Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BONAVISTA MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an 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, a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The female Respondent, hereinafter referred to as the Tenant, filed an Application for Dispute Resolution in which she applied for a monetary Order for money owed or compensation for damage or loss, for the return of her security deposit, for an Order requiring the Landlord to provide services or facilities, and to recover the fee for filing this Application for Dispute Resolution. As the rental unit has been vacated, I find there is no reason to consider the application for an Order requiring the Landlord to provide services or facilities.

The Agent for Landlord stated that on April 24, 2017 the Application for Dispute Resolution and the Notice of Hearing were served to both Respondents, via registered mail. The Tenant and Legal Counsel for the male Respondent acknowledged receipt of these documents.

The Tenant stated that on April 26, 2017 the Application for Dispute Resolution, the Notice of Hearing, and evidence submitted to the Residential Tenancy branch on May 18, 2017 were served to the Landlord, via registered mail. The Agent for the Landlord

acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On April 27, 2017 the Landlord submitted 119 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to both Tenants, via registered mail, on April 25, 2017. The Tenant and Legal Counsel for the male Respondent acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On May 26, 2017 the Landlord submitted 14 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to both Tenants, via registered mail, on May 25, 2017. The Tenant and Legal Counsel for the male Respondent acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On August 28, 2017 the Tenant submitted 21 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on August 28, 2017. The Agent for the Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On September 07, 2017 the male Respondent submitted 50 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the male Respondent stated that this evidence was served to the Landlord, via registered mail, although he was unable to access the Canada Post receipt to establish service of the evidence. The Agent for the Landlord stated that this evidence was not received by the Landlord. As the evidence was not received by the Landlord, it was not accepted as evidence for these proceedings.

Legal Counsel stated that he believed he could proceed with the hearing without his evidence package. He was advised that the hearing would proceed and an adjournment would be considered if Legal Counsel needed the opportunity to re-serve any documents in his evidence package. Legal Counsel did not request an adjournment for the purposes of re-serving evidence.

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.

Preliminary Matter

After a significant amount of discussion regarding whether the male Respondent was a party to the tenancy agreement, the Agent for the Landlord applied to amend the Application for Dispute Resolution by removing the male Respondent from the Application for Dispute Resolution. With the consent of the Tenant and Legal Counsel for the male Respondent, the Application for Dispute Resolution was amended accordingly, at which time Legal Counsel for the male Respondent exited the teleconference.

Issue(s) to be Decided

Is the Landlord entitled to compensation for replacing the carpet and loss of revenue?
Is the Tenant entitled to compensation for loss of quiet enjoyment and moving expenses?
Is the Tenant entitled to the return of her security deposit?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- this tenancy began on July 01, 2016;
- the Tenant was required to pay monthly rent of $1,595.00;
- the Tenant paid a security deposit of $797.50;
- on March 28, 2017 the Tenant gave the Landlord written permission, via text message, to retain her security deposit as compensation for removing the carpet;
- when this tenancy began there was carpet in the rental unit;
- the Tenant removed the carpet from the unit, without permission from the Landlord;
- the Tenant did not replace the carpet by the time she vacated the rental unit;
- the Landlord informed the Tenant they would end the tenancy if the carpet was not replaced;
- on March 08, 2017 the Landlord served the Tenant with a One Month Notice to End Tenancy because the carpet had not been replaced;
- the One Month Notice to End Tenancy declared that the rental unit must be vacated by April 30, 2017; and
- the Tenant vacated the rental unit on March 26, 2017.

The Landlord is claiming compensation of $1,631.84 for replacing the carpet, which is what the Landlord contends is owed after applying the security deposit of $797.50. The Landlord submitted a copy of an invoice for installing the carpet, in the amount of

$1,093.37. The Agent for the Landlord stated that the Landlord pre-purchases carpet from this installer and was, therefore, unable to provide a receipt/invoice for the purchase of the carpet. She stated that the cost of the carpet was $1,255.97, as outlined in the letter located at exhibit L-33 it cost $2,349.34 to replace the carpet.

The Agent for the Landlord stated that she believes the carpet was 5 or 6 years old at the end of the tenancy. The Tenant stated that she believes the carpet was approximately 6 years old at the end of the tenancy.

The Landlord is seeking compensation for lost revenue from the first two weeks of April. The Agent for the Landlord stated that the rental unit was re-rented for April 15, 2017.

The Tenant is seeking compensation of $300.00 for moving expenses. The Tenant stated that she believes she is entitled to compensation for these expenses because she does not believe the Landlord had the right to issue her with a One Month Notice to End Tenancy. When she was asked why she did not dispute the Notice to End Tenancy if she did not believe the tenancy should end the Tenant stated that she did not know she could dispute the Notice.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because an agent for the Landlord told her that she would be evicted if she did not replace the carpet.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because an agent for the Landlord opened the door to the rental unit without any prior notice. She stated that the incident startled her because she was sitting on the couch with her young child.

The Building Manager stated that the caretaker mistakenly opened the door of the rental unit because he thought he was on a different floor. He stated that the caretaker did not enter the unit and that he immediately apologized to the Tenant. He stated that he subsequently contacted the Tenant and also apologized to her.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because there was mold in the rental unit. She stated that she never told the Landlord about the mold until the end of the tenancy because she did not want them to fix it.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlord falsely accused her of leaving muddy shoeprints in the

hallway. The Landlord submitted a letter, dated March 06, 2017, in which the Landlord informs the Tenant about muddy footprints leading to the door of the rental unit; in which the Landlord declares the incident an “act of vandalism” and in which the Landlord informs the Tenant that if this type of behavior continues it could lead to the end of the tenancy. The Agent for the Landlord stated that this letter was sent to the Tenant because the footprints led to her unit.

The Landlord submitted a series of emails between the Tenant and the Building Manager, in which the Tenant indicates the shoeprints may have been left by a male named “David”.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because she believes the Landlord has harassed and intimidated her. When asked to give examples of the harassment and intimidation she stated that on one occasion an agent for the Landlord refused to remove her shoes during a unit inspection. The Tenant was given several opportunities to provide other examples of harassing and intimidating behavior but she stated she was satisfied all of the relevant issues had been raised at the hearing.

Analysis

Section 38(4)(a) of the *Residential Tenancy Act (Act*) stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

On the basis of the undisputed evidence I find that on March 28, 2017 the Tenant gave the Landlord written permission, via text message, to retain her security deposit as compensation for removing the carpet. As the Landlord had the Tenant’s written permission to retain the Tenant’s security deposit, I dismiss the Tenant’s application for the return of her security deposit.

When making a claim for compensation 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.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to replace the carpet she had removed during her tenancy. I therefore find that the Landlord is entitled to compensation for replacing the carpet.

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 10 years. On the basis of the testimony provided during the hearing I find that the carpet was approximately 6 years old at the end of the tenancy. I therefore find that the carpet had depreciated by 60% and that the Landlord is entitled to 40% of the cost of replacing the carpet. On the basis of the undisputed evidence I find that it cost the Landlord $2,349.34 to replace the carpet. I therefore find that the Landlord is entitled to recover 40% of that cost, which is $939.73.

As the Tenant has granted the Landlord authority to apply her security deposit of $797.50 to the cost of replacing the carpet, I find that the Tenant must pay an additional $142.23 to the Landlord for replacing the carpet.

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 evidence shows that the Landlord gave written notice to end the tenancy on April 30, 2017. As the rental unit was vacated in March of 2017, I cannot conclude that this tenancy ended on the basis of that notice.

As there is no evidence that the Tenant gave written notice end the tenancy in a manner that complies with section 45 of the *Act*, I cannot conclude that the tenancy ended 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 the Tenant was required to vacate the rental unit at the end of a fixed term, I cannot conclude that the tenancy ended 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. I find that this tenancy ended when the Tenant vacated the rental unit on March 28, 2017.

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 Tenant failed to comply with section 45 of the *Act* when she failed to provide the Landlord with notice of her intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. As the Tenant had not properly ended the tenancy prior to April 01, 2017, I find that she was obligated to pay the rent that was due on April 01, 2017, pursuant to section 26 of the *Ac*t. In these circumstances the Landlord is only seeking rent of $797.50 for April, and I grant that amount to the Landlord.

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

In these circumstances I find it was reasonable for the Landlord to serve the Tenant with a One Month Notice to End Tenancy on the basis that she had removed the carpet. It is not necessary for me to determine whether or not the Landlord had grounds to end the tenancy for that reason in these circumstances, as that matter is not before me. It is sufficient to simply conclude that it was reasonable for the Landlord to serve the Notice in an attempt to end the tenancy.

In the event the Tenant believed the Landlord did not have the right to end the tenancy, the Tenant had the option of disputing the Notice to End Tenancy. As she did not dispute the Notice she is presumed to have accepted the tenancy is ending, pursuant to section 46(5) of the *Act*, and was required to vacate the rental unit. Had the Tenant

successfully disputed the Notice to End Tenancy she would not have incurred any moving expenses. As the Tenant did not mitigate her losses by disputing the Notice to End Tenancy, I dismiss her claim to recover moving expenses.

As I have concluded that it was reasonable for the Landlord to serve the Tenant with a One Month Notice to End Tenancy on the basis that the Tenant had removed the carpet, I find it both reasonable and responsible for the Landlord to tell the Tenant she would be evicted if the carpet is not replaced. I therefore dismiss the Tenant's claim for compensation for being told that her tenancy would end if the carpet was not replaced.

On the basis of the undisputed evidence I find that the caretaker accidentally opened the door to the rental unit on one occasion, which startled the Tenant. Although this was undoubtedly disconcerting for the Tenant, I find that it was an innocent mistake. Given that the caretaker and the building manager both apologized for the intrusion I find that the intrusion was fleeting and does not constitute a significant breach of the Tenant's right to the quiet enjoyment of her rental unit. I therefore dismiss her claim for compensation on the basis of this incident.

A tenant has a responsibility to inform a landlord about problems with a rental unit, including the presence of mold. A landlord has a responsibility to repair defects in a rental unit, including addressing a mold problem that is not growing as a result of the tenant's actions. In these circumstances a problem with mold was never reported to the Landlord. As the problem was not reported to the Landlord, the Tenant could have no reasonable expectation of having the mold removed. I therefore find that she is not entitled to compensation as a result of mold in the unit.

Given that the muddy shoeprints led to the Tenant's door, I find it was reasonable for the Landlord to raise this issue with the Tenant and that it was reasonable for the Landlord to warn the Tenant that continued problems of this nature could lead to the end of the tenancy. Although it is unfortunate that the Landlord chose to characterize the incident as an "act of vandalism", I find that the incident does not constitute a breach of the Tenant's right to quiet enjoyment. I therefore find that she is not entitled to compensation as a result of this incident.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord acted in a threatening or intimidating manner.

After considering all of the evidence presented at the hearing, I cannot conclude that the Landlord has significantly breached the Tenant's right to the quiet enjoyment. I therefore dismiss her claim for compensation for loss of quiet enjoyment.

Conclusion

The Tenant has failed to establish a monetary claim.

The Landlord has established a monetary claim, in the amount of $1,039.73**,** which includes $142.23 for replacing the carpet, $797.50 in rent for April of 2017, 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 the $1,039.73. In the event the Tenant does not 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: September 20, 2017

Residential Tenancy Branch