted that the walls and trim in the rental unit were damaged beyond normal wear and tear, including writing on the wall with markers and holes in the walls. The landlord hired a contractor to make all necessary repairs to the rental unit after the tenancy ended, as evidence by the contractor's invoice, but the landlord only seeking compensation for the wall repairs of $300.00. The walls had to be patched, sanded and the paint touched up. The landlord pointed to a number of phonographs as evidence in support of their claims

The tenant acknowledged that his child had written on the walls but was of the position the landlord had to repaint anyways since his tenancy was for more than six years. The tenant pointed out that one of the holes in the walls was from running a cablevision line in the rental unit. The tenant submitted that he did not damage the rental unit to the extent submitted by the landlord and it is unreasonable to hold him accountable to pay the amount claimed considering the tenancy was for over six years.

4. Bed bug treatment -- $345.45

The landlord submitted that bed bugs were discovered and treated in the rental unit in 2013. The landlord testified that she advised the tenant that pest control was a tenant responsibility but that if the landlord arranged for treatment it would be done right. The landlord claimed that the tenant had agreed to pay for the extermination before the exterminator attended the unit but then the tenant reneged on that agreement. The landlord made attempts to collect the cost from the tenant during the tenancy to no avail. The landlord speculated that the bed bugs were introduced when the tenant had guests in the unit or after travelling.

The tenant submitted that he found a bug in the carpeting during the tenancy and with a new baby in the household he wanted the matter addressed so he reported it to the landlord. At the time, the tenant did not know that the bug was a bed bug since he also had mice and cockroaches in the rental unit. The tenant stated that he had agreed to pay for ½ of the cost to have the issue resolved. The tenant stated that he does not know how bed bugs came to be in his unit, if the bug was a bed bug.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the Applications before me.

Landlord's application

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 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.

As the applicant, the landlord bears the burden to prove its claims against the tenant.

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean and undamaged. Section 37 further provides that reasonable wear and tear does not constitute damage.

The landlord submitted that tenant did not clean the carpets at the end of the tenancy. The tenant did not refute this allegation but was of the position that he was only agreeable to paying for $60.00 for carpet cleaning.

The landlord provided evidence to verify the cost of carpet cleaning paid by the landlord. I am of the view that $84.00 is not an unreasonable amount to pay for carpet cleaning of a one bedroom plus den unit. If the tenant sought to pay for less for carpet cleaning it would have been upon him to arrange for and pay for carpet cleaners. Therefore, I award the landlord the $84.00 for carpet cleaning as requested.

Upon review of the landlord's photographs, and the cleaning ladies' email describing the condition of the rental unit as she found it and after she left it, I find the landlord has satisfied me that the rental unit was not left reasonably clean by the tenant. The photographs depict dirty walls, baseboards, fridge, mirror, bathtub and hot water tank. The cleaner's email mentions not only these areas but dirty cupboards, toilet, exhaust

fan and windows. Therefore, I find the landlord's position is supported by evidence and I reject the tenant's position that the rental unit was left reasonably clean.

The landlord provided evidence to support that the landlord paid the cleaning lady $210.00. While I accept that additional cleaning was required after the cleaning lady performed four hours of cleaning, the landlord did not provide evidence to support the cost of the additional cleaning. I acknowledge that compensating an incoming tenant for additional cleaning by way of a rent abatement is a loss the landlord may recover from the outgoing tenant, the landlord did not provide sufficient evidence to establish the amount the incoming tenant was compensated for cleaning despite settling with the incoming tenant three months ago. Therefore, I limit the landlord's award to the amount verified, or $210.00.

As for wall damage, upon review of the landlord's photographs, I accept that the tenant and/or his child caused damage to the walls that is beyond reasonable wear and tear. The brightly coloured marker on the walls was also accompanied by several gouges in the wall. It would also appear that a bracket was pulled from the wall, leaving holes. I accept that the gouges and holes would require filling, sanding and painting as asserted by the landlord. Further, brightly coloured marker would likely require sealing or priming to sufficiently cover the colour.

The invoice prepared by the landlord's contractor clearly indicates that the charge of $300.00 is to "patch, sand and repaint/touch up the damaged walls" and I find that amount reasonable to do such work. I am satisfied the landlord is not seeking to recover the cost to repaint the entire unit from the tenant as such a job would likely cost much more. Therefore, I find the landlord has satisfied me that the landlord is entitled to recover the cost to repair the wall damage that exceeds reasonable wear and tear and I grant the landlord's request to recover $300.00 from the tenant.

As for the bed bug treatment, I find the landlord has not established a basis to recover this cost from the tenant. Pest control is generally a responsibility of a landlord, not a tenant, and falls under the landlord's obligation to repair and maintain a property under section 32 of the Act. Accordingly, in order to recover pest control treatments from a tenant a landlord would have to prove the tenant was negligent or knowingly and intentionally brought the pests to the property. This is a very high threshold to overcome because it is almost impossible to determine when and how pests came to migrate to a rental unit. Pests are opportunistic and may come to be in a rental unit due to no negligence on part of the tenant. The landlord could only speculate as to how the bed bugs came to be in the rental unit as attributable to the tenant having guests or travelling. Most tenants will have guests or travel from time to time and that is not a

negligent activity. Therefore, I reject the landlord's claims that the tenant is responsible for bed bug treatment and I dismiss this portion of the landlord's claim.

Since the landlord was partially successful in this application, I award the landlord a partial recovery of the filing fee, in the amount of $75.00.

Tenant's application

Pursuant to section 38(1) of the Act, a landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

Under section 38(6) of the Act, if the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

In this case, the tenancy ended June 30, 2016 but the tenant did not provide the landlord with a forwarding address in writing by serving the landlord in a manner that complies with section 88 of the Act. Rather, the tenant emailed an address to the landlord on August 8, 2016 and email is not a permissible method of serving a document. In any event, the landlord filed an Application for Dispute Resolution to claim against the security deposit on August 22, 2016. Therefore, I am satisfied the landlord did not exceed the time limit for filing its application and I deny the tenant's request for return of double the security deposit.

Since the tenant was unsuccessful in his request for return of double the security deposit, and his Application for Dispute Resolution was unnecessary in the circumstances, I make no award for recovery of the filing fee he paid.

The tenant remains entitled to the single amount of the security deposit, plus the key deposit, totalling $475.00.

Monetary Order

As provided under section 72 of the Act, I offset the tenant's security deposit and key deposit against the amounts awarded to the landlord with this decision and I provide the landlord with a Monetary Order in the net amount, calculated as follows:

Carpet cleaning	$ 84.00
Cleaning	210.00
Wall repairs	300.00
Filing fee (partial award)	75.00
Less: security deposit and key deposit	(475.00)
Monetary Order for landlord	$194.00

Conclusion

The landlord was partially successful in its claims against the tenant. The tenant's application was dismissed. The landlord has been authorized to retain the tenant's security deposit and key deposit in partial satisfaction of the amounts awarded to the landlord and the landlord has been provided a Monetary Order for the net balance owing of $194.00 to serve and enforce upon the tenant.

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: February 23, 2017

Residential Tenancy Branch