Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, OLC, PSF, MNR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for 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.

The tenant applied requesting compensation for damage or loss, that the landlord return the security deposit, an Order the landlord comply with the Act and provide services or facilities required by law and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The parties confirmed that only the landlord and tenant were named on each application. The tenant confirmed he understood that A.W. was in fact an occupant; as set out in the tenancy agreement, and not a co-tenant. A.W. was at the hearing and the landlord had no objection to her participating.

The landlord and his spouse were present in the hearing. Initially the tenant objected to the presence of the landlord’s spouse, who confirmed she is a co-owner of the home. As the spouse is a co-owner I determined she has rights as a landlord, to attend the hearing. The tenant did not object further.

The tenant confirmed that as the tenancy has ended there is no need for any Order the landlord comply or the provision of services or facilities.

The details of the dispute set out a claim for loss of August 2014 rent revenue; vs. unpaid rent.

All evidence and the hearing documents were confirmed received within acceptable time-frames.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent for August 2014?

May the landlord retain the security deposit in partial satisfaction of the claim or is the tenant entitled to return of the deposit?

Is the tenant entitled to compensation for damage or loss under the Act in the sum of $11,949.75?

Background and Evidence

The tenancy commenced on September 1, 2012. Rent was $1,399.00 due on the 1st day of each month. A security deposit in the sum of $699.50 was paid. A copy of the tenancy agreement and "additional terms" was supplied as evidence.

The tenancy agreement indicated that utilities were included in rent. The additional terms documents signed by the parties included a term:

> *"Tenant responsible for 50% of electricity and gas, paid at the beginning of the month included with rent."*

The parties agreed that at the start of the tenancy the tenant had written a note under the utility term, which stated:

> *"$195.00 of the rent is for utilities to August 2013 to be adjusted to August 2013.*"

The landlord did not dispute that $195.00 of rent paid was as the 50% utility payment.

The additional terms included a pet prohibition.

The tenant has made the following claim:

Rodent problem – 25% rent reduction over 9 months plus 1 week compensation for cost of exterminator	$3,964.75
Order by the landlord to keep windows closed; 25% rent reduction for 18 months	5,418.00
Loss of quiet enjoyment June, July 2014; 30% rent reduction for 2 months	722.00
Utility cost – failure to reconcile payments against actual costs; $75.00	1,845.00

per month for 21 months; $135.00 per month for 2 months	
TOTAL	$11,949.75

The tenant has requested return of the security deposit in the sum of $699.50.

The parties communicated via email; copies of messages were supplied as evidence.

The tenant said that from February to September 2013 five separate verbal complaints were made to the landlord in relation to a mouse problem in the home. The landlord initially brought the tenant mouse traps. The tenant said that landlord did nothing more in response to the report of mice. The tenant submits that a failure to respond formed a breach of section 32 of the Act.

In September 2013 the tenants obtained a cat, which resulted in elimination of the mouse problem. The tenant submits that the landlord was aware early in 2014 that they had a cat; it was not until the report of a rat problem was made to the landlord on July 9, 2015, that the landlord directed the tenant to remove the cat from the property.

On July 11, 2014 at 10:56 a.m. the tenant emailed the landlord stating the landlord had been informed on the previous day of a rat problem and that rat droppings had been cleaned up from the floor that morning. The tenant said that after talking with the landlord and being told the landlord would not take action, the health hazard posed would need to be dealt with as soon as possible. The tenant stated that the landlord's refusal to pay for an exterminator resulted in the tenant arranging pest control for that day.

The July 11, 2014 email listed a number of other matters:

- the landlord had not responded to a July 2013 request for window screens, to mitigate the possibility of pests and that this request was made again on July 9, 2014;
- that the tenant was going to purchase screen and install it himself; and
- that if the tenant deducted costs from rent the landlord had said he would work constantly on the renovation in the upper level, through the children's sleep times.

The landlord responded by email at 2:25 p.m. on July 11, 2014, telling the tenant he must remove the cat and denying there was a rat infestation. The landlord said that on numerous occasions and at least 2 times in the past few months he had seen the windows and doors to the home left open to their garden unit; which could allow animals' entry to the home. The landlord refused to pay $300.00 or $400.00 for pest control and said the tenant was over-reacting and that there were only a "few mouse droppings". The landlord stated that the tenant was attempting to "freely spend" the landlord's money.

The tenant responded at 9:19 p.m. on July 11, 2014 stating they did not leave windows and doors open; that they have 2 young children and a cat; so they would never leave doors open. The tenant pointed out the landlord had been completing renovations in the upper level of the home since the first week of June and that the landlord had been seen leaving the balcony door and most windows open. The tenant said that having even a single rat in the home was unacceptable and the tenant would now hire pest control, that the problem must be dealt with as soon as possible, and that he had a right to protect his health.

A July 11, 2014 email sent at 9:19 p.m. informed the landlord that an exterminator attended the unit; the cost was under $200.00. Six traps were placed in the unit and the tenant purchased screen. The tenant submitted a copy of the invoice issued on July 11, 2014 in the sum of $157.50 for pest control services. A detailed report issued by the pest control company showed that 6 bait stations were placed in the suite, rat droppings could be seen and that the tenant had been hearing rats. The report noted that potential points of egress were at both exterior drain pipes and the garage door was not properly sealed. The tenant submitted that when outside a rat had run up his leg. The email stated that the tenant wanted the landlord to withdraw the request the cat be removed, that he did not wish to be evicted and they could develop a professional relationship as landlord and tenant.

On July 14 at 11:07 a.m. the landlord sent the tenant a message stating that a few rodent droppings did not constitute an infestation. The landlord explained that a discussion he had had with the tenant's spouse took place in the common area of the building; outside of the tenant's unit. The landlord confirmed he had been renovating the upper unit since June 1, 2014 and that he had been called on July 9, 2014 with a report of rodent droppings after the window had been left open for a few days. The landlord said the lease prohibited pets and that if the cat was not removed by July 25, 2014 the landlord would have to evict the tenant.

The tenant has claimed a rent reduction in the sum of $2,709.00 for the period February to October 2013 as a result of a rodent infestation. A further $75.00 is claimed for one week in July 2014. A claim in the sum of $1,023.00 has been made for clothes, toys, a sofa bed mattress that were damaged by rodent feces and had to be disposed. The tenant could not recall the specific dates the landlord had been contacted in 2013, with requests for assistance with the rodent problem. The tenant said that he did speak with the landlord in February, April, May, July and September 2013, to report the mouse problem.

The tenant has claimed the cost of an exterminator; based on the payment made in the sum of $157.50.

The tenant submits that the landlord refused to allow him to ventilate the home, by denying the request for screens. The tenant submitted that from February 2013 onward, both verbally and by email in July 2014, a request for screens was made. Without the screens the tenant was unable to open the windows, due to the fear rodents

would come in the ground-level unit windows. On June 11, 2014 the landlord refused the request for screens. The tenant has requested a 25% rent reduction for eighteen months of the tenancy.

There was no dispute that the landlord was renovating the unit in the upper portion of the home. The tenant was not given any written notice of repair work that resulted in banging noise, chemical and paint odours which could not be ventilated due to the lack of screens on windows. The renovations occurred 4 to 6 days per week, for 8 to twelve hours each day. A photograph showing dust caused in the laundry room as a result of the renovations, was submitted as evidence. The tenant has claimed rent reduction of 30% for the 2 months of renovation. The tenant was not aware he could make any request of the landlord in relation to the noise being caused and only became aware of his rights in July 2014, after doing some research.

The tenant said that $195.00 of rent owed was to pay 50% of monthly utility costs. The landlord was to complete an annual reconciliation of the bills, each August. The tenant would then pay any sum owed or the landlord would return any overpayment made by the tenant. The landlord has not provided copies of utility bills or ever reconciled the sums paid against that actually owed. The tenant has contacted BC Hydro and obtained information on the average monthly payments being made on the property, but does not know the actual sum incurred year to year. The tenant was unable to obtain billing information for gas usage. The tenant estimated the utility costs in the sum of $75.00 per month from September 2012 to May 2014 and $135.00 for June and July 2014.

The parties agreed that on July 14, 2015 at 8:37 p.m. the tenants sent the landlord an email giving notice ending the tenancy effective August 1, 2015. The tenants were ending the tenancy based on material breach of the tenancy as the result of:

- a loss of quiet enjoyment;
- the landlord’s entry to the common area of the home; and
- the landlord’s failure to repair and maintain the rental unit.

On July 16, 2014 the landlord replied that the tenant must pay August rent, including utilities. The landlord reiterated that he believed the tenant was vacating as a result of the request the cat be removed.

On July 27, 2014 the tenant sent a final, 3 page email setting out the request for compensation. The tenants confirmed they would vacate July 31, 2014, based on material breach of the tenancy agreement by the landlord. The tenant alleged illegal entry by the landlord, a failure to respond to the rodent problem, aggressive behavior, entering the common area of the home without permission and commencing renovation work without written notice to the tenant. The tenant confirmed the cat was removed effective July 24, 2014.

The tenant vacated at the end of July 2014; a forwarding address was provided and the landlord applied claiming against the deposit within several days.

Photographs of pest droppings, holes in the exterior of the home structure and a dead rat were supplied as evidence.

The landlord responded that the problems raised by the tenant only occurred after the landlord saw the cat at the unit on July 9, 2014. The email communication took place over a matter of several days and prior to this period of time the tenancy had proceeded with no issues or problems. The landlord had not previously been aware of the pet. He did not want to evict the tenant but the tenancy prohibited a pet.

The landlord said he was not told about a mouse problem at the start of the tenancy. When I questioned the landlord he said that he had no record of a report of mice, no phone records of calls were provided; no emails were sent and that he had no knowledge of mice. Toward the end of the hearing, I asked the landlord about the glue traps the tenant said the landlord had delivered at the start of the tenancy. The landlord denied knowledge of the rodents. Questioned further, the landlord said he never heard anything further about a mouse problem but did acknowledged delivery of the traps at the start of the tenancy.

The landlord confirmed receipt of a call on July 9 2014, reporting a rat had been seen in the rental unit. The weather had been very hot and the landlord believes the tenant left the door and windows open. The next day the landlord went to the rental unit; he did not see any rodent droppings. The landlord felt it was not prudent to spend $400.00 on pest control and believed that the tenant was overreacting. This was the first time the landlord had seen the tenant's cat. He then emailed the tenant and that is when the conflict began. The landlord said that rats do not run up people's legs; he questioned the validity of the tenant's claim.

The landlord said he did not order the tenants to close the windows and doors at any point during the tenancy.

The landlord stated that the tenants did not complain, approach him or make any request in relation to the renovations he was completing on the upper unit. The landlord has employment elsewhere so was limited in the times he could be at the unit to complete repairs. He was able to complete renovations on Tuesdays, Thursdays and would work from 9 a.m. to 1 p.m. He also had every 2nd Friday and Saturday available to complete renovations. He normally works elsewhere, seventy to seventy-five hours per week. The landlord knows the tenant's children napped at approximately 3 p.m. and never worked during that time. The landlord said that his busy schedule was the reason it took him 5 months to complete the repairs. The tenant responded that the landlord had other workers in the unit when he was not there.

The landlord said that the first time the tenant asked for screens was in July 2014, prior to this time there had not been any issues; he had not been in the tenant's unit and

there had been no difficulties. The landlord did not want to evict the tenant but he did not agree to the cat and was willing to issue a Notice ending tenancy if the cat was not removed. The conflict occurred between July 11 and 14, 2014 and the tenant suddenly accused the landlord of material breaches of the tenancy.

The landlord has claimed compensation for the loss of August 2014 rent revenue. As soon as the tenant gave notice the landlord placed an ad on a popular web site, for the same rent the tenant had paid. Within 7 to 9 days of receiving notice from the tenant the unit was shown to 3 prospective tenants during a single, open-house style showing. When the landlord arrived to show the unit, the tenant allowed the prospective tenants into the unit and then closed the door and locked the landlord out. The landlord did not arrange further showings until after the tenant vacated as the relationship had deteriorated. The landlord was able to re-rent the unit effective October 1, 2014.

The tenant denied blocking access to the landlord during the showing of the unit. He opened the door, the potential tenants entered and the landlord stood outside, so the tenant closed the door.

The landlord's written submission did not refer to the issue of utilities. During the hearing the landlord confirmed the tenant had added the hand-written note to the utilities term, with no objection made by the landlord. The landlord stated that $195.00 of monthly rent was for utilities and they could agree to adjust the sum owed for utilities in the future. The landlord has not given the tenant copies of any utility bills and no adjustment took place in relation to the sum owed for utilities.

The landlord said that if there had been breaches of the tenancy by the landlord it seemed odd that the tenant's first email sent on July 11, 2014 asked the landlord to withdraw the direction to remove the cat, as the tenant did not want to vacate.

Throughout the hearing I asked both parties question in relation to the details of the claims made.

Analysis

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.

When making a claim against another party it is critical the applicant provide evidence of communication made in relation to complaints, as the burden of proving a loss of quiet enjoyment or other loss falls to the applicant. Written reports of complaints and concerns may form the best record and provide each party with clarity. The respondent

also must be provided with a reasonable period of time to investigate and respond to allegations. Written communication can assist with mitigation of a claim.

I have considered the tenant's claim made related to the alleged failure of the landlord to respond to an on-going mouse problem, commencing in February 2013. From the evidence before I find that the landlord was aware of the presence of mice in the unit. I found the landlord's testimony contradictory and evasive on this matter. Initially, after repeated questioning on my part, the landlord denied any knowledge of a report of mice in 2013. Later in the hearing when I asked about the glue traps, the landlord confirmed he had given those traps to the tenant at the start of the tenancy. This led me to find that the landlord had been aware of a report of mice; that is the only conclusion I can draw from the provision of traps to the tenant. This inconsistency in testimony caused me to question the credibility of the landlord.

However, despite my concerns in relation to the landlord's credibility, the tenant must prove, on the balance of probabilities that he took steps to minimize any loss he may have suffered. Section 7 of the Act provides:

> ***Liability for not complying with this Act or a tenancy agreement***
>
> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The tenant said that he repeatedly spoke to the landlord over an 8 month period of time, in an attempt to solve the rodent issue. That may well have occurred; but I find the tenant has essentially allowed his claim to grow, without taking any steps to mitigate the loss he has claimed over a 9 month period of time. If the tenant believed there was an infestation the landlord was not properly addressing, the tenant was at liberty to seek an Order for pest control very early in the tenancy. The tenant failed to take this step and waited until after he had given notice ending the tenancy to inform the landlord of his intent to seek compensation. A lack of knowledge of rights and obligations under the Act does not relive a party of the requirement to mitigate a loss. There was evidence the landlord knew mice had been seen at the start of the tenancy, but the tenant has failed to prove a long-term infestation and failed to mitigate the claim made.

There was no evidence before me in support of the claim made for clothes and a mattress. The tenant did not provide evidence that the landlord was contacted in relation to this type of damage; no detailed list of items was supplied nor was any estimate of value for each item.

I do find that the landlord failed to properly respond to the July 2014 report of rats. I found the landlord's refusal to hire pest control was rather arbitrary; given his prior knowledge of mice in the unit. From the evidence before me the tenant attempted to have the landlord address the problem; the landlord refused and pest control was hired by the tenant. I find the presence of rats in a unit poses a health risk; this is based on common knowledge that rodents could affect health.

Therefore, I find, in the absence of evidence the tenant attempted to minimize the claim made, the absence of verification of a mouse infestation and of the loss of personal items that the claim related to rodents is dismissed, with the exception of the pest control costs incurred in July 2014. The tenant is entitled to compensation in the sum of $157.50.

There was no evidence before me supporting the tenant's submission the landlord had ordered the tenant to keep doors and windows closed. The tenant may have wished to have screens on the windows; not an unreasonable expectation. However, rather than providing the landlord with some sort of verifiable communication requesting screens early in the tenancy, the tenant waited almost 2 years to communicate this request in writing. Once the tenant gave the landlord written notice of his request, the tenant very decided to vacate the unit. Again, the tenant was at liberty throughout the tenancy to make an application requesting an Order screens be installed. However, the tenant decided to end the tenancy and not pursue an Order for screen installation.

Therefore, in the absence of an attempt to mitigate I find that the claim related to the landlord's failure to provide screens that would allow ventilation, is dismissed. I found the landlord's response to the July 2014 report of rodents, where he suggested doors and windows had been kept open, causing the problem, unreasonable. It is just as likely that rodents gained access through the exterior points of egress shown in the photographs and referenced in the pest control report. However, as the claimant the tenant must mitigate.

In relation to the renovations, there was no evidence before me that the tenant took any steps to inform the landlord that the work being completed was having a negative impact on the tenant. The time between the tenant's emails in July issuing concerns and ending the tenancy occurred over 4 days and did not provide the landlord with a reasonable period of time to respond.

Therefore, I find that the tenant has not proven a loss related to a disturbance caused by renovation and that this portion of the claim is dismissed. The tenant said he was not aware of his right to approach the landlord; however, a failure to understand rights does not circumvent the need to exercise the obligation to mitigate a claim by communicating concerns to the landlord.

In relation to the utility costs, I have considered the tenancy agreement and the additional terms of the agreement. Section 6(3) of the Act requires that a term of a tenancy agreement be expressed in a manner that clearly communicates the rights and

obligations under it. A simple reading of the additional term for utilities leads me to find, on the balance of probabilities, that rent was $1,399.00 per month; less $195.00 which represented the tenants' 50% contribution to monthly utility costs. I find that the hand-written notation contained in the additional term is too vague to be enforceable; the intent of that notation is unclear and does not provide any explanation referencing reconciliation of bills. It is apparent that the term contained in the body of the tenancy agreement was meant to be altered, by way of the additional terms signed by the parties. Therefore, as I have determined that rent was $1,204.00 per month and utilities $195.00 per month, representing 50% of utility costs, I find the claim for utility costs is dismissed.

Section 45(3) of the Act provides:

> *(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

The tenant has submitted he ended the tenancy based on section 45(3) of the Act; based on a breach of sections 28, 29 and 32 of the Act. Of those deficiencies the single issue of the report of a rat in the home is one which I find gives the tenant's decision to end the tenancy some weight. There is no evidence before me that the landlord has entered the tenant's unit; only the common area outside of the unit (section 29.) I have also dismissed the claim for loss of quiet enjoyment (section 28.)

Section 32 of the Act provides, in part:

> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> > *(a) complies with the health, safety and housing standards required by law, and*
> > *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

It is reasonable to accept that health safety and housing standards would include a rental unit being kept free of rodents. On July 11, 2014 the tenant sent the landlord an email reporting the rat problem, asking the problem be dealt with as soon as possible. Therefore, I find that when the landlord denied the request for pest control treatment he breached section 32 of the Act.

I have then considered if a breach of the Act by failing to provide rodent control was a breach of a material term of the tenancy. Residential Tenancy Branch policy (#8)

suggests that when a party alleges a breach of a material term, the party alleging the breach must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

From the evidence before me, on July 9 and 10, and 11, 2014 the landlord was informed of the rat problem. The email sent on July 11, 2014, outlining the need for pest control did not provide any specific date by which the landlord must arrange pest control; only that it must be dealt with as soon as possible. The July 11 email did not inform the landlord that the tenant believed the problem could form a breach of a material term of the tenancy and did not inform the landlord that a failure to respond to the request could result in an end of the tenancy. It was not until the tenant gave notice ending the tenancy via email sent on July 14, 2014 that breach of a material term of the tenancy was raised.

Therefore, as the tenant did not set out a date by which pest control should occur and did not tell the landed that a failure to complete pest control wold form a breach of a material term of the tenancy, I find that the tenant has failed to meet the standard required to end a tenancy based on section 45(3) of the Act. I find that policy gives a tenant clear and specific standards that must be met in order to end a tenancy in accordance with section 45(3) of the Act and that the tenant did not meet that standard.

In relation to the landlord's claim for unpaid rent, I find that the landlord did make efforts to locate new tenants. There was no dispute that the unit had been advertised or shown within a short period of time that the tenant gave notice to the landlord. The showing would have occurred sometime around July 21 or 23, 2014. I find the landlord was given little notice allowing him to locate new occupants effective August 1, 2014.

Residential Tenancy Branch policy (#3) suggests that when a landlord makes a claim for loss of rent revenue consideration should be given to put the landlord in the same positon as if the tenant had not breached the Act. Written notice given by the tenant, if signed and dated, on July 14, 2014 would have ended the tenancy effective August 31, 2014, the earliest date in accordance with section 45 of the Act. There was no dispute that the landlord made attempts to advertise and show the unit. The tenant showed no evidence that the unit was advertised at a rent higher than what he had paid. Even if that was the case, the landlord did attract potential tenants to view the unit.

Therefore, I find that as a result of a breach of the Act by the tenant, when he failed to give proper notice ending the tenancy, that the landlord is entitled to compensation in

the sum of $1,204.00 for August 2014 rent. The tenant is not liable for utility costs as the tenancy had ended. The balance of the claim is dismissed.

As each claim has merit I find that filing fees are set off against the other.

I find that the landlord is entitled to retain the tenant's security deposit in the sum of $699.50, in partial satisfaction of the monetary claim.

In summary, the tenant is entitled to compensation in the sum of $157.50; the landlord is entitled to $1,204.00. The balance of each claim is dismissed.

Based on these determinations I grant the landlord a monetary Order for the balance of $347.00**.** 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.

Conclusion

The tenant is entitled to compensation in the sum of $157.50 for pest control costs; the balance of the claim is dismissed.

The landlord is entitled to compensation in the sum of $1,204.00 for loss of rent revenue. This sum is reduced by the amount owed to the tenant.

The landlord will retain the security deposit.

The balance of each claim is dismissed.

Filing fee are set off against the other.

This decision is final and binding and 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: March 01, 2015

Residential Tenancy Branch