Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMENT SERVICES (BC) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with monetary cross applications. The tenant applied for a Monetary Order for compensation payable to tenants where a landlord does not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*. The landlords applied for a Monetary Order for compensation for damage to the rental unit. 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.

Preliminary and Procedural Matter – Naming of parties

In filing the Tenant's Application for Dispute Resolution, the tenant had named the property management company who acted on behalf of the owners during the tenancy. I confirmed that the tenant had named the landlord as it appears on the 2 Month Notice to End Tenancy for Landlord's Use of Property that brought the tenancy to an end. The property management company was represented at the hearing. The Landlord's Application for Dispute Resolution was filed by the current and former owner of the property. The tenancy ended in March 2017 and the former owner sold his one-half interest to his sister-in-law on August 3, 2017. The landlords claims pertain to damage that allegedly occurred during the tenancy that was repaired shortly after the tenancy ended. The definition of "landlord" under the Act includes the owner of the property, an agent who acts on behalf of the owner and the former owner where the context requires this. In the circumstances of this case, I am satisfied that all of the parties named as landlord in this decision met the definition of landlord at the relevant time. Should the tenant succeed in obtaining a Monetary Order the tenant may pursue any or all of the named landlords for payment and it shall be the responsibility of the landlords to apportion any liability to the tenant among themselves.

Issue(s) to be Decided

1. Is the tenant entitled to additional compensation payable to tenants under section 51(2) of the Act?
2. Are the landlords entitled to compensation from the tenant for damage to the rental unit in excess of the amount already given by way of deductions from the security deposit?

Background and Evidence

The facts of this case were largely undisputed. The rental unit is a condominium that was owned by a husband and wife (herein referred to as "the owners") and rented to the tenant for a long period of time through a property management company. The tenant only had dealings with the property management company.

The tenancy started in 2001 and at the end of the tenancy the tenant was paying a monthly rent of $1,387.00. The tenancy ended on March 17, 2017 when the tenant vacated the rental unit. The tenancy ended pursuant to a *2 Month Notice to End Tenancy for Landlord's Use of Property* that was issued on February 21, 2017.

The tenant paid rent for March 2017 and on March 9, 2017 the tenant gave the landlord notice that he would be ending the tenancy effective March 17, 2017. The landlord's agent determined the tenant was entitled to reimbursement of 8 days of rent he paid for March 2017, plus the equivalent of one month of rent, in keeping with compensation payable to tenants in receipt of a 2 Month Notice, as provided under sections 50 and 51(1) of the Act.

At the end of the tenancy the tenant participated in a move-out inspection with an agent for the property management company. The tenant agreed to compensate the landlord $400.00 for damage to the flooring and $120.00 for carpet cleaning by way of the tenant's $514.40 security deposit and a $5.60 adjustment to the compensation payable to the tenant calculated above. The net amount was paid to the tenant.

Shortly after the tenancy ended, the owners renovated the rental unit, including installation of: new laminate flooring throughout the rental unit, new light fixtures, new shower head, new toilet, new switches and outlets, new heater controls, and, a new garburator. The renovation work was invoiced by the owner's contractor on May 22, 2017 for the sum of $11,413.50.

On or about May 25, 2017 the rental unit was advertised for rent at the monthly rent of $2,000.00. The owners testified that the unit was re-rented starting on August 1, 2017. The owners also submitted that on August 3, 2017 the husband transferred his one-half interest in the property to his sister-in law. The wife retained an ownership interest in the property.

The tenant submitted that the owners did not use the rental unit for the purpose stated on the 2 Month Notice for at least six months after the tenancy ended and the tenant seeks additional compensation payable that is under the Act.

The landlords were of the position the tenant should not receive any further compensation considering:

- The owners gave the tenant nearly three months of advance notice to end the tenancy and the tenant ended the tenancy early, causing the owners to lose two or more months of rental income.
- The owners intended to have their son move into the rental unit after the renovation was completed and their son got married in August 2017 but circumstances changed and their son was re-hired at his job in another province so the rental unit was re-rented.
- The landlords could have ended the tenancy for the reason of making significant renovations.

By way of the landlord's Application for Dispute Resolution, the owners seek compensation of $7,050.00 from the tenant for the following: $6,000.00 for installation of the new laminate flooring; $600.00 for installation of the new toilet; and, $450.00 for installation of the new garburator. Below, I have summarized the parties' respective positions with respect to these claims.

The owners submitted that the existing laminate flooring was heavily damaged by scratches, broken pieces, and evidence of spilled liquids. The owners testified that the damaged flooring was approximately 12 years old. The owners explained that their claim of $6,000.00 was determined by way of contacting the contractor and asking the contractor the cost of the materials and labour for the new laminate flooring that was included in the total renovation invoice.

The owners submitted that the former toilet had a cracked toilet bowl and the toilet had to be replaced. The owners estimated the toilet to be approximately 20 years old. The owners explained that the claim of $600.00 was determined by enquiring with the

contactor as to how much the new toilet cost to purchase and install out of the total renovation invoice.

The owners submitted that the existing garburator was not working at the end of the tenancy. The owners do not know the reason it stopped working but were of the position the tenant should be held responsible for paying for a new one. The owners estimated that the garburator was approximately 15 years old. The landlords testified that the contractor informed them that the cost of purchasing and installing the new garburator was $450.00 even though the invoice provided as evidence shows that the contractor charged the owners $350.00 for changing the garburator.

The tenant responded by pointing out that his tenancy was more than 15 years in duration and testified that during his entire tenancy the only thing that was changed was the fridge, meaning the laminate flooring was at least 15 years old. The tenant acknowledged that the laminate flooring was scratched and in need of replacement at the end of the tenancy but the flooring was most likely beyond its useful life and he already compensated the landlord $400.00 for damage to the flooring.

The tenant testified that he was unaware of any crack in the toilet bowl since the toilet was functional at the end of his tenancy.

The tenant agreed that the garburator was not working at the end of the tenancy and that it did require replacement. The tenant had intended to notify the property management company about the garburator but then he received the 2 Month Notice so he did not complain about it, although he did point it out to the landlord's agent during the move-out inspection. Again, the tenant pointed out that the garburator in the unit was at least 15 years old.

The property manager testified that the rental unit was in need of a major renovation and he attributed the need for a renovation to damage in the rental unit. I noted that none of the parties had provided a copy of the move-out inspection report even though I heard that one was done. The owners pointed to the email the property manager sent to the owners where the tenant agreed to compensate the landlords $400.00 for "heavy damage" to the flooring. The owners also took the position that the former laminate flooring had a life expectancy of 20 – 25 years based on the manufacturer's representations for the new laminate flooring. The owners indicated that the same life expectancy should apply to the former laminate flooring. The owners also stated that carpeting, which was in the bedroom, should be expected to last 15 - 20 years.

Analysis

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

Tenant's application

Where a tenant receives a *2 Month Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act, the tenant is entitled to certain benefits and compensation pursuant to sections 50 and 51 of the Act. Under section 50, a tenant in receipt of a 2 Month Notice is entitled to end the tenancy earlier than the effective date of the 2 Month Notice by giving the landlord 10 days of notice and if the tenancy ends part way through a month and the tenant already paid rent for that month, the tenant is entitled to reimbursement of the rent paid for days after the tenancy ended. In addition, a tenant in receipt of a 2 Month Notice is entitled to compensation equivalent to one month's rent for receiving a 2 Month Notice as provided under section 51(1). Finally, a tenant in receipt of a 2 Month Notice is also entitled to additional compensation from the landlord where the landlord does not use the rental unit for the purpose stated on the 2 Month Notice, as provided under section 51(2) of the Act. Compensation payable under section 51(2) is in addition to compensation payable under section 51(1) and is intended to dissuade landlords from ending a tenancy for one reason and then using the unit for another purpose.

The tenant in this case has already received the reimbursement owed to him under section 50 of the Act and compensation payable to him under section 51(1). The tenant seeks compensation payable under section 51(2) of the Act. Section 51(2) provides, which my emphasis underlined:

> (2) In addition to the amount payable under subsection (1), if
>
> > (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
> >
> > (b) the <u>rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice</u>,
>
> <u>the landlord...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.</u>

Section 49 provides for a variety of reasons a landlord may end a tenancy for landlord's use of property. Accordingly, I find the application of either paragraph (a) or (b) of section 51(2) depends on the reason given for ending the tenancy. To illustrate my reason for this interpretation: a landlord may end a tenancy for landlord's use where the unit is going to be demolished and in such cases paragraph (b) would not apply and paragraph (a) would be most applicable. Whereas, if a tenancy is ended so that the landlord may occupy the rental unit, it would be more appropriate to require the landlord to occupy the rental unit for more than a brief period of time to avoid abuse of this provision.

In this case, the landlord indicated the reason for ending the tenancy was so that the owner, or owner's close family member, could occupy the rental unit. Where a tenancy ends for that reason, I find it appropriate to apply paragraph 51(2)(b) as described above. Accordingly, I find the issue to determine is whether the owners, or the owners' close family member, occupied the rental unit for at least six months after the tenancy ended.

It is undisputed that the rental unit was advertised for rent starting shortly after the renovation was completed and the rental unit was re-rented effective August 1, 2017. In re-renting the rental unit starting August 1, 2017 I find the rental unit was not occupied by the owners, or owners' close family member, for at least six months after the tenancy ended. Therefore, I find the landlords must now pay the tenant additional compensation under section 51(2) of the Act.

As for the landlord's arguments against the tenant's claim, I have considered each one of their arguments but I find that they do not change the outcome of my decision. Although the owners' son may have intended to move into the rental unit and his employment circumstances changed there is no exemption to the landlord's obligation to occupy or give occupancy of a close family member for at least six months after the tenancy ends. To avoid paying the tenant additional compensation the owners may have retained vacant possession of the rental unit or move into it themselves. But, they chose to re-rent it and for a lot more rent I noted. As for the landlord's allegation that they had already paid the tenant compensation and lost rental income due to his early termination of the tenancy I find the tenant had only received what he was entitled to receive under the Act and nothing more or less. Finally, it is not relevant that the landlords could have indicated they wanted to end the tenancy for purposes of making a major renovation. Section 51(2) is clear in that the requirement to pay additional

compensation applies where a landlord does not use the rental unit for the “stated purpose” on the 2 Month Notice.

In light of the above, I grant the tenant’s request for compensation of $2,774.00 plus $100.00 for recovery of the filing fee.

Landlord’s application

The owners in this case seek compensation for damage to the rental unit. Such claims are made under section 7 and 67 of the Act. A party that makes an application for monetary compensation against another party has the burden to prove their claim. Accordingly, the landlords must prove the following:

1. That the tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the landlords to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the landlords did whatever was reasonable to minimize the damage or loss.

Under section 37 of the Act, a tenant is obligated to leave a rental unit undamaged. Section 37 of the Act provides that reasonable wear and tear is not damage. Nor, is a tenant liable to repair pre-existing wear and tear or damage. Accordingly, a landlord may pursue a tenant for compensation for damage to the rental unit that occurred during the tenancy but not wear and tear.

It is important to note that awards for damages are intended to be restorative. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item in recognition of the limited useful life of building elements. In order to estimate depreciation I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful life of building elements.*

Flooring damage

It is undisputed that the flooring in the rental unit was in need of replacement at the end of the tenancy. The landlords seek compensation equivalent to the entire cost of the new flooring ($6,000.00) but considering the flooring was at least 15 years old when the tenancy ended, I find the landlords’ request to be unreasonable as it does not take into account wear and tear and aging of the flooring for more than 15 years.

Policy guideline 40 provides that carpeting has an average life of 10 years and hardwood has an average useful life of 20 years. The policy guideline does not provide an average useful life of laminate flooring and the landlord did not produce any documentary evidence to demonstrate the useful life of the laminate flooring that was in the rental unit. Accordingly, I find it appropriate to estimate the useful life. Considering hardwood flooring only has an average life of 20 years and hardwood flooring is much more expensive and solid than laminate, I find that the 15 year old laminate flooring in the rental unit was at or near the end of its useful life as submitted by the tenant. The landlords also replaced the carpeting with new laminate flooring and the carpeting was at least 15 years old as well and at or near the end of its useful life. Therefore, I find the landlords have not demonstrated that they are entitled to the additional compensation they seek from the tenant for the flooring and I dismiss this portion of their claim.

Toilet

The landlords did not provide evidence to corroborate their position that the toilet bowl was cracked. Further, Policy guideline 40 provides that toilets have an average useful life of 20 years. The toilet that was allegedly cracked during the tenancy was 20 years old according to the landlords. As such, I find their request that the tenant pay them the cost to purchase and install a new toilet is unreasonable considering it was at or near the end of useful life. Therefore, I dismiss this portion of their claim.

Garburator

It was undisputed that the garburator was not working at the end of the tenancy. However, in order for the landlord's to succeed in a claim for the tenant to pay for replacement of the garburator the landlords would have to demonstrate the garburator was damaged by way of negligence or misuse on part of the tenant. The landlords testified that they did not know the reason the garburator stopped working. Considering the garburator is a mechanical appliance and its age (at least 15 years old) I find it just as likely that it stopped working due to mechanical failure or age. Therefore, I find the landlords have not established that the tenant is liable to pay for a new garburator and I dismiss this portion of the landlord's claim.

Since the landlords were entirely unsuccessful in their claims against the tenant, I make no award for recovery of the filing fee they paid and their application is dismissed in its entirety.

Monetary Order

In keeping with my findings and reasons provided above, I provide the tenant with a Monetary Order in the sum of $2,874.00 to serve and enforce upon the landlords.

Conclusion

The tenant has been provided a Monetary Order in the sum of $2,874.00 to serve and enforce upon the landlords.

The landlord's application has been dismissed in its entirety.

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: December 21, 2017

Residential Tenancy Branch