Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals 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* (the "*Act*") for:

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by MR ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he served the tenant with the Notice of Dispute Resolution Proceedings package by sending it to the tenant's forwarding address on December 24, 2020. The tracking number for the mailing is recorded on the cover page of this decision. The landlord testified that the tenant supplied him with his forwarding address in writing on December 1, 2020. Based on the landlord's testimony, I deem the tenant served with the landlord's Notice of Dispute Resolution Proceedings package on December 29, 2020 in accordance with sections 89 and 90 of the Act.

This hearing was conducted in the absence of the tenant in accordance with Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Preliminary Issue

The landlord filed two separate applications, both seeking the same relief. The landlord advised that he didn't think he sought an order to retain the tenant's security deposit in his original application although this was actually applied for. In light of this, I deem the second application redundant and proceeded to hear the landlord's testimony regarding the original application.

Second, the landlord misspelled the tenant's given name in his Application for Dispute Resolution. The landlord testified that the tenant's name should appear as it does in the tenancy agreement supplied as evidence. I amended the landlord's application in accordance with section 64(3) of the Act to reflect the tenant's proper given name as shown on the cover page of this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages or compensation?
Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed evidence. The tenancy agreement supplied as evidence shows a different landlord, however the landlord named on this Application for Dispute Resolution is a subsidiary of the landlord shown on the tenancy agreement. The tenancy agreement began on July 1, 2013 with rent originally set at $900.00 per month. A security deposit of $450.00 was collected from the tenant which the landlord continues to hold. A condition inspection report was conducted at the commencement of the tenancy.

The landlord points out clause 32 of the tenancy agreement, printed on the backside of one of the pages of the tenancy agreement. This page was not provided to me as evidence, so the landlord read this clause to me during the hearing. It says:

> *Insurance: tenants are advised to carry adequate insurance coverage for fire, smoke and water damage and theft of their own possessions. May be held liable for accidental injury, accidental damage or accidental breakage arising from the tenant's abusive, wilful or neglectful act or omission or that of his guest in his use of the landlord's services and property.*

Just after midnight on September 28, 2020 a fire broke out, originating from the stove of the tenant's rental unit. According to the landlord, the tenant threw water on the fire, however that made the fire worse. The fire caused the building's sprinklers to go off, damaging eleven other units and some of the common areas of the building. The

landlord testified that a restoration company was hired to assess the damage and provide a quote to fix the damage caused to the building. A copy of the restoration company's quote for a total of $125,000.00 was provided. The landlord testified that so far, they have paid the restoration company $18,205.00 to do some of the work however an invoice for that work was not provided.

The landlord also provided a "liability release waiver" from the city's fire rescue service. The document indicates the city fire rescue service responded to the building as a result of an automatic alarm and sprinkler activation. As a result of the response, the fire service noted the following conditions exist and require attention from a certified technician:

- Fire Alarm not fully functional
- Fire watch required
- Sprinkler system not fully functional

Each of these conditions were marked with an arrow beside them.

The landlord submits that the tenant's failure to purchase tenant insurance violates the tenancy agreement. Like the rest of the building occupants, the tenant is supposed to have tenant insurance. The landlord testified that this is stipulated in all their advertisings for vacancies however no advertisements were provided into evidence. The landlord testified that the tenant had insurance at the start of his tenancy, but his ran out 2 months before the fire. The landlord did not claim the damage on their own insurance policy because the deductible is high and they preferred to hire the restoration company themselves.

The landlord testified that the tenancy ended when the tenant returned his keys to the landlord on November 30th or December 1st when the tenant also gave the landlord his forwarding address in writing. The tenant did not stick around to participate in a move-out condition inspection report with the landlord.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

7 *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss.

First, the landlord must establish the existence of the loss. The only photos of the damage provided by the landlord are those taken by the restoration company. Those consisted mostly of images of drying equipment and doors to the units. Surprisingly, the only photos of the tenant's unit provided are of water pooling in the ceiling, drying equipment and the door. No photos of damage caused by fire in this tenant's rental unit were supplied as evidence for this hearing.

Based on the landlord's undisputed testimony, I find the landlord has established that water damage was done to the entire building, caused when the sprinklers went off after a fire in the tenant's rental unit. Turning to the city fire rescue liability waiver however, I find the landlord bears at least some of the burden for the water damage caused to the other units and the common areas. I take special note of the issue of the sprinklers and fire alarms not being fully functional in the city's liability release waiver. It is altogether possible that the water damage could have been isolated to the tenant's unit if the landlord had maintained their sprinklers in proper working condition. Likewise, had the landlord properly maintained the fire alarm, it possible that the damage could have been avoided.

Secondly, the landlord claims that the tenant violated the tenancy agreement by not purchasing tenant insurance. Clause 32 makes it clear that the tenant is "***advised*** *to carry adequate insurance coverage for fire, smoke and water damage".* The consequences for not carrying such insurance is that the tenant "*may"* be held liable for accidental damage. I find that the specific wording of this clause cannot justify a breach of the clause, since the clause is merely an ***advisory***, not a ***requirement*** of tenancy. While it may be in the tenant's best interest to protect his interests by purchasing tenant insurance, I find the failure to do so does not constitutes a violation of the tenancy

agreement. The landlord does not allege any breach of the Act or regulations, or at least none was presented in testimony.

Based on the findings above, I find the landlord has not provided sufficient evidence to satisfy me that the tenant violated the tenancy agreement, the Act or the regulations by failing to purchase tenant insurance. Further, the landlord has failed to establish that the damage to the building was caused solely by the actions of the tenant, since part of the blame for the water damage from the sprinklers rests upon the landlord for the landlord's failure to maintain a fully functional sprinkler system and fire alarm system.

I find the landlord has failed to provide sufficient evidence to establish point 2 of the 4-point test: *Proof the loss was the result, solely, of the actions of the other party in violation of the Act or Tenancy Agreement*. For this reason, I dismiss the landlord's application without leave to reapply.

As the landlord's application was not successful, the landlord is not entitled to recover the $100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit. The landlord is ordered to return the tenant's security deposit in accordance with section 38 of the Act.

Conclusion

The 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: January 15, 2021

Residential Tenancy Branch