Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. I have considered the documents that were agreed upon during the hearing; the testimony of the parties and their witnesses.

Preliminary Matters

Residential Tenancy Rules of Procedure requires evidence be served to the Residential Tenancy Branch (RTB) and the other party as soon as possible and no later than 5 days prior to the hearing.

The tenant confirmed receipt of the landlords' notice of hearing package and calculation of the claim, prior to the end of June, 2013.

The tenant's eighty-two page evidence submission was given to the RTB September 9, 2013. The tenant said that he sent the landlord his evidence package via courier, on September 11, 2013. The landlord confirmed receipt of that evidence on September 14, 2013.

The landlord submitted the application on June 12, 2013. On September 12, 2013 the landlord submitted eighty-five pages and 1 USB as evidence to the tenant and the RTB.

The tenant stated he did not have sufficient time to review the landlord's submission and that the lack of time allowed for review of the evidence would be prejudicial. The landlord said that they did not supply their evidence submission earlier as some costs were only recently established, they were out of the country, they had too many repairs to make to the home and that they had been ill. The landlord had asked the

tenant for an agreed delay to the hearing, but the tenant had not responded to that request. The landlord understood that at the time of the hearing they could request an adjournment.

When the landlord made the June 12, 2013 application it was the responsibility of the landlord to prepare for the hearing by ensuring that all evidence was given to the tenant and RTB within the required time-frame. The landlord did not provide any evidence of an illness that would have barred the landlord from making an evidence submission by September 9, 2013; the last possible day for service to the RTB and September 11, 2013 as the last possible day of service to the tenant. An absence from the country does not form adequate reason to delay the service of evidence on an application made in early June; the landlord still had what I find was adequate time to prepare evidence and make those submissions as required by the Rules of Procedure.

The tenant was able to make his evidence submission based on the detailed calculation contained in the application given to him in June 2013, yet the tenant also failed to submit his evidence to the landlord within the required time-frame, by September 11, 2013.

Therefore, I determined that the hearing would proceed based on oral submissions only; both sets of evidence were excluded as a result of the failure of each party to serve the other and the RTB within the required time-frame.

The landlord was informed that the absence of evidence would result in the absence of verification of some portions of the claim.

After a request was made to each party for copies of their signed tenancy agreement, addendum and move-in and move-out inspection reports, the parties agreed that the copies contained in the tenant's evidence package were consistent with the copies the landlord possessed and that those copies could be referenced by the arbitrator.

The hearing proceeded for a period of 1.5 hours; the parties then disconnected and dialed back into the conference call system, to allow for additional hearing time totaling 3 hours.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for unpaid June 2013 rent?

May the landlord retain the security deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

Originally the landlord had wanted the tenant to sign a lease agreement commencing in April 2012; that document was not signed.

There was no dispute that by mid-April 2012 the tenant had keys to the unit; the tenant had agreed to assist the landlord in vacating the unit; at this point the landlord had packed approximately 25% of their belongings. The tenant and his friend/witness, R.D., spent time at the unit, packing for the landlord, until the landlord returned from the U.S. on April 24, 2013.

There was also no dispute that the tenant, his witness, the landlord and the landlord's witness spent time at the unit between April 15 and May 1, 2012, packing up the landlord's belongings in an effort to assist the landlord in vacating the home, as they were relocating to Arizona. By May 1, 2012 the landlord's property was removed or placed in the garage.

The parties agreed that the tenant paid over $5,000.00 for the purchase of numerous furniture pieces from the landlord.

The parties had not known each other prior to the tenancy commencing; the tenant said he was simply trying to assist the landlord in making the transition from the house.

There was no dispute that on May 23, 2012 the parties signed a standard RTB tenancy agreement, with an addendum attached. The agreement indicated that the tenancy was to commence on May 1, 2012; rent was $3,500.00 per month, due on the 1st day of each month. A security deposit in the sum of $1,750.00 was paid.

The addendum to the tenancy agreement was not in dispute. The addendum indicated:

- The tenant was responsible for yard maintenance;
- The landlord would be responsible for water, sewer, wi-fi internet and security alarm;
- The tenant would be responsible for BC hydro, Fortis gas and Shaw.

Parking was to be on-street; the landlord retained the garage for their own use.

The landlord has made the following claim:

June 2013 rent	$3,500.00
Utilities – internet	1,059.00
Lawn and plant damage	720.00
Install 2 columns and 5 exterior lights	700.00
Replace keys and garage remote	150.00
Missing dresser	500.00

Cleaning, painting, repairs	700.00
TOTAL	$7,329.00

The parties disputed the nature of some financial transactions that occurred prior to May 1, 2013. The tenant said he viewed the home on March 3, 2012 and was to move in on April 1, 2012. On April 1, 2012 the tenant paid $1,750.00 as a security deposit. On April 3, 2012 the tenant paid $3,500.00 for May 2012 rent. The keys were given to the tenant sometime around April 14, 2012.

The landlord said that the tenant paid $1,750.00 as one half of rent owed from April 15, 2012, when the tenant was given keys to the home. A further $1000.00 was paid to cover the security deposit. The balance of security deposit owed; $750.00, was not paid as the tenant was to install some columns and lights on the property. There was no dispute that May 2012 rent was paid.

The landlord said that the tenant had refused to participate in a move-in condition inspection at the start of the tenancy; the tenant said he was not given the opportunity to complete an inspection. The landlord stated that at the beginning of May 2012 they did complete a move-in inspection report, in the absence of the tenant. The landlord agreed that on May 22, 2013, they did sign an "inspection checklist" that had been completed by the tenant. This list indicated a number of minor deficiencies throughout the home.

The move-out condition inspection report signed by the landlord's agent on June 3, 2013 did not indicate any notations from a move-in inspection. The tenant was present and participated in the move-out inspection, but did not sign the report.

The landlord stated that there were not really any issues with the cleanliness of the rental unit at the end of the tenancy. The move-out inspection report completed by the landlord's agent indicated:

- A dirty kitchen fan;
- Scratches on the fridge door and some dirty;
- Scratches and paint chip in a bedroom wall, plus holes where a cabinet was removed;
- A paint chip around an electrical outlet in a bedroom;
- Lots of clover in the lawn;
- 2 side entrance keys, the mail key and garage opener were missing; and
- Scratches on the corner of a counter-top in the office

The parties agreed that in mid-May 2013 the landlord issued the tenant a 1 month Notice to end tenancy for cause. The tenant did not dispute that Notice; it had an effective date of June 30, 2013.

Toward the end of May, 2013, the tenant informed the landlord that he was planning on vacating. The tenant vacated the rental unit on June 3, 2013 and agrees he did not pay any portion of June 2013 rent. The landlord obtained possession of the unit on June 3, 2013.

The landlord's agent was not available during the month of June to allow potential tenants to view the home. The landlord was out of the country and on June 7 they listed the home for rent on 1 popular web site. The on-line advertisement was renewed on June 16, 2013. No other methods of advertising were used. The landlord said that they pushed all showings of the home to the end of June as the home was not presentable and the landlord was in the U.S. The rental is a beautiful home and the landlord wanted some time to prepare it for viewing and to meet people before entering into an agreement. The home was rented effective July 15, 2013.

The landlord said that the tenant owed $658.56 for Shaw internet and cable services throughout the tenancy. During the tenancy the landlord paid the Shaw bills via direct deposit, and this only came to their attention at the end of the tenancy. The tenant agreed he was to pay the Shaw costs but he never received a bill from the landlord. The tenant then had his own Shaw high speed internet service connected and paid his own Shaw costs throughout the tenancy.

The landlord and their witness testified that the lawn was in good shape at the start of the tenancy. The landlord's witness mowed the lawn just prior to the tenant moving in; around April 28 or 29, 2012. The lawn was thick and lush. The landlord said the lawn had been newly installed; that boxwood hedges were in good shape and 2 planters with spiral cedars were at the front entry of the home. After the tenant vacated the landlord had a landscaper attend on July 18; the cost was $540.75 to have the yard rehabilitated, due to the neglect of the tenant. The move-out condition inspection report indicated that the lawn had "lots of clover."

The tenant and his witness said that the lawn required some weeding at the start of the tenancy and that at the end of the tenancy the witness had weeded the lawn. The tenant stated that the lawn was not newly installed; that during the tenancy he cut it every 2 weeks and that the landlord is claiming for yard work completed 6 weeks after the tenancy ended. From the time the tenancy ended to July 18 the tenant said that yard would have needed some maintenance.

The landlord said that the garage remote was not returned; only the key to the side door and 2 front doors keys were returned. The tenant said that the mail key was left in the closet, where it had hung throughout the tenancy. The garage remote had been left in the garage during June 2012. The female landlord had asked the tenant to leave the remote in the garage, as she had taken her remote to the U.S. and needed the 2nd remote for her husband's use on 1 of his trips to the home. The tenant said he had no use for the remote as the garage was not included as a facility for his use.

There was no dispute that the tenant removed a dresser that had been screwed into a wall. The landlord said that this dresser was valued at $500.00 and that the tenant did not have permission to remove the dresser. The tenant said that after purchasing other furniture items the female landlord had told him that he could have the dresser.

In relation to the claim for cleaning, painting and repair; the landlord confirmed that this encompassed $361.98 for damage to the fridge door plus $447.89 for T.V. brackets that had been removed by the tenant. The tenant caused a dent to the fridge door and an estimate had been obtained for repair. The tenant had purchased 2 televisions from the landlord and said that he did remove part of the brackets for the T.V's as the landlord had not given him the bases to the T.V.'s.

During the hearing the tenant agreed to specific costs to the landlord. As the fridge door had been damaged at the start of the tenancy, the value had already decreased and repair was needed. The tenant said the door was further damaged when he was moving out. The tenant said he felt that one-half of the $262.00 cost claimed was a reasonable offer for the damage he caused to the fridge door.

The tenant agreed he owes the landlord $124.91 for hydro costs and $322.01 for Fortis gas.

Analysis

Based on the evidence before me I find, pursuant to section 62(3) of the Act, that the tenancy commenced effective May 1, 2013. The tenant was present at the home prior to May 1, 2013 assisting the landlord with a move, but the signed agreement indicated that the tenancy commenced on May 1, 2012. When there is a dispute in relation to verbal agreements I rely upon the written contract. I find that the arrangement leading up to May 1, 2013 did not form any part of the tenancy that was established when the parties signed the tenancy agreement on May 23, 2013 and I have relied upon the written tenancy agreement to establish the start date of the tenancy. Whatever the arrangement was during March and April 2012, I find it was not a tenancy.

I find, on the balance of probabilities that the payments made to the landlord prior to May 1, 2012 were to cover the security deposit and 1st month's rent, commencing May 1, 2012. There had been some discussion in relation to work that might be performed by the tenant; however, this was not a term of the signed tenancy agreement and occurred outside of the tenancy contract. Therefore, I find that the claim for the cost of columns and lights is not within the jurisdiction of the Act.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of

the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that an arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

RTB policy also suggests that when the landlord issues a Notice ending tenancy the landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. When a landlord does not take steps to mitigate the loss, a claim may be reduced for the amount that might have been saved. I find this takes a reasonable stance.

The tenant did not dispute the Notice and accepted the tenancy would end. The landlord did advertise the rental unit within several days of taking possession of the unit on June 3, 2013. However, when the landlord chose to delay interviewing potential occupants until the end of the June I find that the landlord failed to fully mitigate the loss claimed. The tenant did not have the right to end the tenancy on June 3; the effective date of the Notice was June 30, 2013. However, the tenant’s breach of the Act does not confer an automatic entitlement to the landlord. Therefore, in the absence of efforts to mitigate the loss by seeking new occupants during the month of June I find that the landlord is entitled to loss of rental revenue to June 15, 013, in the sum of $1,750.00 and that the balance of the claim is dismissed. I find that the tenant’s breach of the Act resulted in a loss of revenue to the landlord but that the landlord’s failure to mitigate by interviewing potential occupants at any time during June must reduces the amount due to the landlord.

Based on the agreement of the tenant I find that the landlord is entitled to the sums claimed for BC hydro and Fortis gas.

In the absence of verification of the amount claimed for Shaw cable and internet costs, I find that this portion of the application is dismissed. There was no evidence before me that the landord had given the tenant any written notice of payment or supplied the tenant with copies of bills at any time during the tenancy. Copies of the bills may have been given as part of the landlord’s late evidence submission; documents that, for the previous year, would have been available throughout the tenancy. The tenant arranged for his own service and accepted that the Shaw service was not provided. If the landlord had presented the tenant with a copy of bills, commencing in 2012, the parties would not have experienced any confusion in relation to the term of the tenancy agreement that required the tenant to pay for cable and internet. When the landlord failed to provide the tenant with copies of the bills, I find that the landlord did not attempt to reduce the claim they are now making and that it was not unreasonable for the tenant to obtain his own account with Shaw.

I find that the landlord has failed to prove, on the balance of probabilities, that the tenant is responsible for the sum claimed for lawn and plant damage. There was no verification supplied in support of the claim. Further, the move-out inspection report noted only that the lawn had some clover. No other indication was given on the inspection report that lawn and plant damage had occurred. I find that 6 weeks after the tenancy ended it would not be unreasonable for the landlord to have hired someone to complete maintenance on the yard.

It is likely that prior to the start of the tenancy the tenant was given a garage remote; he had been at the property, assisting in packing the landlord's belongings. I find, in the absence of verification of the claim made to replace the keys and the remote that the claim is dismissed. I also find that it is likely the mail key was left in the closet and that the remote had been left in the garage for the landlord's use. The tenant did not have use of the garage, so it seems highly likely that he had left the remote in the garage, as he said had been requested by the female landlord.

If the tenant took the dresser without having been given that piece of furniture, I find that the matter would not fall within the jurisdiction of the Act. However, I find it is just as likely that the landlord had given the tenant the dresser. Therefore, this portion of the claim is dismissed.

In the absence of verification of the sum claimed for damage to the fridge, I find that the landlord is entitled to amount agreed upon by the tenant; $131.00; the balance of the claim is dismissed.

As the tenant acknowledged he removed the T.V. brackets and, in the absence of any verification of the sum claimed, I find that the landlord is entitled to nominal compensation in the sum of $50.00 for those brackets. The balance of this claim is dismissed.

	Claimed	Accepted
June 2013 rent	$3,500.00	$1,750.00
Utilities - internet	1,059.00	446.92
Lawn and plant damage	720.00	0
Install 2 columns and 5 exterior lights	700.00	Jurisdiction declined
Replace keys and garage remote	150.00	0
Missing dresser	500.00	0
Cleaning, painting, repairs	700.00	181.00
TOTAL	$7,329.00	$2,377.92

I find that the landlord's application has merit, and that the landlord is entitled to recover a $50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution; equivalent to that paid for a claim under $5,000.00.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $1,750.00**,** in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of $677.92**.** In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the claim is dismissed.

Conclusion

The landlord is entitled to compensation for damage or loss under the Act and damage to the property.

Jurisdiction was declined in relation to the columns and lights.

The landlord is entield to a $50.00 filing fee.

The landlord may retain the security deposit in partial satisfaction of the claim.

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: September 30, 2013

Residential Tenancy Branch