Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SIMPLE PURSUITS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was scheduled to convene at 1:30 p.m. on September 7, 2023 concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The hearing did not conclude during the time scheduled, and I adjourned the hearing to September 27, 2023 at 9:30 a.m. to continue.

On September 27, 2023 the tenant requested an adjournment, which was granted and the hearing was adjourned to October 18, 2023, peremptory on the tenants. My Interim Decisions were provided to the parties after each scheduled date.

An agent for the landlord and both named tenants attended the hearing on all scheduled dates, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed, and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Residential Tenancy Act,* regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on March 1, 2021 and reverted to a month-to-month tenancy after February 28, 2022. Rent in the amount of $1,075.00 was originally payable on the 1st day of each month, which was increased to $1,091.00 effective March 1, 2022, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of $537.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a studio apartment in an apartment building. The landlord's agent also resides on the property. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that the tenant called the landlord on February 10, 2022 stating that the tenants wanted to vacate at the end of the month. The landlord disagreed, then the tenant said March 31. The landlord followed up with an email saying that the tenancy would end on March 31, 2022 and there would be no showings in February.

The tenants wanted to extend it to the end of April, although the landlord had new tenants to move in. The parties ultimately signed a Mutual Agreement to End Tenancy, a copy of which has been provided for this hearing. It is dated March 29, 2022 and contains an effective date of vacancy of April 30, 2022. The tenants vacated on May 1, 2022. The tenants had some difficulty obtaining an available moving truck, and the landlord was able to assist. The tenant (JM) was not there, but residing in Alberta.

A move-in condition inspection report was completed by the parties at the beginning of the tenancy, and a copy has been provided for this hearing. The tenants didn't show up for the move-out condition inspection, which had been arranged. The landlord posted to the door of the rental unit a Final Opportunity to Schedule an Inspection on April 27, 2022 scheduling it for April 30, 2022 at 11:00 a.m. The landlord's agent did not complete the inspection report but took video, provided for this hearing.

The landlord has not provided a Monetary Order Worksheet, however the landlord orally made the following claims as against the tenants:

- Entry door labour and costs – Police breached the door for the tenant to get her keys and purse, $682.50 for labour – the door jamb could not be repaired, and had to be replaced and painted. The door jamb itself cost $360.64, and receipts have been provided;
- Painting the unit, including baseboards and Bulk heads - $504.00;
- Door frame painted $236.35;
- Chip in flooring in the bathroom $78.75;
- Chip on a counter in the kitchen $78.75;
- When the door was breached, a hole existed in the door which the landlord agreed to cover with a metal plate rather than replace, and the cost was $150.00;
- Filters in the ceiling had to be replaced (HVAC system), which have to be replaced every 3 or 4 months. The tenants didn't give access, so the landlord is claiming $105.00 for the time because the company had to come back; no receipt or invoice has been provided;
- The landlord's agent further seeks the time spent to get this sorted and claims 7 hours, or $367.50;
- Loss of rental income for half a month rent for May of $700.00 which the landlord had to pay to the new occupants who were supposed to move in, which was half a month's rent;

The rental unit was brand new when the tenants moved in.

The landlord's total claim is $3,360.59, including recovery of the $100.00 filing fee.

The first tenant (JM) is the mother of the other tenant, who testified that the testimony of the landlord's agent regarding moving out on May 1 is false. Everything was moved out on April 30, and the fob was deactivated so the tenant's son had no access to the building or the suite, so he couldn't clean or anything.

On April 26 when the door was breached, the landlord made a statement that when movers arrived nothing was packed, but that is also incorrect. The tenant was with her son and everything was packed. The tenants could not get in.

The security deposit was never returned, and now the landlord owes the tenants double the amount.

With respect to painting and repair of the bulk head, the tenant has provided a video. The landlord's evidence contains photographs that are not clear, some is repetitive or irrelevant.

The tenancy agreement stipulated that a certain type of tape should be used, and when it was pulled off, paint pulled off the wall. It is not normal drywall or paint, but a pre-fabrication of some kind, and a person cannot put anything on the walls without leaving a mark. It looked like the walls were missing a coat of paint. The hook that the tenant's son put on the wall was the lightest kind, so if someone hung pictures, it would have left damage. If marks were left from the tape, the tenants should not pay for that.

With respect to loss of revenue, the other tenant could not get in on May 1. The landlord also sent the tenant several emails itemizing all charges, and the tenant responded. However the landlord kept sending them and the tenant stopped responding. In all of the numerous emails, not once was loss of rent mentioned. The landlord only added that for this dispute. The other tenant was not out by 1:00 but that wasn't his fault. The tenants did not know on April 30 if new tenants were going to be able to move in, so to give the landlord half a month's rent is not the tenants' problem; new tenants could have moved in on May 1. The fob was deactivated on April 30.

The email provided from U-Haul states that there was a glitch and no truck was available. The tenants tried other trucks, which were not available. The tenant was in Edmonton and continued to try to find movers. Then the landlord said she knew someone who had a truck and a friend of the other tenant came to help move on April 30. To charge $52.50 per hour was a shock. At no point did the landlord's ever say she was charging for her time. On May 2 the tenant sent a text message about sending a gift, but the landlord's agent never responded and never mentioned that charge.

The landlord's agent also testified that the other tenant didn't show up for the move-out condition inspection, but she didn't make her presence known on April 30, 2022. The other tenant was there at 11:00 and the landlord's agent admitted that she knew that. So to say he didn't participate is wrong, and the security deposit cannot be forfeited. Everything was all packed up.

The landlord's agent also mentioned people being let into the rental unit on May 1, which was the cleaner. Two acquaintances of the other tenant arrived on May 1 to finish cleaning. If the other tenant was denied access on April 30 and other people went in on May 1, the tenant questions who did the damage. The tenants never got a move-out condition inspection report, and the landlord's photographs are not clear.

A chip in the bathroom floor was a tiny little crack behind the toilet, but it wasn't noticed during the move-in condition inspection. Also, the chip in the kitchen counter is black and blurry and no more than normal wear and tear.

The door jamb could have been repaired rather than replacing it, and removing the door would not be necessary if the door jamb had been repaired. The landlord's agent said it was 1 piece, but in her testimony the landlord's agent specifically said more than once that it was the door jamb that was replaced, not the frame, which the landlord's agent said was saved. The testimony is very contradictory. If it was all 1 piece, how is it that they had to do all of that. Then the landlord charges to paint the new door frame for 3 hours when no more than a half hour would be required to complete 2 coats.

With respect to filter replacement costing $105.00 to get the contractor to return. There are 84 suites and it is plausible that he wouldn't charge each suite. The email indicated that the filters would be replaced on the 4th and 5th floors. The other tenant was home, and expected them to arrive, but they came while he was in the shower. No one called or texted, and the person never came back after the 4th or 5th floors were done. The tenancy agreement states that when the landlord wants to gain access, notice has to be given with a reasonable reason. The time scheduled was 9:00 to 4:30, which is an unreasonable time. The other tenant made a point of being there.

The landlord's invoice is contradictory. For the door jamb it says unit 419, not unit 403, and perhaps that's the rental unit of the landlord's agent. Further, interior painting is $480.00, but the landlord claims $501.10 which doesn't add up with taxes.

The second tenant (DM) testified that the other tenant (JM) is his mother and the guarantor on the tenancy agreement, but never lived in the rental unit.

The landlord has listed unjustified damages without due diligence and false claims. Stating that the tenant wasn't there for the move-out condition inspection report is wrong, which was established during the first hearing date. The tenant questioned the landlord's agent and she finally admitted that the tenant was there and the landlord's agent chose not to attend. Text messages indicating that she left have been provided for this hearing.

The landlord's agent refused to return the security deposit or provide information to figure out the damages.

The landlord locked the tenant out, and when the tenant returned, he could not get in or contact anyone. The tenant had to stay on the street all night. The landlord's agent

said that the tenant showed up later, but that's a lie. The tenant had no access to the rental unit or phone charger. The landlord's agent also testified that she was moving stuff out on Saturday morning, but access was stopped on the Friday before.

The tenant was told to use "command strips" which he did and that removed paint from the walls. They were not properly painted in the first place. The landlord never did the work that was promised, but only in hallways, etc. To claim it was new is false. There were cracks all over.

SUBMISSIONS OF THE LANDLORD'S AGENT:
The tenants gave the landlord 3 dates for the move-out condition inspection and didn't show up. The door jamb was damaged due to the tenant (DM) not giving access to his mother to get her purse. Police were there on a wellness call, who broke the door down.

SUBMISSIONSOF THE TENANTS:
Police breached due to a medical issue, is disingenuous. The door and jamb didn't need to be completely replaced, it was breached with minimal damage and was a simple repair as visible in the landlord's photographs. They still show a crack. It was not replaced and the invoice is for a different unit in the building. There is no proper receipt respecting painting, but a general receipt for some others and the landlord decided to spread the bill equally. The tenants never received a Monetary Order Worksheet from the landlord or the landlord's video.

Analysis

Firstly, the *Residential Tenancy Act* states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at move-in and move-out. The law also states that if the tenant doesn't participate in the move-out portion, the landlord may complete the report in the absence of the tenant, so long as certain steps have been taken to schedule the inspection. In this case, the landlord testified that the tenant didn't show up for the move-out portion, which is disputed by the tenants. Further, the landlord didn't make the move-out report at all, which is an absence of evidence.

Where a party makes a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;

2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlord has not provided a Monetary Order Worksheet, but numerous repetitive emails to the tenants setting out some of the landlord's claims. The record shows a claim of $2,193.09 for damages and an additional $1,067.50 for compensation for damage or loss. The first is $682.50 for labor to replace the door jamb, testifying that it could not be repaired and had to be replaced and painted. The door jamb itself cost $360.64, and the landlord has provided an invoice dated May 2, 2022 in the amount of $360.64. The police did a wellness check because the tenant refused to open the door, and I see no reason for the tenant's refusal. I find that the landlord has established a claim of **$360.64**, as well as the invoice in the amount of **$682.50** for the repair.

With respect to the landlord's claim for painting, I have reviewed the video and photographs, and I am satisfied that the walls in the rental unit were not of a typical drywall but a pre-fabricated material and that the tenant used "Command strips" as per the tenancy agreement, which was not disputed by the landlord's agent. Further, the evidence also shows that the landlord was intending to repaint while the tenant was in the rental unit, but that never happened. I find that the landlord has failed to establish mitigation and I dismiss that portion of the landlord's claim.

The landlord also claims $78.75 for a chip in the flooring in the bathroom. The tenants testified that it wasn't noticed at move-in because it was behind the toilet and was very small. I find it a great coincidence that the claim amount is exactly the same amount as the claim for the chip in the counter, and no evidence of where that amount comes from.

The tenants do not dispute the chip on the counter, and I find that the landlord has established that **$78.75** claim.

The landlord has not provided any invoice or receipt for a metal plate for the door, and I dismiss the $150.00 claim.

I have also reviewed the evidence regarding Notice to Enter to replace the filter in the HVAC system. The landlord claims $105.00 for the call-out because the company had to return. The Notice to Enter is not sufficient because it has a time period that is much too long, any time between 9:00 and 4:30 is not reasonable. Further, the landlord has

not provided any evidence of the cost and has not satisfied elements 2, 3 or 4 in the test for damages.

There is no evidence that the landlord's agent spent 7 hours to "get this thing sorted" or that anything the landlord did during that time period is the responsibility of the tenant. A landlord may not claim the costs of writing emails to the tenants or preparing for a hearing, and I dismiss that portion of the claim.

The landlord has not provided any evidence at all to support the testimony that the landlord had to pay a future resident that was supposed to move in. The landlord did not dispute the tenants' testimony that the landlord had removed the tenant's access to the rental unit, and I dismiss the $700.00 claim for loss of rental revenue.

The *Act* also states that a landlord must return to a tenant a full security deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application claiming against the deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount to the tenant. In this case, the tenancy ended on April 30, 2022 and the landlord received the tenants' forwarding address in writing on May 14, 2022. The landlord made the application seeking to keep the security deposit on December 7, 2022, which is well beyond the 15 days permitted.

The landlord's agent takes the position that the tenant's right to return of the security deposit is extinguished because the tenants didn't participate in the move-out condition inspection. The tenant testified that he was there, but the landlord's agent didn't knock on the door. The tenants take the position that the landlord's right to claim against the security deposit for damages is extinguished. I have reviewed all of the copious amounts of evidence provided by the parties, and I do not believe that either party has established that the other party's right is extinguished.

Having found that the landlord is owed $360.64 and $682.50 and $78.75, and since the landlord has been partially successful, the landlord is also entitled to recover the $100.00 filing fee from the tenants, for a total of $861.25.

Since the landlord did not file the claim within 15 days of the date the landlord received the tenants' forwarding address in writing, the landlord must repay double the amount of the security deposit, or $1,075.00.

Pursuant to my authority under the *Act,* I set off those amounts, and I grant a monetary order in favour of the tenants for the difference of $213.75. The landlord must be

served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $213.75.

This order is final and binding and may be enforced.

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: October 27, 2023

Residential Tenancy Branch