Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, O, OLC (Tenant's Application)
OPC, MNDL, MNDCL, FFL (Landlord's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") filed by Tenant on September 6, 2017 and by the Landlord on October 27, 2017.

The Tenant applied to: cancel a notice to end tenancy for cause; to suspend or set conditions on the Landlord's right to enter the rental unit; for the Landlord to comply with the *Residential Tenancy Act* (the "Act), regulation, or the tenancy agreement; and for "Other" issues, namely to dispute the Landlord's monetary claim.

The Landlord applied for: an Order of Possession for cause; a Monetary Order for damage to the rental unit; money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the filing fee from the Landlord.

The Landlord, an assistant for the Landlord, and the Tenant appeared for the hearing and provided affirmed testimony. 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 issues to be decided.

The Tenant confirmed receipt of the Landlord's Application and the Landlord's extensive documentary evidence which was submitted to the Residential Tenancy Branch through the online application system and to the Tenant in documentary and digital USB form.

While the Tenant confirmed receipt of the Landlord's evidence, the Tenant stated that he could not view the digital evidence. However, the Tenant acknowledged that he had not responded to the Landlord's email and text enquiries for confirmation that he was able to view that evidence and therefore had no objection to the Landlord relying on the evidence she had served.
The Landlord confirmed receipt of the Tenant's Application but stated that she had received no evidence from the Tenant. The Tenant confirmed that he had provided one page of photographs into evidence which was not before me even though it appears as though the Tenant had unsuccessfully attempted to submit to the Residential Tenancy Branch faxed evidence of two pages on several occasions.

The Tenant was unable to confirm or provide supporting evidence of service of this evidence to the Landlord. Therefore, I continued the hearing without the Tenant's evidence as it was neither before me or the Landlord.

Preliminary Issues

At the start of the hearing, the parties were given an opportunity to voluntarily settle the matter with regards to the ending of the tenancy under the 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") because this matter was to be dealt with first.

The parties had a brief discussion and the Tenant put forward a proposal to end the tenancy on January 15, 2018. The Landlord exited the call to consult with her property manager and agreed to end the tenancy based on the Tenant's proposal as follows.
The parties agreed to end the tenancy on January 15, 2018 at 1:00 p.m. The Landlord is issued with an Order of Possession effective for this date and time. This order is enforceable in the Supreme Court of British Columbia as an order of that court **if** the Tenant fails to provide the Landlord with vacant possession of the rental unit.

The Tenant is to pay half month's rent for January 2018 and is not to use the security deposit as payment of rent. The Tenant is required to leave the rental unit clean and undamaged pursuant to Section 37(2) of the Act. The parties withdrew the 1 Month Notice. The Tenant accordingly, withdrew all his Application as the tenancy is due to end shortly and the Tenant's claims pertaining to a surviving tenancy are now moot and hereby dismissed. The hearing continued to hear the Landlord's monetary claim.

Issues(s) to be Decided

Is the Landlord entitled to a monetary claim for damages to the rental unit?

Background and Evidence

The parties agreed that this tenancy for a fully furnished condo started when the Tenant moved in on May 31, 2017. The parties signed a tenancy agreement which requires the Tenant to pay rent in the amount of $3,750.00 on the first day of each month. The Tenant paid a security deposit of $1,875.00 at the start of the tenancy which the Landlord holds in trust.

The Landlord testified that on June 21, 2017 the Tenant caused the washing machine to leak. As a result, the Landlord immediately called an emergency restoration company who stemmed the leak and undertook flood damage mitigation by absorbing all the water from the washing machine that had gone into the flooring and surrounding areas.

The Landlord testified that she attended the rental unit to see the flood damage that had been caused and that the restoration company spent several days drying out and dehumidifying the wooden floors where the water had spread to. The Landlord testified that when she questioning the Tenant about the flood, the Tenant asserted that the washing machine was faulty.

The Landlord testified that the washing machine was relatively new and the previous renter had used it without incident. Therefore, to determine the cause, the Landlord had the washing machine removed from the rental unit and inspected by a professional company. The Landlord provided the company's report into evidence which concludes that the washing machine remains in good working order and does not have any leaks. The Landlord explained that the report goes onto conclude that based on their tests and residual amounts of yellow washing up liquid that had been used in the washing machine, this is what had caused the problem.

The Landlord provided an article on the damaging effects of using dishwashing liquid in a washing machine due to the excessive amount of suds and soapy water. The Landlord stated that she discussed the report with the Tenant but the Tenant still insisted that the washing machine was faulty.

The Landlord said that she offered the Tenant and opportunity to have his own independent testing which the Tenant refused. Therefore, the Landlord then decided to get a second opinion to disprove the Tenant's assertion that the washing machine was faulty by asking another company to conduct additional testing.

The Landlord explained that in the meantime, the company who had undertaken the testing suggested that they meet at the rental unit with the Tenant so that they could watch the Tenant using the washing machine. This would determine if the Tenant was doing something that may be causing the issue. As a result, the Tenant had his friend, whom the Landlord testified testing company present.

The Landlord took video footage of this meeting and provided it into evidence. The Landlord wanted me to note that when the company asked the Tenant's friend to run a cycle on the washing machine, the Tenant's friend reached for a jug that contained yellow liquid sitting on a shelf by the washing machine and went to pour this in the washing machine dispenser.

The Landlord testified that the company technician managed to stop the Tenant's friend from doing so and pointed out that it was washing liquid that he was about to pour into the washing machine. The Landlord submitted that this further supports the conclusion of the company that the damage to the washing machine was caused by the Tenant's use of the yellow dishwashing liquid.

The Landlord then referred to the second testing that was undertaken, in particular a report which again confirmed that the washing machine was in perfect working order and does not leak.

The Landlord now claims $2,292.81 for the emergency restoration services that were called to deal with the washing machine leak, $224.00 for the first testing that was undertaken by the washing machine company, and $99.75 to obtain the second opinion. The Landlord provided invoice evidence to verify these costs.

The Tenant testified that he did not use any washing liquid in the washing machine as he always uses washing tabs. The Tenant explained that he was unable to appear for the appointment with the washing machine company and that is the reason why he sent his friend along in his place. The Tenant submitted that his friend had not used the washing machine and was coerced into using the washing up liquid as he assumed it was for the washing machine.

The Tenant confirmed that he did want to have his own testing done but did not manage to get around to doing this. The Tenant explained that he did agree to put the claim in with his insurance company but he was not able to get to that either.

The Landlord also claims $350.00 for the costs associated with sanitising and cleaning a wool rug that was provided to the Tenant to mitigate damage to the hardwood flooring. The Landlord testified that when she inspected the rental unit in September 2017 she saw the Tenant had placed the wool rug on the patio, where it had gotten wet and mouldy on the underneath. The Landlord provided photographic evidence to show the state of the wool rug and an estimate of $350.00 to have it cleaned.

The Tenant stated that the rug was generating a lot of dust on the floor so he removed this to the patio area. The Tenant agreed that he could have placed the rug inside the rental unit or asked the Landlord to provide one that did not generate dust.

The parties then provided evidence with respect to alleged damage caused to the hardwood flooring. The Tenant argued that the damage referred to by the Landlord was reasonable wear and tear and that he had video footage evidence to prove this was the case; although none was provided into evidence.

The Landlord felt that she had provided sufficient evidence to show that the damage to the flooring had gone beyond reasonable wear and tear and that it must now be replaced. However, the Landlord decided to withdraw this portion of the claim in order to gather further evidence to bolster the evidence she had already gathered. I permitted the withdrawal of this portion of the claim as it would also give the Tenant an opportunity to provide rebuttal evidence so that a full assessment of the claim for the hardwood flooring could be determined at a later date. Therefore, the Landlord was given leave to re-apply for this portion of the claim. No objections were raised by the Tenant to this course of action.

Analysis

Section 32 of the Act states that a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

In this case, I am satisfied by the Landlord's evidence that the Tenant is responsible for the flooding issue that stemmed from the washing machine. I find the Landlord's evidence of two independent reports sufficiently rebuts the Tenant's claim that there was a pre-existing fault with the washing machine. I find this evidence to be compelling in the face of the Tenant's rebuttal testimony.

I concur with the Landlord and find that on the balance of probabilities, the Tenant's friend was the most likely culprit to have used yellow washing up liquid in the washing machine which then led to the flood. This is where the Landlord's evidence takes me and the Act provides that a Tenant is responsible for the actions of permitted persons in the rental unit.

As a result, I find the Tenant is liable to pay the Landlord for the remediation work that was undertaken at a cost of $2,292.81 over the course of several days. I find that this cost was essential to prevent further damage to the flooring and rental unit that may have occurred if the restoration company had not preformed this work.

In addition, I also grant the Landlord the costs she incurred to verify and get two professional opinions and reports to rebut the Tenant's continual assertion that the washing machine was faulty. Had the Tenant admitted liability from the onset, the Landlord would not have had to go to the extent of obtaining this evidence. Furthermore, if the Tenant felt that there was a pre-existing fault with the washing machine, then the onus would have been for the Tenant to have obtained the necessary evidence to prove otherwise. In this case, the Tenant did not and I find the Tenant is liable for the testing costs totalling $323.75.

In relation to the Landlord's claim for the cleaning of the wool rug, I find the Tenant failed to mitigate any loss as required by him under Section 7(2) of the Act. If the Tenant felt the wool rug that was provided to him in this tenancy was causing dust, the Tenant had on obligation to either remove the rug or place it for safekeeping or to notify the Landlord in writing requesting to have the rug removed and replaced. In this case, I find the Tenant's actions in removing the rug to the outside area were inappropriate and this negligence has now caused the resulting damage.

I accept the Landlord's evidence that the Tenant's action caused the rug to get dirty and mouldy. Therefore, the Tenant is liable for the cleaning cost of $335.00 as verified by the submitted estimate for this charge.

I note the Landlord had also filed an additional Monetary Order Worksheet into evidence pertaining to an anticipated claim for a locksmith. The Landlord had not filed an amendment to her Application for this portion of the claim and withdrew this as the Tenant confirmed that the

original lock the Landlord was claiming for had been put back on. As this item did not form part of the Landlord's claim, the Landlord is at liberty to file an application at a future date to recover this cost if applicable.

As the Landlord has been successful in proving the claims that were dealt with in this hearing, the Landlord is also awarded the recovery of her $100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the Landlord is issued with a Monetary Order for a total amount of $3,066.56.

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment.

Copies of the above orders are attached to the Landlord's copy of this Decision. The Tenant may also be liable for the enforcement costs of the orders.

Conclusion

The parties agreed to end the tenancy mutually on January 15, 2018. The Landlord is granted a Monetary Order for damage to the rental unit in the amount of $3,066.56. The Landlord's monetary claim for damage to the hardwood flooring is dismissed with 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: December 05, 2017

Residential Tenancy Branch