Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANGARA GARDENS HOLDINGS LTD. & LANGARA GARDENS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S FFL

Introduction

The landlord seeks compensation against the tenant pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act").

Attending the dispute resolution hearing were the tenant, the tenant's daughter (whose role was that of her mother's advocate and a witness), and an agent for the landlord. All parties were affirmed, no service issues were raised, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained to the parties.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on January 15, 2021 and, after a devastating fire on April 30, 2022, ended on May 31, 2022. An $825.00 security deposit is being held in trust by the landlord pending the outcome of this application. A copy of the written tenancy agreement was in evidence.

There is no dispute that the tenant caused, or was responsible for, a fire in the rental unit. This fire caused extensive damage, both to the landlord's property and, it must not be forgotten, to the tenant's personal property. Multiple photographs, along with the fire department's report, attest to the devastation. What is in dispute is the extent to which the tenant is liable for the amounts claimed by the landlord.

A total of $17,638.23 is being sought (excluding the $100.00 application filing fee). The amount is broken down in a detailed *Monetary Order Worksheet* submitted by the landlord. For each of the individual amounts the landlord provided either a quotation for the amount, an invoice, or an invoice for an approximate or identical cost amount. As explained shortly, the tenant disputes that the landlord's evidence on these amounts is spurious. An excerpt from page two of the worksheet is reproduced below:

Document Number	*Receipt / Estimate From*	*For*	*Amount*
#1	PCOM	Cleaning & water extractior	$ 1522.50
#2	PCOM	Painting, flooring and repai	$ 7979.65
#3	Trail Appliances	Fridge replacement	$ 1260.00
#4	Trail Appliances	Built-in microwave	$ 420.00
#5	Trail Appliances	Range	$ 1231.98
#6	Trail Appliances	Dishwasher (	$ 1092.00
#7	Trail Appliances	Washer & Dryer	$ 1892.80
#8		Blinds	$ 703.50
#9	Unico Kitchens	Kitchen cabinet doors	$ 835.45
#10	Selective Countertops	Countertops	$ 700.35

Invoices from Peterson Commercial Property Management Inc. were submitted into evidence. The information contained in the description sections of the two invoices was clear, detailed, and outlined the various activities undertaken for what are claims 1 and 2. The tenant disputed that this was the case and argued that there were no additional receipts or invoices for the supplies listed, such as paint.

There is in evidence an invoice dated June 24, 2022 from “The Carpet Centre Factory Direct” in the amount of $5,421.89, but no corresponding amount on the worksheet. (If some or all of this amount is contained within another invoice, I cannot see it.) However, there is an invoice from “Economy Floor Supply Richmond Ltd.” in the amount of $1,141.95 which is referenced and included in the invoice for claim #1.

An invoice dated December 17, 2020 from “A & A Door & Moulding Ltd.” was in the landlord’s evidence and is for a door and baseboard. The amount of $2,301.96 does not correspond to any of the dollar amounts in the worksheet.

Two invoices from Trail Appliances were provided into evidence, but the amount does not correspond to those on the worksheet. If the landlord has included taxes or fees on those amounts, this is not clear.

In respect of the kitchen cabinet doors, there is an invoice from Unico Kitchen Ltd. in the amount of $835.45 which corresponds to the amount for claim #9.

For claim #10, an invoice from Selective Countertops in the amount of $700.35 corresponds with the amount claimed. The tenant argued that the countertops were perfectly fine, and that they did not need to be replaced.

There are additional invoices from a carpet company, an appliances company, a countertop company, all dated from 2016. An invoice for blinds was included, and that invoice was dated November 4, 2015. A more recent invoice for blinds, dated March 17, 2022 was in evidence. As noted, this invoice pre-dates the fire and is for a different rental unit. The landlord testified that the blinds were otherwise identical, and that the price is basically equivalent.

An additional invoice from Canstar Fire & Flood, invoice dated November 18, 2020, appears to cover clean up and hazmat-related activities for a different rental unit than the one in question.

An additional disputed issue has to do with how the landlord completed the *Condition Inspection Report* at the end of the tenancy. The tenant and her daughter argued that the landlord did not give the tenant two opportunities to attend to participate in the move-out inspection. The daughter did attend the office on one occasion but was not comfortable or confident to act on behalf of her mother. The tenant further testified that the landlord neither telephoned nor emailed her about the condition inspection.

In response, the landlord testified that there are no records of the landlord having the daughter's contact information, no mention of the tenant being willing to participate in the move-out inspection, and no record of the tenant not being able to attend.

A copy of correspondence between the daughter and the landlord's "Rental Office Manager" ("Judy") was in evidence. On May 27, 2022, the daughter emailed Judy letting her know that movers were scheduled for May 31. Later that afternoon, Judy emails the daughter back. In that email, Judy states that "We have booked a move out inspection time for May 31st at 1:00 pm." No further communication between Judy and the daughter appears to have been submitted into evidence.

Ultimately, the Condition Inspection Report was completed on May 31, 2022, without the tenant being present. The report reflects much of the damage for which compensation is being claimed.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss. Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable in minimizing their loss?

In this dispute, it is not disputed that the tenant breached the Act. Section 37(a) of the Act states that when a tenant vacates a rental unit, the tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." There is no doubt, and no dispute, that the fire left the rental unit in a state that was neither clean nor undamaged. It is fortunate, of course, that the tenant did not suffer serious injuries because of this fire.

Further, there is no dispute that the landlord suffered a monetary loss because of the tenant's breach of the Act. However, what is disputed is the amount of the loss being claimed.

Residential Tenancy Policy Guideline 16 Compensation for Damage or Loss (version August 2016), at page 2, states that "A party seeking compensation should present compelling evidence of the value of the damage or loss in question."

For claims 1 and 2, I am persuaded that the invoices reflect an accurate recital of the extensive work undertaken in extracting water, cleaning, floor replacement, painting, and so forth. The description of the work outlined in these two invoices is reasonable, understandable, and entirely consistent with the state of the rental unit as evidenced by the landlord's photographs of the rental unit after the fire. The amounts are not, as argued by the tenant, "exaggerated."

As such, in respect of claims 1 and 2, taking into consideration all the oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that they are entitled to compensation in the amounts of $1,522.50 and $7,979.65, for a subtotal of $9,502.15.

In respect of the claims for appliances (claims #3 through #7), I am not persuaded that these appliances needed to be replaced. The Condition Inspection Report references damage to some of the appliances, but there is insufficient evidence that the appliances needed to be replaced in their entirety due to inoperability caused from the fire. Thus, for these claims, taking into careful consideration all the oral and documentary evidence before me, it is my finding that the landlord has not proven on a balance of probabilities that they are entitled to compensation for the appliances.

Regarding the claim for the blinds, the amount claimed is both reasonable and credible. There is no dispute that the fire melted the blinds. They needed to be replaced. Thus, it is my finding that the landlord is entitled to compensation in the amount of $703.50 for the blinds.

Regarding the kitchen cabinet doors and countertops, the photograph evidence persuades me to find that the cabinet doors needed replacing. The amount claimed, $835.45, is supported by the invoice and is, it is noted, a reasonable amount. However, I am not persuaded, based on the evidence, that the countertops required replacement. As such, this claim by the landlord is dismissed.

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee. In this dispute, as the landlord was successful with the bulk of the amount being sought, they are entitled to recover the filing fee of $100.00.

In total, the landlord is awarded $11,141.10.

As for the issue regarding the completion of the condition inspection report, the tenant and her daughter argue that the landlord did not give the tenant two opportunities to attend the inspection (as required by section 36 of the Act). Conversely, the landlord did not specifically deny that two opportunities were not offered, rather, they argued that there is no record of any interactions between the landlord and the tenant about the upcoming inspection. That said, the landlord testified that they (that is, the landlord's staff) "tried connecting" with the tenant, they tried contacting the tenant's daughter, but to no avail; the daughter, according to the landlord, was not willing to participate in the inspection.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the tenant—who has raised the issue of the condition inspection report not being properly completed—has failed to prove that the landlord did not comply with section 36 of the Act. The onus does not fall on the landlord to prove that two opportunities were presented when the respondent tenant raises this as an issue. Further, I find it rather unlikely (if not a bit suspect) that the tenant would not have been aware of an impending move out inspection given that it was the daughter who appears to have been taking care of end-of-tenancy activities. The daughter was in communication with the landlord's rental office manager, set up a date for the movers, arranged to book the elevator, and was told about the date of the inspection.

In all, I am not persuaded based on the evidence before me that the landlord failed to comply with requirements set out under the Act. As such, the landlord is entitled to make a claim against the tenant's security deposit.

Section 38(4)(b) of the Act permits an arbitrator to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. As such, the landlord is hereby authorized ordered to retain the tenant's security deposit of $825.00 in partial satisfaction of the amount awarded.

The balance of the award ($10,216.10) is granted by way of a monetary order. A copy of this monetary order is issued in conjunction with this decision to the landlord. The landlord is then responsible for serving a copy of the monetary order on the tenant.

Conclusion

The landlord's application is hereby granted, in part.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: August 10, 2022

Residential Tenancy Branch