Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord and the Agent for the Tenant with the initials "E.M." (hereinafter referred to as the Agent for the Tenant) agree that the rental unit has been vacated. As the rental unit has been vacated I do not need to consider the Landlord's application for an Order of Possession.

The Landlord stated that on April 27, 2017 the Application for Dispute Resolution and the Notice of Hearing for the Tenant with the initials "E.M." were personally delivered to the forwarding address provided to her by the Tenant with the initials "E.M.". The Agent for the Tenant stated that the package was delivered to his home and that on May 10, 2017 he opened the package with the permission of the Tenant with the initials "E.M.", who is his daughter.

The Agent for the Tenant stated that the Tenant with the initials "E.M." is currently out of the country; that he informed her of the information on the Application for Dispute Resolution; and that she authorized him to represent her at these proceedings.

The Landlord stated that the Tenant with the initials "E.M." provided her with the aforementioned forwarding address, via email, on March 04, 2017. The Agent for the Tenant stated that the Tenant with the initials "E.M." told him that she did not provide the Landlord with the aforementioned forwarding address. The Landlord submitted a copy of an email, dated March 04, 2017, in which she informs the Landlord that she will have "any mail forwarded to" the aforementioned forwarding address. On the basis of the testimony of the Landlord and the email that corroborates her testimony, I find that the Tenant with the initials "E.M." provided the Landlord with the aforementioned forwarding address.

The Landlord stated that she never received a forwarding address for the Tenant with the initials “N.C.”, so the Application for Dispute Resolution and the Notice of Hearing for this Tenant were personally delivered to the forwarding address provided to her by the Tenant with the initials “E.M.”.

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. Rule 3.1 of the Residential Tenancy Branch Rules of Procedure stipulate that when a landlord files an Application for Dispute Resolution, the landlord has the burden of proving that each tenant named on the Application was served with the Application for Dispute Resolution. Service of the Application for Dispute Resolution must be done in accordance with the *Residential Tenancy Act (Act).*

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:
(a) by leaving a copy with the person;
(c) by sending a copy by registered mail to the address at which the person resides;
(d) by sending a copy by registered mail to a forwarding address provided by the tenant; or
(e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

The Landlord submitted no evidence to show that either Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore cannot conclude that either Tenant was served in accordance with section 89(1)(a) of the *Act*.

The Landlord submitted no evidence to show that the Application for Dispute Resolution was mailed to either Tenant and I cannot, therefore, conclude that either Tenant was served in accordance with sections 89(1)(c) of the *Act* or 89(1)(d) of the *Act.*

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenants in an alternate manner, and I cannot, therefore, conclude that either Tenant was served in accordance with section 89(1)(e) of the *Act*.

On the basis of the Agent for the Tenant’s testimony that he informed the Tenant with the initials “E.M.” of the contents of the Application for Dispute Resolution, I find that this Tenant should be deemed to have received the Application for Dispute Resolution pursuant to section 71(2)(c) of the *Act*. I will, therefore, consider the Landlord’s application for a monetary Order for unpaid rent that names this individual.

While I am satisfied that the Application for Dispute Resolution was received by the Tenant with the initials “E.M.”, I find that there is no evidence to establish that the Tenant with the initials “N.C.” received that document. I therefore cannot conclude that

the Application has been sufficiently served to this individual pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As there is insufficient evidence to establish that the Tenant with the initials "N.C." was properly served with, or that she received, the Application for Dispute Resolution, I am unable to consider the Landlord's application for a monetary Order naming this individual.

The Landlord stated that on May 07, 2017 or May 08, 2017 an Amendment to an Application for Dispute Resolution, in which she added a claim for damage to the rental unit, was sent to the forwarding address provided by the Tenant with the initials "E.M.". The Agent for the Tenant stated that Canada Post attempted to deliver registered mail for the Tenant with the initials "E.M." but the mail was not accepted as she did not live at that address.

On the basis of the testimony of both parties I find that the Amendment to an Application for Dispute Resolution was served to the Tenant with the initials "E.M." in accordance with section 81(1)(d) of the *Act*. I will, therefore, consider the Landlord's application for a monetary Order for damage to the rental unit that names this individual. A party cannot avoid service of an Amendment to an Application for Dispute Resolution by simply refusing to accept documents that are sent to a forwarding address provided by that party.

On May 08, 2017 the Landlord submitted 33 pages of evidence and 85 photographs to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant with the initials "E.M." with the Amendment to an Application for Dispute Resolution. For the reasons cited above, I find that this evidence has been properly served to the Tenant with the initials "E.M." and it was accepted as evidence for these proceedings.

On May 11, 2017 the Agent for the Tenant submitted 33 pages of evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent that names the Tenant with the initials “E.M.”?

Background and Evidence

The Landlord and the Agent for the Tenant agree that:

- the tenancy began on October 15, 2015;
- the Tenant with the initials “E.M.” (hereinafter referred to as the Tenant) and the Tenant with the initials “N.C.” agreed to pay monthly rent of $1,250 by the first day of each month;
- the rental unit was vacated on April 30, 2017;
- the parties agreed that rent would be reduced to $1,000.00 for the month of April of 2017 if the rental unit was left in clean condition; and
- $375.00 in rent was paid for April of 2017.

The Landlord is seeking compensation of $157.59 for cleaning. The Landlord stated that the rental unit was not left in clean condition and that she and her husband spent approximately 4 hours cleaning the unit at the end of the tenancy. The Landlord submitted numerous photographs of the rental unit which she contends show that additional cleaning was required.

The Landlord submitted a receipt for cleaning, in the amount of $37.59.

The Agent for the Tenant stated that the rental unit was professionally cleaned at the end of the tenancy. The person assisting the Agent for the Tenant stated that she viewed the rental unit at the end of the tenancy and believes it was left in clean condition at the end of the tenancy.

The Landlord contends that since the rental unit was not left in clean condition the Tenant is not entitled to the rent reduction for April of 2017, and she is now seeking the full amount of rent for April of 2017. The Agent for the Tenant argued that the rental unit was left in clean condition and that the Tenant is entitled to the rent reduction.

The Landlord is seeking $1,500.00 in compensation for repainting the rental unit at the end of the tenancy. The Landlord stated that:

- the rental unit was previously painted sometime in 2013;
- there is an addendum to the tenancy agreement that stipulates the rental unit must be re-painted to a neutral color-scheme if the rental unit is painted by the Tenants during the tenancy;
- the Tenants painted the rental unit a variety of colours, as depicted by the photographs;
- the rental unit was not painted properly by the Tenants
- the Landlord did not approve the paint colours used by the Tenants; and

- the walls were not returned to a neutral colour scheme at the end of the tenancy.

The Agent for the Tenant stated that he believes the colours used by the Tenants are a neutral colour scheme and that the Tenants had verbal authority to use those colours.

The Landlord submitted a receipt for painting, in the amount of $1,500.00.

The Landlord stated that she asked the Tenant for written permission to keep the Tenants' security deposit of $625.00 to be applied to the cost of repainting the rental unit.

The Agent for the Tenant stated that on April 10, 2017 the Tenant gave the Landlord written permission to keep the security deposit. He stated that the Tenant made it clear in her email that the deposit should be applied to rent for April of 2017.

The Landlord submitted an email from the Tenant, dated April 11, 2017, in which the Tenant writes, in part: "I told you in writing to keep my damage deposit" and "You will not be receiving any more money than the $375 I sent to you and the deposit that you constantly threatened to withhold from me before April 30th for no reason other than your ill intent and assumptions. Those two values are equal to the $1000 we agreed upon".

Analysis

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 37(2)(a) of the *Act* requires tenants to leave the rental unit in reasonably clean condition at the end of the tenancy. On the basis of the photographs submitted in evidence by the Landlord I find that the rental unit was not left in reasonably clean condition at the end of the tenancy. I find that the photographs show that areas behind the kitchen appliances required additional cleaning; the side of the refrigerator door needed cleaning; a door to the bathroom needed cleaning; the toilet seat needed cleaning; the bathtub needed cleaning; the lint trap in the dryer needed cleaning; and the floor behind the washer and dryer needed cleaning.

I therefore find that the Landlord is entitled to compensation for the four hours spent cleaning the rental unit, in the amount of $100.00, and the $37.59 for cleaning supplies. This award is based on an hourly rate of $25.00, which I find to be reasonable for labour of this nature**.**

On the basis of the undisputed evidence I find that the Landlord and the Tenant agreed that the rent would be reduced to $1,000.00 for April of 2017 if the rental unit was left in clean condition. As I have concluded that the rental unit was not left in reasonably clean condition, I find that the Tenant was not entitled to the rent reduction that was contingent on the condition of the rental unit at the end of the tenancy. I therefore find the rent for April of 2017 remained at $1,250.00.

On the basis of the undisputed evidence I find that $375.00 in rent was paid for April of 2017, leaving a balance due of $875.00.

On the basis of the undisputed evidence I find that the rental unit was painted by the Tenants during the tenancy and that there is an addendum to the tenancy agreement that stipulates the rental unit must be re-painted to a neutral colour-scheme if the rental unit is painted by the Tenants during the tenancy.

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 interior paint is four years. The evidence shows that prior to the Tenants painting the rental unit, it was painted “sometime” in 2013. I therefore find that the original paint of 2013 would have reached its life expectancy by the time this tenancy ended in April of 2017 and that the unit would have needed to be re-painted at that time even if the Tenants had not painted the unit a colour that did not meet the Landlord’s approval.

Even if I concluded that the Tenants did not paint the rental unit in neutral colours, as required by the addendum to the tenancy agreement, I would dismiss the Landlord’s claim for repainting the rental unit, as the original paint had reached its life expectancy.

Section 38(4)(a) of the *Act* authorizes a landlord to retain an amount from a security deposit for a liability or obligation if, at the end of the tenancy, the tenant gives the landlord written authority to do so.

On the basis of the email, dated April 11, 2017, submitted in evidence by the Landlord, I find that the Tenant gave the Landlord written permission to keep her security deposit of $625.00. On the basis of the other information in that email I find that the Tenant authorized the Landlord to apply the security deposit to rent for April of 2017. I therefore find that the Landlord has the right to apply the security deposit to unpaid rent for April of 2017, pursuant to section 38(4)(a) of the *Act*.

After applying the security deposit of $625.00 to outstanding rent for April of 2017, which is $875.00, I find that the Tenant still owes $250.00 in rent for April.

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 $487.59, which includes $137.59 for cleaning, $250.00 for rent, and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for $487.59. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, 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 *Act*.

Dated: May 31, 2017

Residential Tenancy Branch