Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacifica Housing Advisory Association 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 pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenant attended the hearing. The landlord was represented at the hearing by agents B.F. and C.H. Both the landlord and tenant confirmed receipt of each other's evidentiary packages, while the tenant confirmed receipt of the landlord's application for dispute. I find all parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award, including a return of the filing fee?

Can the landlord retain the security deposit?

Background and Evidence

Both parties agreed this tenancy began on June 25, 2019 and ended on December 31, 2020. Rent was $1,570.00 per month and two deposits of $785.00 (pet and security) were collected at the outset of the tenancy and continue to be held by the landlord.

The landlord sought a monetary award of $10,700.00. The landlord explained they were seeking this amount represented damage to the unit during the tenancy and the costs associated with repairing the unit following the tenant's departure. Specifically, the

landlord alleged the unit required significant cleaning and the replacement of all flooring along with a repainting of the suite. The landlord testified the unit was new when the tenant first occupied the suite and he stated she was the first person to live in the unit. In support of the application, witness and agent B.F. testified that the unit pictured was the same unit which was repaired. As part of the dispute resolution package, the landlord included two invoices. One invoice from a commercial cleaning company was for $432.60 and another was a quote for 'Paint, Flooring and Turnover' for $14,200.00 plus 5% GST of $710.00.

The parties were unable to complete a condition inspection of the unit following the tenant's departure due to a falling-out between the parties.

The tenant disputed all aspects of the landlord's claim. The tenant accused the landlord of attempting to take advantage of her by submitting invoices and repairs for a unit which she never occupied. The tenant testified that she left the unit she occupied "very clean" and free of any damage after having spent "a week cleaning." She alleged the invoices for which the landlord was attempting to recover funds were associated with a different apartment within the complex and somewhere she "had never lived." In support of her position, the tenant submitted several photos of photographs of a rental unit along with videos purporting to show the unit was left clean. I note no original photo or videos were produced in evidence, rather the videos and pictures submitted appear to be "screenshots," pictures of photocopies, or "videos of videos" (someone recorded a video of a video).

The landlord denied submitting false evidence or evidence related to a different rental unit. The tenancy agreement and "move-in/move-out" inspection submitted in evidence by the landlord notes the tenant occupied unit 215 at 2**6 S**** Rd, but the invoices also submitted by the landlord describing the repairs and cleaning completed relate to unit 219 at 2**6 S**** Rd. A copy of the RTB #41 Form "Proof of Service" submitted in evidence by the tenant notes her address as unit 219 at 2**6 S**** Rd but a copy of the tenancy agreement also submitted by the tenant places her address at unit 215.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. As per *Policy Guideline #16* the claimant must prove the existence of the damage/loss, and that it stemmed

directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to a monetary award.

Per Rule 6.6 of the Rules of Procedure, the standard of proof in a dispute resolution hearing is on a balance of probabilities which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

After having considered the testimony of both parties and having reviewed the documents submitted in evidence, I find that sufficient doubt has been raised by the tenant regarding which rental unit was repaired. While agent B.F. noted in her testimony the unit pictured in the landlord's evidence was the same unit occupied by the tenant, I find the inconsistencies associated with the evidence support the tenant's assertion that the landlord was attempting to collect funds for the incorrect rental unit.

I found the evidence uploaded by the landlord to be contradictory, specifically, the fact the tenancy agreement and move-in/move-out inspection report are associated with unit 215 but the invoices for repairs and the application dispute are for unit 219. While I am alive to the fact that some questions are raised by the tenant's use of RTB Form #41 associated with unit 219, I note the landlord bears the burden of proving their case and I find the inconsistency in the landlord's evidence were not sufficiently explained by the landlord. During the hearing when the tenant testified that she did not occupy the unit in question, the landlord gave no indication that she had switched units or moved from unit 215 to 219 during the course of the tenancy.

Finally, I place a significant amount of weight on the fact that the move-in/move-out form lists unit 215 as requiring repairs to the floors as described in the hearing by the landlord. It was signed by the landlord on the date the tenancy ended, it lists the named tenant as the person in occupation of unit 215 and I note Residential Tenancy Regulation #21 discusses the 'Evidentiary eight of a condition inspection report.' It notes, "In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary." Therefore it would follow that the damage described and listed on the condition inspection report signed by the landlord on December 31, 2020 (the same date the tenancy ended) accurately reflects the unit number in question.

For these reasons I dismiss the landlord's application related to unit 219 concerning tenant M.H. without leave to reapply.

Conclusion

The landlord's application related to unit 219 concerning tenant M.H. is dismissed without leave to reapply.

The landlord must bear the cost of their own filing fee.

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: June 3, 2021

Residential Tenancy Branch