Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's two agents, landlord RH ("landlord") and "landlord VG," and the tenant and his agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the general manager and landlord VG was the building manager and that both had permission to represent the landlord company named in this application. The tenant confirmed that his agent, who is his son, had permission to represent him. "Landlord witness PH" testified on behalf of the landlord and "tenant witness MM" testified on behalf of the tenant. Both parties were excluded from the outset of the hearing, did not hear the parties' testimony, and were only recalled when it was their time to testify. Both parties had equal opportunities to question both witnesses. The tenant provided two other witness letters with his evidence, but said that the witnesses were unable to testify at this hearing.

The hearing began at 1:30 p.m. and ended at 2:54 p.m. for a total of 84 minutes. The tenant, the tenant's agent, landlord witness PH, and myself all called to the conference at the scheduled start time of 1:30 p.m. Landlord witness PH left the conference and returned at 1:39 p.m. and then exited again, only returning to testify later during the hearing. The landlord called in late at 1:37 p.m. and landlord VG called in late at 1:38 p.m., both stating that they had difficulty calling in to the conference. I notified the landlord and landlord VG of what occurred in their absence.
The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's written evidence package.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and their witnesses, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2012 and ended on June 6, 2018. Both parties signed a written tenancy agreement. Monthly rent in the amount of $1,150.00 was payable on the first day of each month. A security deposit of $515.00 was paid by the tenant and the landlord continues to retain this deposit. Move-in and move-out condition inspection reports were completed for this tenancy but the tenant did not sign the move-out report. The tenant provided a written forwarding address in writing to the landlord on April 30, 2018 on his notice to vacate, which the landlord received. The landlord did not have written permission to keep the tenant's security deposit and filed this application to retain it on August 17, 2018.

The landlord seeks a monetary order of $4,821.35 plus the $100.00 application filing fee. At the hearing, the landlord reduced his monetary claim from the original amount of $5,731.46.

The landlord seeks $3,777.58 for emergency cleaning of the rental unit by a restoration company. The landlord originally applied for $4,777.58, but reduced it at the hearing, stating that restoration companies charge more than regular companies to clean, and that the emergency call increased the hourly rate that was charged. He said that the tenant failed to clean the rental unit when he vacated and the landlord needed it to be done before he could re-rent it to new tenants. The landlord claimed that most cleaners refused to clean the rental unit, even when hired by the tenant, because the odour was so bad in the unit that they could not breathe. The landlord provided copies of invoices and receipts for the above original amount, as well as photographs of the condition of the rental unit. He said that debris had to be removed, as well as furniture, which was included in the cleaning invoice.

The landlord stated that both parties agreed to meet for a move-out condition inspection and report on July 12, 2018, after the landlord had the rental unit cleaned. He claimed that the tenant showed up, the landlord had the cleaning invoices to give to the tenant, but the tenant said he had to go to an appointment, and would return with his agent on July 18, 2018.

Landlord VG explained that the unit had to be cleaned by the tenant first, before any move-out condition inspection and report could be completed. He said that the tenant failed to clean the unit and the air was not breathable, since the tenant has no sense of smell, which the tenant did not dispute. He explained that the toilet in the bathroom was clogged with fleas and mosquitoes. He stated that the cleaning was done by a team wearing hazmat equipment. He said that the cleaner hired by the tenant, recommended by the landlord because the tenant asked for cleaning references, told him that she refused to clean when she came to the rental unit because she said she could not breathe and wanted to throw up, due to the smell.

Landlord witness PH testified that she was a field supervisor, employed for eight years by the restoration company that was hired by the landlord to clean the tenant's rental unit. She maintained that she has

done a lot of cleaning in her employment with the company. She explained that she cleaned the living room, dining room, kitchen, bathroom, one bedroom, and the hallway of the rental unit. She stated that the rental unit "should have been unlivable" and was filthy, filled with feces and urine, she could not see the floor, and there was garbage everywhere. She said that the bathtub was filthy, and she could not restore the toilet because there was dirt inside the toilet where there was a black area ring so it would have damaged the porcelain if she tried to chisel it away in order to clean it.
Landlord witness PH said that she was required to wear a respirator and a white suit to cover her clothing, referred to as a hazmat suit, because of the unbearable odour in the rental unit. She said that it took two days to clean the rental unit, that the first day was eight hours with her and three other workers, and that the second day was eight hours with her and two other workers. She explained that she used an air scrubber inside the rental unit for three days after in order to clear the odour.

During the hearing, the tenant agreed to pay $200.00 towards cleaning of the rental unit to the landlord. He stated that he cleaned the entire rental unit except for the kitchen and bathroom, and he agreed to pay his cleaner $200.00 to complete it, but she did not end up cleaning. He explained that the cleaner, recommended to him by the landlord, left after talking to landlord VG but he did not know why. He said that he is not responsible for the landlord's renovations of the curtains, floor and kitchen inside the rental unit. The tenant stated that the refrigerator was fine and he hardly used the stove. The landlord claimed that he is not charging the tenant for the floor renovation or the carpet cleaning. The tenant explained that he did not participate in a move-out condition inspection at the time that he was moving out. He maintained that an inspection was only done after the landlord had the rental unit cleaned and it was a quick tour of the rental unit.

Tenant witness MM testified that she and her husband helped the tenant move his possessions out of the rental unit. She provided a letter as evidence in support of the tenant. She stated that the rental unit was clean when the tenant vacated, except for the kitchen and bathroom, which still needed cleaning. She explained that the tenant was told by the landlord that he would be doing a renovation inside the rental unit, so not to worry about the carpet and the curtains. She said that the tenant told her that the cleaners he hired, with the landlord's recommendation, left for an unknown reason and were speaking Chinese so he could not understand it.

The landlord seeks $852.12 for a new toilet, sink and vanity that replaced the older ones. He said that the above items were purchased new and installed in 2015 and that they had to be fully replaced because the tenant failed to clean and maintain them, such that they could not be repaired or cleaned. The landlord provided an invoice for the 2015 purchase of $953.88, which he originally applied for, as well as the new invoice for $852.12, which he reduced his claim to, during the hearing. The tenant disputed this claim, stating that only cleaning was required in the bathroom and that he was not responsible for the landlord renovating the bathroom.

The landlord seeks $191.65 for unpaid rent for the period from June 1 to 5, 2018. The tenant agreed to pay this amount during the hearing.

Analysis

Damages

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord $191.65 in unpaid rent from June 1 to 5, 2018, as the tenant agreed to pay this amount during the hearing.

I award the landlord $300.00 for the replacement of the toilet, the new supply line and the old toilet removal. I dismiss the remaining claim of $552.12 for the remaining toilet claim, the sink and vanity replacement, without leave to reapply. I find that the landlord failed to provide sufficient evidence that a new sink and vanity was required in the bathroom. I find that the landlord showed that the tenant failed to properly clean the toilet and permanently damaged the inside of the toilet by failing to maintain it throughout the tenancy. Landlord witness PH testified about the fact that she could not clean the toilet without damaging it, so it had to be replaced. The landlord provided photographs of this damage and the new July 31, 2018 invoice for $852.12 for the new toilet replacement, old toilet disposal and the new supply line. The landlord also provided the old invoice of $953.88 for the toilet, sink and vanity when it was completed by the landlord for March 31, 2015. I find that the above amount is a reasonable amount, taking into account the use of the toilet over the three year period between 2015 and 2018.

I award the landlord $3,000.00 for the cleaning of the rental unit by the restoration company. The landlord reduced the original invoice amount by $1,000.00 to $3,777.58 during the hearing, noting that it was an emergency call and cost more with a restoration company. I dismiss the remaining $777.58 without leave to reapply. I find that the above is a reasonable amount, given that restoration companies who make emergency calls charge for those services and are more expensive, as per the landlord's testimony.

I find that the tenant failed to maintain reasonable health and cleanliness standards during this tenancy, as per section 32 of the *Act*, such that he did not adequately clean the rental unit when he vacated. A cleaner refused to clean the unit on behalf of the tenant and the tenant agreed that he did not clean the entire rental unit, as he was required to do so before vacating. I find that this delayed the move-out condition inspection, which could not be done by the landlord because the unit was not cleaned as required. I accept landlord witness PH's testimony that she is a professional cleaner and field supervisor in this business who had a to wear a hazmat suit to protect her and her employees from the smell and the dirt inside the rental unit, which took two days to clean and three days to purify the air. I have also taken into account the testimony from tenant witness MM, who did not testify as an expert cleaner, but who was present while the tenant was moving out and did not make the same observations as landlord witness PH. I have reduced the amount owed by the tenant based on the above factors.

As the landlord was mainly successful in this application, I find that it is entitled to recover the $100.00 filing fee from the tenant.

Security Deposit

The landlord continues to hold the tenant's security deposit of $515.00. No interest is payable on the deposit during the period of this tenancy. The landlord made this application to claim against the tenant's security deposit.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of both parties. The tenancy ended on June 6, 2018. The tenant provided a written forwarding address to the landlord by way of a written notice on April 30, 2018. The landlord confirmed receipt of it. The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the deposit. The landlord filed this application to retain it on August 17, 2018. This is outside the 15-day time period between the later date of the end of the tenancy on June 6, 2018 and the application date on August 17, 2018.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17*,* I find that the tenant is entitled to receive double the value of his security deposit of $515.00, totalling $1,030.00. Even though the tenant did not make an application for the return of his deposit and he did not ask for doubling of his deposit, I am required to consider the deposit since the landlord applied to retain it, and the doubling since the tenant did not specific waive his right to it, as per Residential Tenancy Policy Guideline 17.

I issue a monetary order to the landlord for $2,561.65 for the balance due by the tenant, after deducting the doubling of the deposit of $1,030.00.

Conclusion

I order the landlord to retain the tenant's entire security deposit, including the doubled portion, totalling $1,030.00, in partial satisfaction of the monetary order.

I issue a monetary order in the landlord's favour in the amount of $2,561.65 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's application is dismissed without leave to reapply.

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 28, 2018

Residential Tenancy Branch