Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MND, FF
For the tenant: MNDC, MNSD, FF

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to retain the tenant's security deposit and pet damage deposit, monetary compensation due to alleged damage to the rental unit, and for recovery of the filing fee.

The tenant applied for a monetary order for a return of his security deposit and pet damage deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

This hearing began on December 6, 2013, and dealt only with the landlord's application, with the landlord and his agent presenting the landlord's case in full and the tenant providing a response.

The parties were informed at the original hearing that the hearing would be adjourned in order to consider the issues contained in the tenant's application.

This hearing proceeded on the tenant's application for dispute resolution.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the landlord entitled to a monetary order for alleged damage to the rental unit, to retain the tenant's security deposit and pet damage deposit, and to recover the filing fee?
2. Is the tenant entitled to a return of his security deposit and pet damage deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence is that this tenancy began on April 1, 2012, and the tenant paid a security deposit of $1200 and a pet damage deposit of $300 at the beginning of the tenancy. The landlord's application and the tenant's testimony show that the tenant vacated the rental unit on August 21, 2013.

The monthly rent began at $2400 and was later raised to $2491 during the tenancy.

The rental unit was one side of a duplex home, with the landlord residing in the other half.

Landlord's application-

The landlord's monetary claim listed in his application is $1520, comprised of $1470 for repair of damage to painted walls and HST, and recovery of the filing fee.

The landlord's relevant documentary evidence included a copy of the tenancy agreement showing that the tenant and a maximum of 5 occupants were permitted to reside in the rental unit, a single home, a condition inspection report containing the move-in and move-out statement of condition, a painting estimate and copies of photographs of the rental unit.

In support of his monetary claim, the landlord submitted there were 75-100 holes throughout the rental unit at the end of the tenancy, which he considered excessive.

The landlord submitted that he performed some of the wall repair work, and hired a painter for the rest. The landlord submitted that the painting required 2 painters for 3 days.

In response to my question, the landlord confirmed he had not provided instructions to the tenant regarding hanging pictures or any other hangings.

The landlord's agent submitted that the tenant used the incorrect type of materials when he spackled the walls.

In response the tenant submitted any holes in the rental unit were patched to professional standard as he had worked as a painter at one point. Additionally, the tenant submitted that he worked with the landlord to make repairs and that the landlord

understood that he and the other occupants would live in the rental unit and treat it as their home, such as hanging pictures.

The tenant said that the landlord promised to supply the touch-up paint, but that the paint was never supplied.

The tenant took exception to the amount of time claimed by the landlord in repairing and painting the walls.

Tenant's application-

The tenant's monetary claim is $20,794.88, comprised of the following:

Security deposit of $1200, doubled	$2400
Pet damage deposit of $300, doubled	$600
Compensation for receiving a 2 Month Notice	$2491
Prorated rent, Aug. 25-31, 2013	$562.48
Heater not working, 4 ½ months	$135
2 ½ months of "intense conflict"	$6136.50
Time off work	$2730.80
Moving costs	$757.10
Double monthly rent	$4982

Security deposit and pet damage deposit, doubled-In support of this request, the tenant claimed that the landlord knowingly failed to use his correct address in serving him with the landlord's Application for Dispute Resolution, hearing package and notice of hearing (the Hearing Package) after he filed his application, and therefore he failed to make a timely claim to keep the two deposits.

In response, the landlord stated that he used the address the tenant provided to send his Hearing Package, via registered mail.

Prorated rent, Aug, 25-31-The landlord agreed to prorated rent, but not $562.48 as claimed by the tenant, but rather the amount would be $482.12.

Compensation for receiving a 2 Month Notice-The landlord agreed that the tenant was owed this compensation as he, the landlord, did serve the tenant with a 2 Month Notice.

As to the remaining claims, the tenant submitted that his tenancy began breaking down in value with the issue of the heater in one of the bedrooms, which was not working from January until the end of the tenancy on August 21, 2013. Despite many requests the landlord failed to repair the baseboard heater, according to the tenant. The tenant

submitted that the landlord, at the beginning of the tenancy, informed him that electricity costs would be approximately $150 per month, which was not the case.

The tenant submitted that as his verbal requests for repairs were ignored, he began putting his requests and communication with the landlord in writing, beginning June 9, 2013, which led to a further decomposition of the tenancy.

The tenant submitted that the landlord issued a series of angry outbursts following his June email, threatening his tenancy. The tenant submitted that some of the false allegations by the landlord concerned the tenant allegedly running a hostel instead of renting out bedrooms to long term occupants.

The tenant submitted that the landlord began issuing a series of illegal notices of entry into the rental unit, which required that either he or his other roommates take off work to make sure the landlord did not enter illegally. The tenant submitted that the entries were illegal due to insufficient notice. The tenant submitted that when he informed the landlord he could not enter the suite due to insufficient notice, the landlord said he would enter anyway.

The tenant submitted that the series of invalid notices to enter the rental unit and notices to end the tenancy, one in particular being an invalid 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, caused the tenant to lose his rights to quiet enjoyment.

The tenant submitted that he was promised garage space, and did in fact store his personal property in the garage, but that the landlord withdrew this space, diminishing the value of the tenancy and putting his personal property at risk.

The tenant submitted that the landlord also withdrew access to the front yard, as promised.

As to the 2 Month Notice, the tenant submitted that the landlord has not used the rental unit as stated on the Notice, as he has tenants living in the side of the duplex in which he formerly resided.

The tenant submitted that the landlord refused to communicate in a civil manner and harassed the tenant until the end of the tenancy.

The tenant's relevant documentary evidence included the written tenancy agreement, a written statement explaining the situation surrounding the landlord's service of his application and hearing documents to the tenant and further written rebuttal to the landlord's application, a copy of a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice"), dated July 31, 2013, for an effective move-out date of October 1, 2013, a notice of a rent increase, a copy of 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 2, 2013, banking records, registered mail tracking information, a witness statement regarding the lack of registered mail service to

the tenant's new address, internet search results, a copy of a photo of the alleged wall damage, a written statement from an occupant of the rental unit when the tenant resided there, another witness statement regarding an alleged violation of the tenant's quiet enjoyment, and other issues with the landlord, other witness statements, text message communication between the parties, written communication with the landlord, and notices from the landlord concerning entries to the rental unit.

In response, the landlord's agent denied that the garage space or that the front yard was part of the tenancy, and as these items were not in the written tenancy agreement, did not form part of the agreement. The landlord confirmed this submission.

The landlord submitted that the tenant was supplied a much more powerful heater for the duration of the tenancy and therefore was not deprived of heating in the bedroom.

The landlord submitted that he never entered the rental unit illegally.

As to the 2 Month Notice, the landlord said that he and his wife moved into this rental unit, and that he has rented the other side of the duplex.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Landlord's application-

As to the landlord's claim for damage to the wall due to excessive patching of nail holes, Residential Tenancy Branch Policy Guideline #1 allows a tenant to hang pictures and the landlord may set rules as to how this can be done. I agree with this policy.

In the case before me, I find the landlord did not establish that the tenants were provided rules in hanging their pictures. Additionally, there was no proof that the number of nail holes was excessive considering that the tenant agreement allowed the

tenant and 5 additional occupants to reside in the rental unit. Due to this, I find that the landlord has insufficient evidence that the tenant was responsible for the nail holes caused by hanging their pictures or other wall hangings.

I therefore dismiss the landlord's monetary claim for $1470 for wall painting and repair.

As the landlord has not been successful with his application, I decline to award him recovery of the filing fee.

Tenant's application-

Security deposit-

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for Dispute Resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

In the case before me I find that the tenant submitted insufficient evidence that the landlord purposefully used an incorrect address to serve the tenant with his application for dispute resolution, which was filed on September 3, 2013, falling within the 15 days of the end of the tenancy. I therefore find the landlord complied with the Act by making a timely application seeking to retain the security deposit and I decline to award the tenant double the amount of his security deposit.

I, however, find the tenant is entitled to a return of his original security deposit of $1200 as I have dismissed the landlord's application, and I therefore award him this amount.

Pet damage deposit-

Pursuant to section 38 (7) of the Act, a pet damage deposit may be used only for damage caused by a pet.

As the landlord's claim was for wall patching and repair caused by the tenant, and not for damage caused by a pet, I therefore find that the landlord possessed no such right to make a claim against the pet damage deposit and was required to return the tenant's pet damage deposit within 15 days of August 21, 2013, the end of the tenancy; the landlord failed to do so.

Therefore pursuant to section 38(6)(b), the landlord must pay the tenant double the amount of the pet damage deposit of $300 and I award the tenant this amount, $600.

Prorated rent, Aug, 25-31-The landlord agreed to prorated rent for this time period, or 7 days.

I therefore award the tenant a monetary award of $573.30, ($2491 monthly rent x 12 months = $29,892 yearly rent ÷ 365 days = $81.90 daily rate x 7 days = $573.30)

Compensation for receiving a 2 Month Notice-

The landlord agreed this amount was owed as he issued the tenant a 2 Month Notice, and I therefore award the tenant compensation of $2491.

Compensation equal to double the monthly rent-

The tenant is seeking monetary compensation under section 51 of the Act, which allows a tenant to receive compensation equivalent to double the amount of monthly rent in the event they receive a 2 Month Notice from the landlord pursuant to section 49 of the Act, and the landlord has failed to take reasonable steps to accomplish the stated purpose listed on the Notice or if the rental unit has not been used for the stated purpose for at least 6 months within a reasonable time after the stated effective date.

The Notice was issued pursuant to section 49(3) of the Act which provides "a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or close family member of the landlord intends in good faith to occupy the rental unit".

In this case, I find the evidence clear that the landlord and his spouse have moved into the rental unit and therefore are using the rental unit for the stated purpose.

I therefore dismiss the tenant's claim of $4982.

Heater not working; 2 ½ months of "intense conflict"-

As to the heater not working, I find the tenant submitted insufficient evidence to show that the landlord failed to address this issue, as the landlord supplied an alternate source of heat with a separate heater.

I also find the tenant has not presented sufficient evidence that the garage or the front yard space formed a part of the tenancy agreement as the same was not memorialized in writing.

I also do not find that the communication between the parties rose to the level of intense conflict which would result in compensation for the tenant. I found the communication to be more in the form of concerns between the two parties. I also considered that the tenant failed to address such issues or concerns through dispute resolution, which is a right he has under the Act, until well after the tenancy had ended. On this point, I find the tenant failed to mitigate any claim for loss.

As to the notices of entry to the rental unit issued by the landlord, Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of

the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*.

Pursuant to section 29 of the Act, a landlord may not enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act the notice of entry must contain the purpose for entering, which must be reasonable, and provide a specific time and date.

The documentary evidence of the tenant shows that the landlord posted on the door a notice of entry on July 29, 2013, for entry on July 31, between the hours of 10:00 a.m. and 7:00 p.m.

Another notice was posted on July 31, 2013, for entry the next day, along with the landlord warning the tenant that failure to allow the entry would result in the landlord seeking to evict the tenant.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenant was deemed to have received each of the notices of entry three days after it was posted, meaning entry was not permitted to occur the next day or the day after.

I find one of the landlord's notices in violation of section 29 of the Act, as the landlord failed to state a specific time of entry as the landlord is not permitted to give a wide range of hours in which the entry may be made.

I also find the landlord failed to comply with the time requirements for posting and entering the rental unit; I also accept that the tenant was fearful that if he failed to comply with the landlord's insufficient notice, that he would be evicted.

I therefore find that the tenant was deprived of his rights to quiet enjoyment due to the insufficient notices and threat of eviction and I find he is entitled to monetary compensation. I find a reasonable amount for the two insufficient notices and one threat of eviction to be $300 and I therefore award the tenant compensation in that amount.

Time off work-

I find the tenant submitted insufficient evidence to hold the landlord responsible for lost pay or wages or that the actions of the landlord caused such a loss.

I therefore dismiss the tenant's claim for $2730.80

Moving costs-

As to the tenant's claim for moving expenses, these are choices the tenant made, both in entering into a tenancy and ending a tenancy, on how to facilitate his moving and I

find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant.

I therefore dismiss his claim for $757.10.

As I have determined that tenant's application contained merit, I award him recovery of the filing fee of $100.

Due to the above, I find the tenant is entitled to a monetary award of $5264.30, comprised of $1200 for a return of his security deposit, $600 for the tenant's pet damage deposit of $300, doubled, prorated rent for August 25-31 for $573.30, compensation for receiving a 2 Month Notice for $2491, loss of quiet enjoyment of $300, and recovery of his filing fee of $100.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The tenant's application for monetary compensation is granted in part.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of his monetary award of $5264.30, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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: February 24, 2014

Residential Tenancy Branch