Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF (Landlord's Application)
CNR, FF, MNSD, RR (Tenant's Application)

Introduction and Preliminary Matter

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution she sought an Order cancelling a 1 Month Notice to End Tenancy for Cause, and a 10 day Notice to End Tenancy for Unpaid Rent or Utilities, a Monetary Order in the amount of $700.00, and an Order that the Tenant be permitted to reduce her rent for repairs, services or facilities agreed upon but not provided. In the Landlord's Application for Dispute Resolution the Landlord sought an Order of Possession, a Monetary Order for unpaid rent in the amount of $1,700.00, authority to retain the security deposit and recovery of the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord confirmed that the Tenant had vacated the rental unit such that the tenancy had ended. Accordingly, the Landlord's Application for an Order of Possession and the Tenant's application to cancel the Notice pursuant to section 46 of the *Residential Tenancy Act* were no longer required.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

2. Is the Landlord entitled to monetary compensation from the Tenant?

3. What should happen with the Tenant's security deposit?

4. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on September 12, 2015. Monthly rent was payable in the amount of $700.00 per month. He initially stated that the Tenant paid only the security deposit in the amount of $350.00. The tenancy agreement was introduced in evidence and on the first page of the tenancy agreement there is a notation "pet deposit to be paid". The Tenant provided in evidence a copy of a receipt which confirmed that a pet deposit in the amount of $350.00 was also paid.

The Landlord testified that after the tenancy began the Tenant unilaterally decided that the rental unit was not worth $700.00 and began paying rent in the amount of $500.00. The Landlord claimed that he did not agree to this rent reduction. In a letter written to the Tenant dated April 25, 2016 the Landlord writes that he did not realize the Tenant was paying a reduced amount until he checked the "rent roll".

The Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 25, 2016 noting that the sum of $1,250.00 was owed as of April 1, 2016. He stated during the hearing that he made a mistake on the Notice as he calculated the rent at $750.00, rather than $700.00.

The Landlord clarified his request for monetary compensation as follows. He stated that he sought recovery of the balance of the rent owing for December 2015, January 2016, February 2016, March 2016 and April 2016 in the amount of $200.00 per month for a total of $1,000.00. He also claimed $700.00 for May 2016 rent and $700.00 for June 2016. The Landlord also testified that as the Tenant boarded off the windows he was not certain when the Tenant was at the rental unit. The total amount sought by the Landlord at the hearing was $2,400.00.

The Tenant testified as follows.

He stated that although the tenancy agreement provided that rent was $700.00 per month this amount was contingent on the Landlord completing certain repairs to the rental unit. He claimed that the agreement was that he would pay the full amount when the repairs were completed and $400.00 per month if they were not. He stated that when these repairs were not completed he reduced his monthly rent to the sum of $500.00 for the months December, January, February, March and April and May 2016. He stated that he did not pay rent for June 2016 as he moved out on May 31, 2016.

The Tenant testified that he only paid $500.00 per month as the Landlord failed to honour his promised that he would complete the following repairs:

- paint the walls and ceiling of the rental unit;
- repair the damage to the ceiling which was caused by racoon feces;
- repair the numerous holes in the walls allowed access to rats; and,
- rid the rental unit of rats and racoons.

The Tenant testified that each time he paid his rent his mother sent a letter on his behalf to the Landlord a letter requesting that the repairs be completed as promised. These letters were provided in evidence and were dated: September 2015, October 1, 2015, November 1, 2015, December 1, 2015, January 15, 2016 and February 1, 2016. In the first two letters (September and October) the Tenant reminds the Landlord of the agreement that he was to pay $400.00 per month until the repairs were completed. In the November 1, 2015 letter the Tenant's mother wrote that as the repairs were not completed, the Tenant would pay the sum of $500.00 ($100.00 more than the agreed upon amount as the ceiling hole had been fixed). She confirmed in this correspondence that he would pay the difference when the repairs were completed.

The Tenant and his mother testified that at no time, until shortly before the tenancy ended, did the Landlord express his disagreement with these reduced payments.

The Landlord did not conduct a move in condition inspection report.

The Tenant also stated that he was continuously harassed by other renters in the building, B.B. and M.H. He writes that he brought this to the Landlord's attention on numerous occasions, yet the Landlord failed to address these issues, which culminated in the Tenant being arrested.

The Tenant claimed the rental unit was in disrepair requiring significant work to make it habitable. The Tenant's parents took photos of the rental unit when he first moved into

the rental unit and those photos were introduced in evidence. A review of the photos shows the following:

- a cracked door frame;
- significantly chipped and peeling paint on the walls, ceiling and window frames;
- large holes in the walls and doors;
- a missing window;
- writing on the walls;
- a heating vent where the downstairs unit is visible;
- several photos of dead rats; and
- an unkempt yard.

The Tenant provided written submissions in which he claimed that a window was missing in the rental unit for a significant period of time. He stated that the Landlord repaired the window with a window which was too small and held in place with old caulking. He stated that he initially boarded up the window and then replaced the window when it fell out due to the faulty installation. The Tenant claimed the sum of $120.00 for the cost to replace the window.

The Landlord confirmed that he did not do a move in condition inspection.

The Landlord stated that this was an “interesting tenancy” in that the tenant was brought to him by another landlord, a realtor by the name of G.S., who came to the Landlord asking if the Landlord had a vacancy. The Landlord stated that G.S. said that the Tenant was in dire need of a tenancy and the Landlord let him move in. He said that G.S. took over management of the tenancy. The Landlord confirmed that he did have conversations with the Tenant about painting and repairing the rental unit; he further confirmed that it was his understanding that G.S. was going to “look after those repairs”.

The Landlord stated that to his knowledge the holes in the walls shown in the Tenant’s photos were fixed by G.S. shortly after the Tenant moved in. It appears, based on communication between the parties, that the holes in the walls were not repaired until December 2015, which allowed rat’s access to the rental unit.

The Landlord also stated that he was never informed about rats or racoons until the “very end of the tenancy when things had gone sideways”. The Landlord stated that there were racoons in the roof just prior to the tenancy beginning; however, he

confirmed that he removed the portion of the roof completely and there was no evidence of racoons in the roof, nor did he receive any complaints from other tenants about this.

The Landlord confirmed that the rental unit is a house with nine rental units and he described the house as a rooming house. He confirmed that each unit has its own kitchen and seven out of the nine units share bathrooms.

Analysis

Based on the evidence before me, the testimony and submissions of the parties and on a balance of probabilities, I find as follows.

The Landlord sought compensation for the outstanding rent from November 2015 to June 2016.

I accept the Landlord's evidence that he did not receive written notice that the Tenant wished to end the tenancy as required by sections 45 and 52 of the *Residential Tenancy Act*. I further accept his evidence that he became aware the unit had been vacated at some point in early June. Accordingly, I find the Tenant is responsible for payment of the June 2016 rent. The quantity of that payment will be addressed later in this my Decision.

A Landlord is required to ensure a rental unit is safe and suitable for occupation. This obligation is mandated in section 32 of the *Residential Tenancy Act* which reads as follows:

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

Further clarification is provided in the *Residential Tenancy Policy Guideline: 1. Landlord & Tenant – Responsibility for Residential Premises* which provides in part as follows:

> …
> The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards"

> established by law, and are reasonably suitable for occupation given the nature and location of the property.
> …
> The landlord is responsible for painting the interior of the rental unit at reasonable intervals.
> …

The condition of the rental unit, as depicted in the photos submitted by the Tenant, indicate the rental unit was not maintained by the Landlord as required by the *Act* and the *Policy Guidelines.* The walls had clearly not been painted in many years and they were severely damaged, permitting rats to enter the rental unit. As well, the evidence was that the ceiling caved in as a result of racoon excrement. For a period of time, a window was missing in the rental unit which is a health and safety concern.

The rental unit is a bedroom and kitchen in what the Landlord described as a "rooming house". The Landlord stated that this was an "interesting tenancy" in that his friend, a local realtor, G.S., asked the Landlord to provide the Tenant with accommodation as the Tenant was in "dire need". Whether the Tenant was desperate for housing should have no bearing on the Landlord's responsibility as a difficult to house Tenant does not relieve the Landlord from their obligation to maintain a rental unit. The Landlord testified that G.S. was supposed to attend to the required repairs and it appears as though G.S. was largely responsible for managing the rental on behalf of the Landlord. Notably, G.S. did not testify at the hearing.

The rental unit clearly required repairs at the beginning of the tenancy. I accept the Tenant's evidence that he reached an agreement with the Landlord's agent, G.S., that his rent would be reduced until repairs were completed to the rental unit. I further accept the Tenant's evidence that those repairs were not done as promised.

The letters provided to the Landlord confirm that he was made aware the Tenant would be reducing his rent, as agreed, until the repairs were completed. The first such rent reduction was made on November 1, 2015 to $500.00 per month. The evidence indicates the Landlord did not dispute this rent reduction, nor did he engage in any communication with the Tenant to question these amounts until approximately April 2016.

During the hearing the Landlord claimed he was unaware the Tenant wasn't paying the full amount of rent until he looked at the rent roll. I find it more likely that the Landlord simply accepted the reduced rent rather than tend to the required repairs, and in doing so confirmed the agreement between G.S. and the Tenant.

In all the circumstances I find the Landlord is precluded by the legal principle *Estoppel,* from claiming the $200.00 per month difference in rent from November 2015 to June 2016.

In a Supreme Court of Canada decision, *Ryan v. Moore,* 2005 2 S.C.R. 53, the Court explained the issue of estoppel by convention as follows:

> 59 …. After having reviewed the jurisprudence in the United Kingdom and Canada as well as academic comments on the subject, I am of the view that the following criteria form the basis of the doctrine of estoppel by convention:
>
> (1) The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of *silence* (impliedly).
>
> (2) A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.
>
> (3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.

Applying the foregoing, I find as follows:

(1) The Landlord, by his agent's agreement and his own complacency, agreed to the rental reduction as of November 2015, and failing to raise any concerns with the decrease or dispute the amounts, created a mutual assumption upon which the Tenant relied.

(2) The Tenant relied on this shared assumption, and did not pursue an Order for a rent reduction pursuant to section 65(1) of the *Residential Tenancy Act.*

(3) It would be unjust and unfair to allow the Landlord to resile or depart from the common assumption that the November 2015 rent decrease was mutually agreeable as the Tenant, having relied on the Landlord's agreement did not pursue remedies available to him pursuant to the *Act* which, based on the condition of the rental unit would have likely resulted in repair orders and rent reductions.

Applying the principle of estoppel by convention, I find that the Landlord is estopped from claiming compensation for the November 2015-June 2016 rent decrease.

Consequently, I find the Tenant is responsible for paying the sum of **$500.00** for the June 2016 rent.

The Tenant's request to reduce rent from October 2015 to June 2016 pursuant to section 65(1) is granted as it is consistent with my above findings. I therefore find the Tenant is entitled to the sum of **$200.00** for the overpayment of rent in October 2015.

The Tenant also sought compensation for **$120.00** for the cost to replace the window. I accept the Tenant's evidence that this was an emergency repair and that the Tenant gave the Landlord an opportunity to attend to this repair as required by section 33 of the *Act.* Accordingly I award him compensation in this amount.

I decline the Tenant's request for compensation for the $211.00 vet bill. In the Tenant's written submissions he writes that other occupants of the rental building intentionally left broken glass in an area where his dogs frequently urinated. This may be the case or it may have been a result of unrelated third parties littering. In any case, I find the Tenant has submitted insufficient evidence to find the Landlord liable for this loss.

The Tenant sought further compensation in the amount of $100.00 per month for "each month living in that condition". As I have found the Tenant was entitled to reduce the rent to $500.00 per month as of October 2015 for the reasons set out previously, I decline his request for further rent reduction or compensation in this respect.

The Tenant also sought compensation for $174.59 for a door repair. The Tenant failed to submit evidence supporting this claim and accordingly, I dismiss his claim for this amount.

I must now address the issue of the Tenant's security deposit.

Section 38 of the *Residential Tenancy Act* provides as follows:

> **Return of security deposit and pet damage deposit**
>
> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Residential Tenancy Policy Guideline 17—Security Deposit an Set Off provides the following additional guidance:

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
- to file a monetary claim

The Landlord claimed against both deposits for unpaid rent.

By failing to perform an incoming or outgoing condition inspection report in accordance with the *Residential Tenancy Act* and the *Regulations,* the Landlord has extinguished their right to claim against the security deposit and the pet damage deposit *for damage to the rental unit,* pursuant to sections 24(2) and 36(5) of the *Act*.

A Landlord can only make a claim against a pet damage deposit for *damage*. As the Landlord had no right to claim against the pet damage deposit, the Landlord was required to return those funds to the Tenant at the conclusion of the tenancy pursuant to section 38(1)(c). While the Landlord made an application within fifteen days of the end of the tenancy, he had no right to claim against the pet damage deposit; accordingly, his only option was to return the funds to the Tenant. In failing to do so, the Landlord has breached section 38(1).

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **$700.00,** comprised of double the pet damage deposit ($350.00).

I find the Tenant has been substantially successful and, had he not obtained a fee waiver for the filing fee, would have awarded him recover of this amount. The Landlord's request for recovery of the filing fee is dismissed.

Conclusion and Summary of Amounts Awarded

The Tenant paid a $350.00 security deposit and a $350.00 pet damage deposit which the Landlord continues to hold.

I award the Landlord the sum of **$500.00** for unpaid rent for June 2015. I authorize the Landlord, pursuant to section 38 of the *Act* to retain the Tenant's $350.00 security deposit as partial payment of this amount which leaves the sum of $150.00 to be paid.

The Tenant is entitled to **$1,020.00** in compensation for the following:

- **$200.00** for the overpayment of rent for October 2015;
- **$120.00** for the window repair; and,
- **$700.00** for return of double his pet damage deposit**.**

The $150.00 owing to the Landlord and the $1,020.00 owing to the Tenant are to be offset against one another such that the Tenant is entitled to be paid the difference, namely **$870.00.** The Tenant is granted a Monetary Order in this amount and must serve the Order on the Landlord. If necessary, the Order may be filed and enforced in the B.C. Provincial Court.

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: June 30, 2016

Residential Tenancy Branch