Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, OLC, RR, O. FF

Introduction:

A hearing was convened on May 05, 2016 in response to an Application for Dispute Resolution in which the Applicants applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, for authority to reduce the rent, and to recover the fee for filing this Application for Dispute Resolution.

The male Applicant, hereinafter referred to as the Tenant, stated that on October 22, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via express post. The Landlord acknowledged receipt of these documents.

The hearing on May 05, 2016 was adjourned for reasons outlined in my interim decision of May 06, 2016**.** The hearing was reconvened on June 09, 2016 and was concluded on that date.

At the hearing on May 05, 2016 and in my interim decision of May 06, 2016, the Landlord was given the opportunity to re-serve his 32 page evidence package to the Tenant. At the hearing on June 09, 2016 the Landlord stated that on May 10, 2016 he served the 32 page evidence package to both Respondents at the service the address provided by the Tenant at the hearing on May 05, 2016. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

At the hearing on June 09, 2016 the Landlord stated that on May 10, 2016 he also served photographs that were not previously submitted to the Residential Tenancy Branch or served to the Tenant.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure stipulates that documentary and digital evidence that is intended to be relied upon at the hearing must be received by the Applicant and the Residential Tenancy Branch not less than seven days before the hearing. As the Landlord submitted additional photographs after the hearing commenced on May 06, 2016, I find that the photographs were not served in accordance with section 3.15 of the *Act* and I refuse to accept them as evidence for these proceedings.

In determining that the photographs should not be accepted as evidence I was heavily influenced by the fact that the parties were advised in my interim decision of May 06, 2016 that additional evidence would not be accepted now that the proceedings have commenced.

In determining that the photographs should not be accepted as evidence I was influenced, in part, by the fact both parties acknowledge that the photographs are of damaged blinds. As the issues in dispute in these proceedings do not include a claim for damaged blinds, I cannot conclude that the photographs are relevant to these proceedings.

The Tenant stated that he did not submit any evidence to the Residential Tenancy Branch in support of these proceedings, nor did he submit a Monetary Order Worksheet. He stated that he did serve evidence to the Landlord, including a Monetary Order Worksheet. The Landlord stated that he has received documents from the Tenant but he did not receive a Monetary Order Worksheet. As the Tenant did not submit any of these documents to the Residential Tenancy Branch, they cannot be considered as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

At the outset of the hearing on June 09, 2016 the Landlord declared that prior to the conclusion of the hearing on May 05, 2016 I had advised the parties that I would join these proceedings with another dispute resolution proceeding regarding this tenancy which is scheduled to be heard on September 15, 2016. The Landlord's interpretation is incorrect, as I did not determine whether the matters should be joined during the hearing on May 05, 2016.

The Landlord was advised that my decision not to join the two matters, as outlined in my interim decision of May 06, 2016, is the decision I reached in regards to joining the matters.

Preliminary Matter #2:

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Application for Dispute Resolution does not provide full details of the Applicants' monetary claim.

In reaching this conclusion I was heavily influenced by the fact the Application for Dispute Resolution declares that the Applicants are seeking compensation of $4,859.04 but the Application does not clearly explain why they are seeking compensation of that amount.

In the Application for Dispute Resolution the Applicants declare that they are seeking compensation of $150.00 for being without a dishwasher for three months; a cleaning fee of

$380.00; and a rent refund of $350.00 for additional rent charged by the Landlord. These issues were considered at these proceedings as I find the Landlord was adequately informed of the nature of these claims for compensation.

In the Application for Dispute Resolution the Applicants declare that the Landlord has breached their right to quiet enjoyment of the rental unit by visiting the rental unit without proper notice. As the Applicants have not clearly informed the Landlord of the amount of compensation, if any, the Applicants are seeking for the alleged breach, I decline to consider this claim for compensation.

In the Application for Dispute Resolution the Applicants declare that the Landlord "made the tenant sign to end the tenancy" and they wish to recover $2,979.00 in "costs". At the hearing the male Tenant stated that the claim for "costs" of $2,979.00 relate to various expenses associated to moving out of the rental unit, which he stated were outlined on the Monetary Order Worksheet he provided to the Landlord. The Landlord stated that he was not provided with a Monetary Order Worksheet that explains the claim for $2,979.00. As there is insufficient evidence to establish that the Applicants clearly explained the claim for $2,979.00, I decline to consider this claim for compensation.

I find that proceeding with claims for damages where the amount being claimed is not clearly outlined is prejudicial to the Landlord, as the absence of particulars makes it difficult, if not impossible, for the Landlord to adequately prepare a response to the claims. The Applicants retain the right to file another Application for Dispute Resolution for matters not considered at these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?
Is the Tenant entitled to compensation for deficiencies with the rental unit?
Is the Tenant entitled to a rent refund?

Background and Evidence:

The Landlord and the Applicants agree that:

- the female Applicant moved into the rental unit on April 01, 2015;
- the female Applicant entered into a written tenancy agreement with the Landlord;
- the Tenant moved into the rental unit on June 01, 2015;
- the Tenant entered into a written tenancy agreement with the Landlord;
- the separate tenancy agreements provided each party with a private bedroom and shared common areas;
- the tenancy agreement requires the Tenant to pay monthly rent of $1,365.00 by the last day of each month;
- the Tenant paid a security deposit of $750.00;
- the Tenant vacated the rental unit on September 30, 2015;
- a final condition inspection report was completed on October 01, 2015;
- the Tenant did not give the Landlord written authority to retain any portion of the security deposit; and
- the Landlord has not returned any portion of the $750.00 security deposit.

The Tenant stated that:

- the Landlord did not schedule a time to complete a condition inspection report when this tenancy began, although he asked the Landlord on several occasions to inspect the unit;
- the Landlord did not serve him with a Notice of Final Opportunity to Schedule a Condition Inspection;
- he provided the Landlord with a forwarding address, by text message, on September 30, 2015;
- when the parties met on October 01, 2015 he asked the Landlord if he had his forwarding address;
- on October 01, 2015 the Landlord showed him the Tenant's text message to confirm that he had the forwarding address.

The Landlord stated that:

- at the start of the tenancy he attempted to schedule a time to complete a condition inspection report with the Tenant but the Tenant would not agree to a date/time;
- that he attempted to schedule a time for the inspection on several occasions, via text message;
- he did not serve the Tenant with a Notice of Final Opportunity to Schedule a Condition Inspection;
- he received a forwarding address for the Tenant, via text message, sometime near the end of September of 2015;
- he received the Tenant's forwarding address again in November of 2015 when he received the Tenant's Application for Dispute Resolution; and
- he was advised by Residential Tenancy Branch staff that receiving a forwarding address on an Application for Dispute Resolution does not constitute service of a forwarding address for the purposes of returning the security deposit.

The Tenant is seeking compensation of $380.00 for cleaning the rental unit. He contends that when he moved into the rental unit he needed to clean the bathroom, the mirrors, the sheets, and blood stains on the mattress. He stated that he did not submit photographs that show the condition of the rental unit at the start or the tenancy however he says the photographs the Landlord submitted in evidence show the stains that were on the mattress at the start of the tenancy.

The Landlord contends that the rental unit was clean at the start of the tenancy and that the mattress was unstained.

The Tenant is seeking compensation for being without a dishwasher for three months. In the Application for Dispute Resolution the Tenant declared that it took three months to repair the dishwasher "after several requests were sent to the landlord". At the hearing on June 09, 2016 the Tenant stated that he reported a problem with the dishwasher to the Landlord during the first week of his tenancy and that it was repaired 6 weeks later. At the hearing on June 09, 2016 the Tenant subsequently stated that the dishwasher was repaired on the long weekend in August.

The female Applicant stated that the dishwasher was not working properly when she moved into the rental unit; that she did not use the dishwasher so she did not report a problem with it; and that she knew the problem had been reported.

The Landlord stated that he cannot recall when the problem with the dishwasher was first reported but he believes it was reported sometime in August or September of 2015 and that it was repaired approximately one week after the report was received.

The Tenant is seeking compensation for being charged an additional $350.00 for having a roommate. In support of this claim the Tenant stated that:

- the female Applicant moved into his room with him in the middle of July of 2015;
- the Landlord told him he must pay an additional $350.00 to have the female Applicant live in his room;
- that he paid the Landlord additional rent of $175.00 for July of 2015;
- that he paid the Landlord additional rent of $350.00 for August of 2015;
- that he initially refused to pay the Landlord additional rent for September but after the Landlord came to female Applicant's place of employment he felt compelled to pay additional rent of $350.00 for September of 2015; and
- he has receipts for the additional rent payments but he did not submit them in evidence.

The female Applicant stated that she did not pay rent to the Landlord for her tenancy in July, August, or September of 2015, but that the Tenant paid the aforementioned additional amounts in July, August, and September of 2015.

The Landlord stated that he did not collect any additional rent from the Tenant for July, August, or September of 2015.

Analysis:

On the basis of the undisputed evidence I find that the Tenant and the female Applicant occupied this residential complex under separate tenancy agreements. As the Applicants occupied the residential complex under separate tenancy agreements, I find that issues arising from the separate tenancy agreements should be adjudicated at separate proceedings. I therefore limit issues to be determined at the proceedings to issues relating to the Tenant's tenancy.

In determining that the issues to be determined at these proceedings will be limited to the Tenant's tenancy I was influenced, in part, by the fact the Application seeks to recover the $750.00 security deposit paid by the Tenant rather than the $582.50 deposit paid by the female Applicant.

In determining that the issues to be determined at these proceedings will be limited to the Tenant's tenancy I was influenced, in part, by the fact the female Applicant has filed her own Application for Dispute Resolution in which she applied to recover her security deposit, which is scheduled to be heard on September 15, 2016.

Section 23(1) of the *Act* stipulates that a landlord and tenant must jointly inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Section 23(3) of the *Act* stipulates that a landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 23(6) of the *Act* stipulates that a landlord must make the inspection and complete and sign the report without the tenant if the

landlord has complied with section 23(3) and the tenant does not participate on either occasion.

Section 7 of the *Residential Tenancy Regulation* stipulates that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times and that if the tenant is not available at the date(s)/time(s) offered the landlord must propose a second opportunity in the approved form.

Residential Tenancy Branch form RTB-22 (Notice of Final Opportunity to Schedule a Condition Inspection) is the form that is currently approved for serving written notice of a second opportunity to participate in an inspection of the rental unit at the end of the tenancy. This form contains very important information for the tenant, including the fact that a tenant's right to the return of the security deposit or pet damage deposit is extinguished if the landlord provides two opportunities for inspection and the tenant does not participate on either occasion and that if the tenant is unable to attend the inspection, the tenant may ask another person to attend on their behalf.

On the basis of the undisputed evidence that the Landlord did not provide the Tenant with an opportunity to inspect the rental unit on the approved form, I find that the Landlord failed to comply with section 23(3) of the *Act.*

Section 24(2)(a) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with section 23(3) of the *Act.* As I have concluded that the Landlord failed to comply with section 23(3) of the *Act*, I find that the Landlord's right to claim against the security deposit and pet damage deposit for damage is extinguished.

I specifically note that although the Landlord has extinguished his right to claim against the security deposit for damage to the rental unit, he retains the right to apply for a monetary Order for damage to the rental unit.

On the basis of the undisputed evidence, I find that this tenancy ended on September 30, 2015 and that the Landlord received a forwarding address for the Tenant, via text message, by September 30, 2016.

In determining that the Landlord received the Tenant's forwarding address, via text message, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that a text message meets the definition of written as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As text messages are capable of being retained and used for further reference, I find that a text message can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act.*

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act,* must be served. Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlord acknowledged receiving the text message in which the Tenant provided his forwarding address, I find that the Landlord was sufficiently served with the Tenant's forwarding address.

In reaching the conclusion that the forwarding address was sufficiently served by text message I was influenced, to some degree, by the Landlord's testimony that he communicated with the Tenant via text message, specifically in regards to completing a condition inspection report at the start of the tenancy. This satisfies me that the Landlord was not averse to communicating with the Tenant by text message.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit and he did not file an Application for Dispute Resolution within 15 days of the tenancy ending and the date he received the forwarding address by text message.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit, which is $1,500.00.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim bears the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant has submitted insufficient evidence to establish that the rental unit was not in reasonably clean condition at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborate the Tenant's submission that the rental unit required cleaning at the start of the tenancy or that refutes the Landlord's submission that the rental unit was clean at the start of the tenancy. Although the Landlord submitted photographs of stains on the mattress, the Landlord contends the staining occurred during the tenancy and they do not, in my view, establish that the stains were present at the start of the tenancy.

As the Tenant has submitted insufficient evidence to establish that the rental unit required cleaning at the start of the tenancy, I dismiss the Tenant's claim for cleaning costs.

I find that the Tenant has submitted insufficient evidence to establish that there was a significant delay between the time a problem with the dishwasher was reported to the Landlord and the time the dishwasher was repaired. In reaching this conclusion I was heavily influenced by the absence of evidence, such as email communications, that corroborates the Tenant's submission that there was a significant delay or that refutes the Landlord's submission that it was repaired in approximately one week.

I find that the Tenant's evidence regarding the dishwasher was inconsistent. In his written submission he declares that it took three months to repair the dishwasher "after" requests were made. At one point in his testimony he declared that it was repaired six weeks after it was reported and he subsequently testified that it was repaired on the August long weekend, which is approximately 8 weeks after the start of the tenancy and 7 weeks after the problem was allegedly reported. Given that the Tenant is uncertain of the delay in repairs, I find his testimony regarding the timing of repairs is unreliable.

As the Tenant has submitted insufficient evidence to establish that the dishwasher was broken for an extended period of time, I dismiss the Tenant's claim for being without a dishwasher.

I find that the Tenant has submitted insufficient evidence to establish that he paid additional rent for July, August, or September of 2015. In reaching this conclusion I was heavily influenced by the absence of independent evidence, such as a receipt or bank statement, that corroborates the Tenant's submission that he paid additional rent or that refutes the Landlord's submission that no additional rent was paid.

I find that the Tenant's evidence regarding the additional rent payment was inconsistent. In his written submission he declares that he paid additional rent of $350.00 for two months and in his testimony he declared that he paid additional rent of $875.00 over a period of 2.5 months. Given this inconsistency, I find his testimony regarding the additional payments is unreliable.

In adjudicating the claim for unpaid rent I have placed little weight on the female Applicant's testimony that the Tenant paid additional rent July, August, and September of 2015. Given that the female Applicant was living with the Tenant and she is currently a party to a separate dispute resolution proceeding with the Landlord, I cannot conclude that she is an unbiased party.

As the Tenant has submitted insufficient evidence to establish that he paid additional rent, I dismiss the Tenant's claim for a rent refund.

I find that the Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $1,550.00, which includes double the $750.00 security deposit and $50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As the issues in dispute at these proceedings were limited to issues involving the Tenant's

tenancy, to which the female Applicant was not a party, I decline to name the female Applicant on the monetary Order.

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 10, 2016

Residential Tenancy Branch