Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

In the first application the tenant seeks to recover her security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the "*Act*") and to recover the equivalent of twelve months rent imposed by s. 51 of the *Act* alleging a failure of the landlord to carry out the intended purpose of a two month Notice to End Tenancy for landlord use of property. She also seeks to recover the one month's rent compensation a landlord is required to pay when a two month Notice has been given.

In the second application the landlord seeks a monetary award for cleaning and repair to the premises after the tenant vacated.

Issue(s) to be Decided

Did the tenant leave the premises reasonably clean and free of damage but for reasonable wear and tear, as required by s. 37 of the *Act*? If not, what is reasonable compensation for cleaning and repair? Is the tenant entitled to recover prorated rent or her security deposit? Is the tenant entitled to the deposit doubling penalty imposed by s. 38? Has the landlord carried out the purpose of the two month Notice within a reasonable time after this tenancy ended?

Background and Evidence

The rental unit is a two bedroom basement suite in the landlord's home. The landlord and her family live upstairs. There is a second rental unit located in the basement, rented to others.

The landlord failed to prepare a written tenancy agreement as she is required to do under the *Act*. She did not appear at this hearing but was represented by her son Mr. S.S. who agreed that the tenancy started in 2012. The tenant says the original rent was $625.00 and that she paid a security deposit of one half that amount ($312.50). She says that during the tenancy the landlord increased the rent to $800.00 and that she supplemented the deposit money to a total of $400.00.

Mr. S.S., the landlord's son and agent at first appeared to agree that the initial rent was $625.00 but during the second hearing indicted it was $550.00. He challenged that the tenant had paid any security deposit but on the second day of hearing, having repeated that no deposit was paid and after being referred to one of the documents he had filed showing a deposit, agreed that $275.00 had been paid as deposit money.

Both agree that the rent was $800.00 per month at the end of the tenancy.

Both agree that the tenant had received a two month Notice to End Tenancy dated July 9, 2018 effective October 1, 2018. The Notice stated that the landlord or a close family member would occupy the rental unit. In August 2018 the tenant gave the landlord ten days notice that she was leaving September 1, 2018. She left on that date and, it is agreed, provided the landlord with a forwarding address in writing, the address in her application for dispute resolution.

Mr. S.S. testifies that the tenant did not attend for a walk through inspection though she had been given two opportunities to do so and did not return the keys. The tenant says that the landlord's husband attended on September 1, that they walked through the rental unit, that all was fine with its condition and that she gave him the keys.

Mr. S.S. for the landlord testifies that the tenant caused damage in the rental unit. He presents a video of the interior showing a strange dusting on a painted wall in the living room, some holes in drywall, small pieces of dirt or stain on the carpets, a carpet tear at a joint, odd metal reinforcements in the frame of the door, a fridge missing a handle and a discolouration and a small hole on the ceiling at a light fixture.

He claims that the landlord hired a renovation man Mr. M., to attend to the repairs and cleaning. He presents Mr. M.'s invoice the invoice totalling $5300.00 plus GST: $5936.00 and that is what the landlord claims from the tenant.

Ms. J.S. testified. She is the landlord's 42 year old daughter and lived in the rental unit prior to this tenant. She says she lived there until May 2014. She is confident of that

date because that's when she and her husband bought their own home. She says that one year before she left she and her husband had remodelled the rental unit with new carpet and had it cleaned every six months. There was a new vanity in the bathroom and the unit was "pristine" when she left. On being questioned by the tenant she denied that the door damage had been done by her husband. She admitted that the fridge handle was off and says she gave it to the tenant to put back on (two screws).

Mr. N.S. testified. He is unrelated to the landlord. He says he was there on September 1 at 10:00 a.m. for the move out inspection. There was no response at the door. He and Mr. S.S. entered and the rental unit was empty.

He says he had seen the rental unit after Ms. J.S.'s renovation" some years before and that he was shocked by its current state. He says there was film like a patchy grease on the walls, the door was damaged, the carpet had marks like burns or stains, there was a hole in the wall and a window was cracked and dirty. The kitchen counter was slashed or ripped and the stove was grimy. The fridge handle was broken, not loose. The bathroom vanity was scratched and there was mould. There were marks on the doors.

At the second hearing the landlord's son called the renovator, Mr. M. who testified to his invoice. He denied acquaintance with the landlord but for the fact that they attend the same temple. He has been on the premises before, doing handyman things.

Mr. S.S.#2 testified. He is another of the landlord's sons. He says he moved into this rental unit on October 1, 2018. He had been living upstairs with his parents. He did not move in earlier because the work that had to be done to the rental unit. He does not pay rent but contributes to the household budget.

The tenant Ms. V.S. testifies that she had no dealings with Mr. S.S. before this. A week after she received her Notice she spoke to the landlord about staying and offered to pay more rent but the landlord told her that it was up to her sons. She did not dispute the Notice, had trouble finding new accommodation and eventually moved across the street possibly into her parents' house. She says she was there for the move out. Neither son was there. She showed the landlord's husband the place and gave him the key.

She produces a number of photos she says she took just before moving out. She says she is a housekeeper by trade. The photos show that the premises is empty but for some luggage and boxes by the door and but for her cleaning equipment. Photos of the premises show it to be clean. Countertops appear clean and undamaged. On the

kitchen countertop can be seen keys. The bathroom appears clean. The carpets appear clean but for the obvious wear and tear from locations that had been covered by furniture. The rip in the carpet can be seen. She says the rip was it was from a piece of furniture the previous occupants had.

The tenant says that the observable, dusty looking marks on the living room wall were made by a pest control company that the landlord had hired about one year earlier, to attend to an ant infestation in the house. She says she never installed the fridge handle she had been given and that it is still there.

The tenant produced extracts from an advertisement on Craigslist showing this suite to be advertised for rent in September 2018. The ad notes that the suite is "freshly renovated." The asking rent is $1500.00. The tenant says that the ad was still on Craigslist on October 15. She lives across the street now. She testifies that new people have moved into the rental unit and she has seen them. The landlord and her family are East Indian. The new people in the suite are not.

She refers to the purported move-in condition report submitted by the landlord and dated July 1, 2014. She says it is not her signature on the report and provides examples of her signature made before the landlord's application and evidence.

Analysis

The allegations made by the parties are too far from each other to allow for any resolution. It is clear that one party or the other had diverged from the domain of fact and so the credibility of the tenant and of the landlord's sons and other witnesses must be assessed. The landlord could have made response to those important aspects of the tenant's story that related to her but she did not attend the hearing on either day.

The signature on the purported move-in report filed by the landlord on her application does not bear a reasonable resemblance to the signatures the tenant has affixed to her documentation filed before she would have seen the report the landlord filed. I consider it most likely that someone other than the tenant signed it.

Neither the landlord or her son Mr. S.S. offered an explanation how it came to be that though she ended this tenancy on the basis that a close family member would occupy the unit, the "freshly renovated" rental unit was offered for rent at nearly double the rent the tenant was paying within two or three weeks after the tenant moved out.

The renovator's invoice is suspect. He charged GST but did not provide a GST number in the invoice. More concerning, he testified that he did the work, rendered the invoice and was paid, but the invoice, entirely in type but for its signatures, states "Paid in full – Cash." Indicating that he was paid before he drafted the invoice. No receipts accompanied the invoice. It is likely that the work he did was to "freshly renovate" the rental unit and not simply to repair damage.

The photos of the interior of the rental unit filed by the tenant are inconsistent with much of the damage note by the landlord in her video. I find it un likely that the tenant would have staged her photos or taken then and then afterward caused the damage.

It was not explained why the son Mr. S.S.#2, who had been living with his parents upstairs and who is not married, would move into a two bedroom rental unit is the lower level.

As was said by Southin J., as she then was, in *Le v. Milburn*, [1987] B.C.J. No. 2690 (15 December 1987) Vancouver Registry No. B81193 (B.C.S.C.),

> When a litigant practises to deceive, whether by deliberate falsehood or gross exaggeration, the court has much difficulty in disentangling the truth from the web of deceit and exaggeration. If, in the course of the disentangling of the web, the court casts aside as untrue something that was indeed true, the litigant has only himself or herself to blame.

For these reasons I consider that I prefer the tenant's evidence over that presented by the landlord's witness, wherever their evidence conflicts.

I find that the landlord has failed to prove that the tenant left the premises in less than a reasonable state of cleanliness or that she caused damage over and above reasonable wear and tear during a relatively long tenancy. I find that after the tenant left the landlord chose to renovate the rental unit, not repair it. I dismiss the landlord's claim.

I find that the tenant attended at the premises with the landlord's husband on September 1, 2018, inspected the premises with him, determined the rental unit was in acceptable condition and returned the key.

I find that the tenant paid an initial deposit and then, at the landlord's request, topped it up to a total of $400.00. She provided a forwarding address in writing on September 1, 2018. Section 38 of the *Act*, provides that once a tenancy ends and once a landlord

has received her tenant's forwarding address in writing, then, within the next fifteen days, the landlord must either repay the deposit money or make an application to keep all or a portion of it. Section 38 provides that if a landlord fails to do either within the fifteen day period she must pay the tenant double the deposit.

The landlord has failed to comply with s. 38 and I award the tenant double the deposit: $800.00.

Section 51(1) of the *Act* provides:

> (1)A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The tenant is entitled to be paid the equivalent of one month's rent as the landlord has issued a two month Notice under s.49. I award the tenant $800.00 accordingly.

Section 51(2) of the *Act* provides:

> 2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
>
> (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
>
> (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find that a close family member of the landlord is not occupying the rental unit, that any reasonable time to do so has passed and that the landlord has re-rented the unit to a person or persons not close family members. The landlord is in breach of s. 51(2). I award the tenant the equivalent of twelve months rent: $9600.00.

Conclusion

The landlord's application is dismissed.

The tenant is entitled to an award totalling $11,200.00, as claimed. She did not pay a filing fee. The tenant will have a monetary order against the landlord in the amount of $11,200.00.

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: January 17, 2019

Residential Tenancy Branch