Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNDC, MNR, MNSD, 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 a monetary order for money owed or compensation for damage or loss and alleged unpaid rent, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

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

This hearing began on January 28, 2014, and dealt only with landlord's application, due to the length of the hearing.

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 and this hearing proceeded on the consideration of the tenant's application original application for dispute resolution.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, 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

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Is the tenant entitled to a return of her security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

This tenancy began on May 15, 2013, for a monthly rent of $1300, and with the tenant paying a security deposit and pet damage deposit of $650 each.

The tenancy agreement shows that the tenancy was for a fixed term, to run through September 30, 2014.

The landlord submitted that tenancy ended on November 21, 2013, and the tenant submitted that she vacated on November 9, 2013.

Both parties agreed that the move-in inspection was conducted on May 14, 2013, the landlord submitted that the move-out inspection occurred on November 22, 2013, and the tenant submitted that the move-out inspection occurred on November 21, 2013.

The landlord currently lives in another country, was living in that country during the tenancy, and was calling into the telephone conference call hearing from that country, at both hearings.

Landlord's application-

The landlord's monetary claim listed in his application was $4500; however at the hearing, the landlord submitted that his new monetary claim was $2151.04, comprised of loss of rent revenue for December of $1300 and the balance in utility bills. In his documentary evidence, the landlord also claimed $547.50, for costs of re-renting the rental unit.

The landlord's significant amount of relevant documentary evidence included a written timeline of events, portions the written tenancy agreement, copies of utility bills, one advertised listing for the rental unit, and extensive copies of email communication. I note that of the approximately 89 pages of evidence, approximately 68 pages consisted of email communication, many pages of which were repetitive, and the font varying

between average size to less than 8 point font. As an example, the landlord included approximately 10 copies of the same fax cover sheet from the tenant's legal counsel, regarding service of the evidence package.

In support of his application, the landlord submitted that he received an email from the tenant on November 9, 2013, that there was no heat in the rental unit and that she was ending the tenancy. The landlord submitted that he advertised the rental unit immediately, but was unsuccessful in obtaining a new tenant for December 2013, resulting in a loss of rent revenue.

The landlord also claimed that the tenant was responsible for 40% of the utilities incurred for the residential property, which was a shared accommodation with another set of tenants and as shown by the written tenancy agreement and that she did not pay her full share.

The landlord referenced the copies of the utility bills supplied into evidence.

In response, the tenant's legal counsel submitted that the landlord is claiming for utility costs, despite not providing for those services, as lack of heat was a primary issue.

The legal counsel submitted that the rental unit could have been rented for December, but that repairs were necessary, and that the fundamental issue was that the tenancy was never fulfilled. The legal counsel explained that the landlord never brought the rental unit to the standard as required by the municipality.

The legal counsel pointed out that there was no billing statements as to the actual costs of re-renting the rental unit.

The tenant submitted that she did make a payment of $109.37 on November 2 and $16.19 on October 3, 2013, towards the utility bills.

Tenant's application-

The tenant's monetary claim is $15,000, comprised of the security deposit and pet damage deposit for $1300, the filing fee of $100, return of rents paid for $8450, and general and aggravated damages for $5150.

The tenant submitted a significant amount of digital and documentary evidence, which included a written submission explaining the details of the tenant's monetary claim, a statutory declaration, the written tenancy agreement, extensive email communication,

and depictions of repair work and the condition of the rental unit, as contained in the USB port.

In support of her application, the tenant and her legal counsel submitted throughout the entire tenancy, the tenant was never provided a rental unit as agreed upon and compliant with section 32 of the Act. In particular the tenant submitted that the residential property containing two rental units was inspected by the municipality and found to be deficient, resulting in orders to the landlord to make repairs. The tenant submitted that the repairs were never made.

The tenant submitted that she endured a lack of repairs and functioning appliances for long periods of time, despite many requests, and that the landlord failed to comply with the municipal order, which she supplied into evidence, creating a health and safety hazard, such as having a bar over the window.

Another repair request which was not addressed was adequate heating, according to the tenant. The tenant submitted that there was mold in the rental unit, which was noted on the move-in condition inspection report and was not addressed.

The tenant submitted that one of the main sources of the problems with the tenancy was due to the landlord living out of the country and there being a series of property managers dealing with the tenancy.

Another complaint of the tenant was that she never received the key to the storage room, which was an internal room within the rental unit, and which was mentioned on the move-in condition inspection report. Additionally, according to the tenant, she did not have access to the second bedroom.

The tenant also submitted that there were ants present in the rental unit and that the landlord failed to address this issue; additionally the tenant was required to allow repair persons into the rental unit on short notice, depriving her of her rights to quiet enjoyment.

The tenant and her legal counsel submitted that due to the landlord's ongoing fundamental breaches of the tenancy agreement, not only was the tenancy agreement void, the tenant was entitled to recover her rents paid through November 2013.

The tenant submitted that despite providing the landlord her written forwarding address on the move-out condition inspection report on November 21, 2013, the landlord has not returned her security deposit or pet damage deposit.

As to the tenant's request for aggravated damages, the legal counsel submitted during the tenancy, as the landlord had found property managers online from another country, the property managers were not given keys, resulting in the tenant having to be home to provide access to the rental unit. Additional reasons included the tenant suffering anxiety for at least 6 months, as the windows would not close properly, a random person with a toddler appearing unannounced ready to perform a repair, the landlord making personal attacks on the tenant regarding her nationality, the landlord renting the property while in violation of a municipal order, the landlord fundamentally breaching the Act and tenancy agreement, causing the tenancy agreement to be frustrated from the beginning, and a lack of requested repairs, according to the legal counsel.

In response, the landlord submitted that the window with the bar is totally secluded, so that she would not need egress through that window. The landlord submitted that the tenant was a source of tremendous stress to him due to her complaints and behaviour and that her actions caused so many property managers to leave.

The landlord submitted that the tenant turned off breakers to the other rental unit and that the tenant caused the issues in the tenancy.

Analysis

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-

Loss of rent revenue-

As to the issue of unpaid rent, Section 45(2) of the Act states that a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

In the case before me, I accept that the tenant provided insufficient notice that she was ending the fixed term tenancy agreement prior to the end of the fixed term and I find, without considering whether the landlord had fundamentally breached the tenancy agreement or the Act, that the tenant was responsible to pay monthly rent subject to the landlord's requirement that he take reasonable measures to minimize his loss, as required by section 7(2) of the Act.

In this instance, I find the landlord failed to submit sufficient evidence that he took reasonable steps to mitigate his loss for rent revenue for December 2013. In reaching this conclusion, the landlord submitted just one instance of advertising the rental unit, which shows a date of December 10, 2013, a full month after receiving the tenant's notice on November 8, 2013, that she was vacating the rental unit. I find that a reasonable step to minimize his loss would be an immediate attempt to re-rent.

I find the date of the advertisement supports the tenant's assertions that the rental unit required repair prior to re-listing it for rent.

I therefore dismiss the landlord's claim for loss of rent revenue for December 2013, without leave to reapply.

Unpaid utility bills-

Although the tenant was obligated to pay a portion of the utility bills pursuant to the tenancy agreement, I dismiss the landlord's request to recover for utility bills. In reaching this conclusion, I relied on the landlord's written submission, which stated that as to one of the bills, he was "not sure if she paid this and other bills, because it was difficult to get any payments when they were do [*sic*]."

Additionally, the tenant testified without contradiction that she had made payments on the utility bills. I therefore could not rely upon the landlord's evidence to prove the amount, if any, that the tenant might owe in unpaid utility bills.

Costs to re-rent-

I dismiss the landlord's claim for any costs associated with re-renting the rental unit. The landlord failed to submit proof of such a cost, step 3 of his burden of proof.

Additionally, the dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business.

I therefore dismiss the landlord's claim for costs to re-rent.

Due to the above, I dismiss the landlord's application for monetary compensation, without leave to reapply.

Tenant's application-

Security deposit-

As required under section 38 (1)(d), I find the landlord made a timely application claiming against the tenant's security deposit for unpaid rent, utilities and costs to re-rent within 15 days of receiving the tenant's written forwarding address on November 21, 2013. As I have dismissed the landlord's application claiming against the tenant's security deposit, I find the tenant is entitled to recover her security deposit.

I therefore award the tenant the amount of $650 for a return of her security deposit.

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 loss of rent revenue, unpaid utilities and costs to re-rent, 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 November 21, 2013; 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 $650, or $1300 and I award the tenant this amount.

Return of rents paid-

The tenant's claim for a return of her rent paid involves her claim that repairs were not addressed in a timely manner, up to the end of the tenancy, or at all, the condition of the rental unit was not as promised, the multiple attendances by tradespersons to repair the rental unit and assorted property manager, resulting in a loss of use and quiet enjoyment of the rental unit, for which she should be compensated.

Under section 32 of the Act, a landlord must repair and maintain a rental unit so that it complies with health, safety, and building standards required by law and is suitable for occupation by a tenant given the age, character and location of the rental unit.

It is important to note that major repair issues, extermination problems and other issues with the rental unit may occur from time to time; however, such events do not automatically entitle a tenant to compensation. Rather, the tenant must demonstrate that the landlord was aware of the problem and was negligent in dealing with the problem which caused the tenant to suffer a loss of use of the rental unit or loss of quiet enjoyment of the unit. Negligence may include inadequate or an unreasonably delayed response to a known problem.

I am satisfied through the evidence provided by the tenant that there were significant ongoing issues with the state of the rental unit, which caused the tenancy to be devalued. In reaching this conclusion, the email communications between the parties show that the tenant reported repair requests and I find the tenant's digital evidence shows that the repairs were ongoing until the end of the tenancy. By this time, this tenancy had degraded and the tenant issued her written notice to end the tenancy.

I also considered that the appearance of storage room contained in the rental unit and a mention of the key to the storage room on the condition inspection report shows the intent that the tenant would have use of the storage room; however, the landlord failed to provide the tenant with a key.

I also find that the evidence shows that the tenant failed to have use of the second bedroom, as well as, I find the landlord failed to consistently provide the tenant with a contact for emergencies in his absence for the duration of the tenancy.

I also considered that the landlord did not have a consistent point of local contact so that the tenant would be able to address tenancy issues.

I, however, do not find that the tenancy was devalued by the amount of the entire rent paid as claimed by the tenant, as there was no evidence that the tenant suffered a loss of use of all of the rental unit, such as the tenant still had use of one of the bedrooms, the bathroom, the kitchen and other facilities.

I find a reasonable amount for the devaluation of the tenancy as explained above to be $350 per month for the 6 months of the tenancy (May 15-November 8, 2013), for a total of $2100.

Aggravated damages-

Under Residential Tenancy Branch Policy Guideline #16, aggravated damages are "designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering."

This Guideline goes on to state that the deliberate or negligent acts of the wrongdoer caused the damage and that the wrongdoer should have reasonably known that the breach would cause the distress claimed.

In considering whether or not the tenant is entitled to aggravated damages, I cannot determine that the tenant's claimed distress rises to the level sufficient to award for this type damage. I do not find that the tenant sufficiently proved that the landlord was acting in such an egregious manner as to have aggravated damages awarded against him.

I therefore dismiss the tenant's claim for aggravated damages.

I award the tenant recovery of her filing fee of $100.

I therefore find the tenant is entitled to a monetary award of $4150, comprised of her security deposit returned in the amount of $650, the pet damage deposit of $650, doubled to $1300, $2100 for a devaluation of the tenancy, and recovery of the filing fee of $100.

Conclusion

The landlord's application is dismissed.

The tenant's application has been granted in part as I have found she is entitled to a monetary award of $4150.

The tenant is granted a monetary order in the amount of $4150 and it is enclosed with her Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served on the landlord and 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: April 20, 2014

Residential Tenancy Branch