Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNDC, 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, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. The landlord attempted to serve the documents to each tenant shortly after the application was made on January 20, 2015. That mail was returned. The landlord then served the tenants again. Registered mail tracking information was supplied as evidence.

The tenant confirmed that she received the hearing documents and evidence on May 17, 2015. The tenant present at the hearing confirmed that the co-tenant also received the hearing documents. The tenant said that they did not wish to make a written submission in response to the landlord's claim.

I determined that the tenants had been served with the hearing documents and evidence in time to allow the tenants to make any written rebuttal submission and to adequately prepare for 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 evidence and testimony provided.

Preliminary Matters

At the start of the hearing it was confirmed that a previous hearing held on the tenant's application resulted in the landlord being ordered to return double the security deposit. Therefore, as the matter of the deposit has been previously decided I may not alter that decision.

The landlord provided the Residential Tenancy Branch (RTB) with a set of coloured photographs, to replace the set of photocopies that had initially been submitted to the RTB. The tenants were given a copy of the photocopied photographs only. The photocopies were essentially illegible.

As the tenants were not provided with coloured copies of the photographs I determined that the coloured copies given to the RTB would be set aside and that only the photocopies would be referenced, as a matter of fairness.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the unit that was to be repaired by the tenants?

Is the landlord entitled to payment of July 2014 rent in the sum of $1,650.00?

Is the landlord entitled to compensation for water bills?

Background and Evidence

The parties agreed that the tenancy commenced on July 1, 2013. The tenants moved into the unit on June 23, 2013. Rent was $1,600.00 per month, due on the 31st day of each month. There is a signed tenancy agreement; a copy was not supplied as evidence.

There was no dispute that the tenancy agreement required the tenants to vacate at the end of a one year fixed term.

The landlord has made the following claim:

Return rent from June 23 – July 31, 2013 given for repairs and maintenance by the tenants	$2,000.00
July 2014 rent	1,650.00
Water bill August 2013 to July 2014 less $32.00 paid each month	1,116.00
Return of $100.00 monthly credit given for maintenance that was not completed	1,200.00
TOTAL	$5,966.00

At the start of the tenancy the tenants were to clean up the yard and make repairs. An addendum signed by the parties was supplied as evidence. Clause 17 of the addendum provided:

> *"Tenants shall fix and paint the home, remove refuge from the backyard, porch area, remove all garbage beside the garage and cut the grass in the back of the home and garage in lieu of July rent in the amount of $1,600.00."*

Through rent abatement the landlord paid the tenants the equivalent of rent owed to the end of July 2013 for the repair work. The landlord has claimed requesting return of that sum as the tenants failed to make the repairs as agreed. Email evidence form August 2013 showed some discussion in relation to the landlord's assertion the tenant's had not held up their end of the bargain. The tenants replied that they had painted, cleaned up hazardous materials such as needles and removed garbage.

The landlord said the painting completed by the tenants was not appropriate as it included some graphics and text on the walls.

The landlord's photographs were meant to show the items left on the property and general lack of upkeep on the property. The photocopies of the photos were illegible.

The tenant referenced an email that was sent to the landlord shortly after the tenancy commenced. The message referenced the attached inspection report and the addendum. The tenant said they would clean up the yard but the landlord must take care of the cost of hauling garbage and removal. The tenant said they did not mind paying the water and garbage bill but would require a copy of the actual bill.

There were emails in evidence that showed the parties were attempting to reach an agreement on the end of the tenancy. On June 29, 2014 the landlord told the tenants she would obtain an Order of possession. The tenants replied that the landlord would require an Order and bailiff. The landlord replied that if the tenants remained in the unit they must pay rent.

The landlord has claimed compensation for July 2014 rent as the tenants did not vacate until July 15, 2014. The tenants did not want to leave at the end of the fixed term and over-held. The landlord referenced emails sent between the parties. On July 1, 2014 the tenants emailed asking if they paid rent could they remain in the unit. On July 3, 2014 the landlord wrote the tenants asking when the tenants would return on Friday and that perhaps they could manage to come to agreement for another six months. On July 4, 2014 the tenants responded that they had advice the one year lease should have converted to a month-to-month term. The tenants provided the name of a lawyer for the landlord to contact. The tenant stated they vacated the unit on June 30, 2014 and that the emails sent in July were in the hope the tenancy might continue.

On July 7, 2014 the tenants asked about a 10 day Notice that the landlord said her parents served to the rental unit. The tenant testified that she never received the Notice ending tenancy the landlord said was posted on July 1, 2014. The tenant said that on July 7, 2014 her neighbour told her about the Notice ending tenancy.

The landlord submitted a copy of a 10 day Notice to end tenancy for unpaid rent that was issued on July 1, 2014 for rent due on that date in the sum of $1,500.00 and $125.00 utilities.

The tenant's witness testified that she lives in the other half of the duplex where the rental unit is located. The witness testified that the tenant's vacated on July 1, 2014 at 5 p.m. The keys were left in the mailbox which the neighbour eventually removed as there had been break-ins in the neighbourhood. Several weeks later the landlord's father came to pick up the keys.

Clause five the addendum provided:

> *"Electricity and water is the tenant's responsibility. Electricity provided directly through BC hydro and $125.00 paid to the Landlord for water/garbage/sewer."*

The landlord said that she would give the tenants copies of the water bills that arrived every four months. The tenants would then pay only $32.00 per month rather than the $125.00 per month that was agreed to in the addendum. This occurred throughout the tenancy.

The tenant responded that the landlord was trying to charge four times the amount she was charged by the City. The tenant said they had no difficulty paying for water but wanted to pay based on the actual cost to the landlord. The landlord said the actual cost is over $1,000.00 per year. The landlord included the $125.00 cost in the addendum as the water service is not able to be placed in a tenant's name. The landlord wanted to be sure she would receive payment.

Clause 14 of the tenancy addendum provided:

> *"Rent is $1600.00 per month and tenant shall receive $100 for maintenance of the place, when monthly inspection is done."*

The landlord received monthly rent in the sum of $1,500.00. Inspections were not completed and maintenance was not provided as agreed. The landlord has claimed return of the monthly $100.00 rent reduction given throughout the tenancy.

The tenant confirmed that the landlord was not doing the inspections, as agreed. This was mentioned in an email sent by the tenant. The tenants wanted the inspections to be completed but the landlord would not complete them.

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.

From the evidence before me I find that the landlord has co-mingled an employment agreement with a tenancy. The landlord provided the tenants with compensation at the start of the tenancy for services provided and throughout the tenancy for services provided, that are in dispute. I find that this was an employment agreement and as such is not contemplated by the Act.

RTB policy (#27) sets out the approach to jurisdiction. Policy confirms that the power and authority of the RTB is derived from the legislation. The dispute resolution process does not create a court and so the RTB does not have inherent powers arising under the common law which are possessed by a judge. Generally the *Residential Tenancy Act* provides that the Act applies to tenancy agreements, rental units and other residential property.

Section 6(3) of the Act provides:

> *3) A term of a tenancy agreement is not enforceable if*
> *(a) the term is inconsistent with this Act or the regulations,*
> *(b) the term is unconscionable, or*
> *(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

The Act does not include remedies related to employment agreements. Therefore, pursuant to section 6(3)(a) of the Act, I find that the terms of the tenancy agreement

related to rent reduction for work completed are not consistent with the Act and that jurisdiction related to those matters is declined.

In relation to the claim for July 2014 rent I find on the balance of probabilities that the tenants did not vacate on either June 30 or July 1, 2014. I found the email evidence more convincing than the testimony provided by the tenants' witness. The witness testified the tenants vacated on July 1, 2014 while the tenant said they vacated on June 30, 2014. This inconsistency, combined with the tenants' email requests to extend the tenancy, even after they say they had vacated, leaves me to conclude that they did not vacate by July 1, 2014.

Therefore, I find on the balance of probabilities that the landlord is entitled to compensation in the sum of $800.00 for one-half July 2014 rent. This is a reasonable period of time during which it would have been difficult to locate new tenants. However, there was no evidence before me that the landlord was regularly checking the home to see if the tenants had vacated. There was also no evidence before me that the landlord took steps to mitigate a loss by attempting to locate new tenants. Therefore, in the absence of evidence the landlord attempted to mitigate the loss claimed I find that the balance of the claim for July 2014 rent revenue is dismissed.

I have considered clause five of the addendum and find that it is enforceable. The clause does not require the landlord to provide a copy of the water bills; it required the tenants to pay $125.00 per month for water, garbage and sewer services. The tenants arbitrarily paid $32.00 rather than the $125.00 agreed to in the addendum. Therefore, I find that the landlord is entitled to the sum claimed.

Therefore, I find that the landlord is entitled to compensation as follows:

	Claimed	Accepted
Return rent from June 23 – July 31, 2013 given for repairs and maintenance by the tenants	$2,000.00	0
July 2014 rent	1,650.00	800.00
Water bill August 2013 to July 2014 less $32.00 paid each month	1,116.00	1,116.00
Return of $100.00 monthly credit given for maintenance that was not completed	1,200.00	0
TOTAL	$5,966.00	$1,916.00

As the landlord's application has merit I find the landlord is entitled to recover a $50.00 filing fee which corresponds with a claim under $5,000.00.

Based on these determinations I grant the landlord a monetary Order in the sum of $1,966.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I note that the landlord has included some terms in the addendum that are not enforceable, such as a $75.00 late payment and NSF fee. The Regulation allows a fee of no more than $25.00 in a month for each.

Conclusion

The landlord is entitled to compensation for loss of rent revenue and water bills.

Jurisdiction is declined in relation to the employment and rent reduction portion of the claim.

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: June 12, 2015

Residential Tenancy Branch