Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 AMOS REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement. The Landlord also requested to recover the filing fee from the Tenant.

The owner of the company Landlord (the "Landlord"), who is the property management company for the owners of the rental unit, and the Tenant appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Application and the Landlord's evidence prior to this hearing. The Tenant also confirmed that he had not provided any 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 each other on the evidence provided.

I noted that the Landlord had provided a request to amend his Application to include an additional amount of damage to his monetary claim for light bulbs. However, the Landlord had not followed the required process as outlined in Rule 4 of the Dispute Resolution Rules of Procedure and the Tenant did not consent to having this matter determined in this hearing. As the Tenant had not been put on proper notice of the increased claim the Landlord was seeking to address in this hearing, I declined this request and informed the Landlord that he is at liberty to file a separate Application for costs associated with light bulbs only.

During the hearing, the Landlord stated that he had made mistake by not selecting on his Application a request to keep the Tenant's security deposit. As this was a clerical error on behalf of the Landlord, I determined that there was no prejudice to the Tenant to amend the Landlord's Application to deal with the Tenant's security deposit. There I added this request pursuant to my authority under Section 64(3) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation for issues in this tenancy?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim?

Background and Evidence

Both parties agreed that this tenancy started on April 15, 2015 for a fixed term which expired on April 30, 2016. The tenancy then continued thereafter on a month to month basis. A written tenancy agreement was signed and rent was payable in the amount of $850.00 on the first day of each month. The Tenant paid the Landlord a security deposit of $425.00 which the Landlord still holds in trust.

The parties agreed that the Landlord completed a move-in Condition Inspection Report (the "CIR") at the start of the tenancy. The parties agreed that the tenancy ended on or around September 15, 2016. The parties also agreed that the Landlord had completed a move-out CIR on September 31, 2016.

Although the parties were unable to provide exact dates, they were agreeable that the Landlord had been served with the Tenant's forwarding address in writing which the Landlord had used to file the Application within 15 days of receiving it.

The Landlord claims $276.41 for cleaning performed to the rental unit at the end of the tenancy as verified by an invoice provided into evidence for this cost. The Tenant did not dispute these costs and acknowledged that he was responsible for the cleaning at the end of the tenancy which he did not do.

The Landlord testified that at the end of the tenancy, the doorbell on the front of the rental unit was missing. The Landlord provided a photograph of the missing plate on the doorbell. The Landlord testified that he estimated a $50.00 cost for the replacement of the doorbell which he determined by opening the phone book to verify this cost.

The Tenant denied any damage to the door bell and submitted that at the start of the tenancy there was a blank plate on the doorbell. The Tenant testified that entry to the condo building was by phone intercom system and the other units in the building did not have bells on them as they were not allowed by the strata. The Tenant stated that he was an electrician and the photograph submitted by the Landlord just showed the plate missing which could have been removed by anyone.

The Landlord testified that the Tenant owned an ATV which had been chained to his vehicle while parked in the Tenant's parking stall. The Landlord pointed me to a letter from the strata council to the owner of the rental unit informing that due to a contravention of strata bylaw 6(5) regarding the storage of the ATV, the owner was being assessed with a fine of $200.00 which the Landlord now seeks to recover from the Tenant.

The Tenant denied this portion of the claim. The Tenant testified that the ATV in question did not belong to him but belonged to a friend of his who resided in the residential building and that he was being mistakenly blamed for the contravention of the strata rules. The Tenant submitted that he was given no warning letter and was not even aware of the alleged breach until he was served with the Application.

The Tenant submitted that it is normal for the strata to hold a hearing on the matter to allow parties being levied with a fine an opportunity to defend themselves, which he was not. The Tenant explained that he had contacted the building manager about this issue who said that a warning letter had been issued by the strata council for this matter. The Tenant testified that he did not get any such letter from the Landlord.

The Landlord confirmed that he did not see or witness the Tenant's illegally parked ATV but stated that the strata council letter was sufficient to show that the Tenant had breached the strata rules. The Landlord was unable to confirm whether any hearing or breach letter had been issued by the strata but submitted that the letter is the evidence.

Analysis

I am satisfied by the parties' undisputed testimony that the Landlord filed the Application to keep the Tenant's security deposit within the 15 day time limit stipulated by Section 38(1) of the Act.

In relation to the Landlord's cleaning costs, I award the Landlord **$276.41** as this amount was undisputed by the Tenant. With respect to the Landlord's claim for the replacement of the missing door bell, I find the Landlord failed to verify the cost he was seeking from the Tenant. The Landlord testified that he looked at a phone book to obtain the replacement cost of the doorbell. However, the Landlord failed to provide sufficient corroborating evidence to show that this amount accurately reflected the loss the Landlord was alleging. In addition, I find there is insufficient evidence of any actual replacement cost incurred by the Landlord that would have enabled me to verify the cost sought. On this basis I deny the Landlord's claim for the doorbell replacement.

With respect to the Landlord's claim for the strata fine, I disagree with the Landlord that the letter from the strata to the owner of the rental unit imposing the fine of $200.00 is sufficient evidence that the Tenant contravened the strata rule. The letter provides for no details or evidence of the contravention and the Landlord relies on hearsay evidence that the alleged contravention even occurred.

I find it plausible that the strata would have issued the owner of the rental unit with a breach letter or an opportunity for the owners to defend themselves of the allegation. This evidence is not before me and neither is there sufficient evidence of the Tenant's parking stall containing the ATV. I find it likely that the strata would have gathered such evidence or have been in possession of it before levying the fine to the owner. The Landlord provided no such evidence. Therefore, I dismiss this portion of the Landlord's claim because the Landlord has failed to prove any breach by the Tenant.

As I have granted a portion of the Landlord's claim, pursuant to Section 72(1) of the Act, I also award the Landlord the **$100.00** filing fee for having to make this Application. Therefore, the total amount payable by the Tenant to the Landlord is **$376.41**. Pursuant to Section 72(2) (b) of the Act, I allow the Landlord to obtain this relief by deducting this amount from the Tenant's $425.00 security deposit. The Landlord must return the remaining balance of **$48.59** back to the Tenant forthwith. The Tenant is issued with a Monetary Order for this amount which may be enforced through the Small Claims Division of the Provincial Court if the Landlord fails to make the return payment.

Conclusion

I order the Landlord to retain $376.41 from the Tenant's security deposit for lack of cleaning and the filing fee. The remainder of the Landlord's Application is dismissed without leave to re-apply. The Landlord may re-apply for light bulbs in this tenancy. The Tenant is granted a Monetary Order for the return amount of $48.59. 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: April 04, 2017

Residential Tenancy Branch