Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNR, MNSD, MNDC, FF. O

For the tenant – MNDC, MNSD, OLC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act*), regulations or tenancy agreement; other issues; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; for a Monetary Order to recover double the security deposit; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence although both parties declined this opportunity. The tenant was represented by a law student. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing by registered mail. The tenant confirmed receipt of evidence. The landlord testified that he did not receive the tenant's evidence. The tenant provided Canada Post tracking details of her evidence sent to the landlord on August 12, 2016. The landlord is deemed to be served the tenant's evidence five days after it was sent pursuant to s. 90(a) of the *Act*. 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.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order to recover double the security deposit?

- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

The parties agreed that this tenancy started on December 01, 2014 for a fixed term tenancy of one year; thereafter the tenancy continued as a month to month tenancy. Rent for this unit was $1,600.00 per month. Although not all details are recorded on the tenancy agreement the parties agreed that rent was due on the first of each month. The tenant paid a security deposit of $800.00 on or about December 01, 2014. The parties agreed the tenant provided a forwarding address by email to the landlord on February 01, 2016.

The landlord's application

Unpaid rent – The landlord testified that the tenant failed to pay rent for January, 2016 of $1,600.00 and did not relinquish possession of the rental unit until January 29, 2016. The landlord testified that he had served the tenant with a One Month Notice for cause for repeatedly late payment of rent on October 28, 2015 by posting the Notice to her door and the Notice had an effective date of November 30, 2015. A hearing was scheduled to deal with that Notice on January 08, 2016. The landlord testified that he also served the tenant with a Two Month Notice to End Tenancy for landlord's use of the property on November 12, 2015 and that notice had an effective date of February 01, 2016.

The landlord testified that at the hearing both parties had filed an application for dispute resolution but the landlords application was dismissed with leave to reapply and only the tenant's application was heard. As the tenant was unsuccessful the landlord was issued an Order of Possession based on the One Month Notice. The Order of Possession was received by the landlord a few days later and was effective two days after it was served upon the tenant. The tenant still failed to pay rent for January and continued to live there until January 29, 2016. As the tenancy was ended based on the reason given on the One Month Notice then the tenant is not entitled to compensation of one month's rent for the Two Month Notice.

The tenant disputed the landlord's claims. The tenant's representative EY stated that the tenant withheld the rent for January, 2016 because of the Two Month Notice that was served upon her after the One Month Notice was served and before the hearing took place to decide the matter. By the landlord serving the Two Month Notice after the One Month Notice this triggered the tenant's statutory right to compensation equal to the last month's rent and that is why January's rent was not paid.

The tenant testified that she vacated the rental unit in accordance with the Two Month Notice as the final decision from the hearing was not received until January 11, 2016 and the tenant then immediately

applied for a review consideration. That decision was received on January 29, 2016 and upheld the original decision.

Money owed or compensation for damage or loss – The landlord testified that at the previous hearing it was proven that the tenant was untruthful with her testimony. This shows the tenant's character is not to be trusted. At the previous hearing the tenant testified under oath that she had not received the landlord's evidence package sent separately to his application; yet the tenant provided some of the landlord's documentary evidence in her evidence package. The landlord agreed he did not file an application for a review of the decision to dismiss his application under the grounds of fraud. The landlord testified that he also did not raise this point at the previous hearing as he testified that he did not work it out until later.

The landlord testified that because the tenant cannot be trusted the landlord feels he should be entitled to change the locks to his rental unit and seeks an award of $465.19. The landlord referred to the estimate provided in evidence for the costs to do this work and to fit a deadbolt to the door. The landlord testified that he saw the tenant in the building on May 24, 2016 and as she has access to the building she may still have copies of the keys to the landlord's unit.

The tenant disputed the landlord's claim. EY stated that the landlord has the burden of proof to show that the tenant did not return all the keys to his unit and that he has suffered a loss in having his locks changed. The tenant now lives in another unit in the building and does have access to the building but has never attempted to gain access to the landlord's unit. EY states that the landlord's evidence is completely unfounded.

The tenant testified that at the previous hearing she stated what she had received from the landlord and that she had received his evidence package but not his application or Notice of Hearing. This is recorded in the previous decision and is the reason why the landlord's previous application was dismissed. The tenant testified that she did not lie under oath and this has no bearing on the tenant's character.

The tenant referred to her photographic evidence in which there is a picture of the landlord's keys waiting to be collected and that he did collect them on January 29, 2016. The tenant testified even if the landlord was entitled to costs to change the locks the unit never had a deadbolt fitted and the landlord should not charge the tenant to fit one after her tenancy has ended.

The landlord seeks to recover the amounts of $1,966.00, $199.00 and $96.00 for his alternative accommodation he had to find while the tenant continued to reside in the rental unit after being served Notice to End Tenancy. The landlord referred to his invoices for accommodation between December 01, 2015 and January 08, 2016; January 16, 2016 and January 18, 2016; and January 24, 2016 and January

25, 2016. The landlord testified that under the Act the tenant is no longer a tenant after she was served with the One Month Notice to End Tenancy on October 28, 2015 and is only an occupant until the Notice is effective on November 30, 2015.

The tenant disputed the landlord's claims. EY stated that the tenant was served the Notice by the landlord who posted it to the tenant's door on October 28, 2015. The Notice was deemed served three days later. The tenant filed an application to dispute that Notice on November 09, 2015. The hearing was scheduled for January 08, 2016. The tenant was unsuccessful at the hearing and the landlord received an Order of Possession. The landlord served the tenant with the Order of Possession by posting it to her door on January 12, 2016 and this was deemed served three days later. The tenant filed an application for a review of that decision on January 18, 2016 and received the review consideration decision on January 25, 2016. The tenant also relied on the Two Month Notice served upon her and ended her tenancy on January 29, 2016. As the tenancy continued until the tenant had the decision from the review consideration. The loss suffered was not from any negligence on the part of the tenant as the tenant is entitled to file an application to dispute the Notice and to file for a review consideration. The landlord's costs for accommodation are not the responsibility of the tenant as the tenant followed the provisions granted under the *Act*.
Further to this EY states the landlord did not mitigate or minimize any loss in this matter as the landlord was aware in July, 2015 that he needed to return to Vancouver for work as he sent an email to the tenant explaining this which states; in part, that the landlord won't be renewing the tenancy as he will be moving in as he is working on a project that will bring him back to town for work.. At that point the landlord could have served the tenant with a Two Month Notice to End Tenancy which would have allowed the tenant time to find alternative accommodation. EY also states that they do not know if the landlord's employer covered his living costs if he was in town for work.

The tenant testified that the landlord and the tenant both work in the film industry and generally employers do cover accommodation costs.

The landlord testified that the tenant was aware the landlord was coming back but this was only a possibility. His company do not cover accommodation costs.

The landlord seeks to recover compensation or $1,000.00 because the tenant lied under oath at the previous hearing concerning the receipt of the landlord's evidence package.

Filing fee for previous hearing – The landlord seeks to recover the $50.00 filing fee from the previous application filed for the hearing held in January, 2016.

Security deposit – the landlord seeks an order to permit the landlord to retain the security deposit of $800.00 to offset against the landlord's monetary claim.

The tenant's application

Harassment – The tenant testified that the landlord harassed the tenant on a regular basis. He left notes on her door, sent text messages and emails and disturbed the tenant's right to quiet enjoyment of her rental unit. The tenant testified that she asked the landlord to stop this harassment but he continued to send her messages asking when she was moving out. The tenant testified that this harassment gave the tenant health problems which affected her ability to work.

The tenant testified that the messages kept asking the tenant when she would move out before the landlord had even issued her with a Notice to End Tenancy. The tenant testified that she told the landlord she would let him know when she found somewhere else. The tenant testified that whenever the landlord's name came up on her phone she got a panic attack. The tenant testified that when she ran into the landlord in the building on a couple of occasions he was aggressive and swore at the tenant. The tenant referred to a letter from a witness who is a friend of the tenants and also an owner of another unit in the building. The tenant testified that her witness has written that they have seen the landlord swearing and acting aggressively towards the tenant. The tenant seeks compensation for harassment for three months of $4,800.00.

The landlord disputed the tenant's claims. The landlord testified that the tone of his emails, text messages were always polite and he was trying to help the tenant find somewhere else. The emails and text messages were simply fact finding to see if the tenant had found somewhere else to live. It is the tenant who has acted aggressively towards the landlord when she asked him to unblock her drains. The landlord testified that he has never sworn at the tenant or acted aggressively towards her.

The tenant seeks to recover compensation of $3,000.00 for fraudulent rent receipts issued by the landlord at the previous hearing.

The tenant seeks compensation of $5,000.00 for a federal offense committed by the landlord against the tenant regarding opening the tenant's mail sent to the rental unit.

Filing fee for previous hearing – The tenant seeks to recover the filing fee of $50.00 from the previous application for the hearing held on January 08, 2016.

Security deposit – the tenant seeks to recover double the security deposit to an amount of $1,600.00 as the landlord has extinguished his right to file a claim to keep it as he did not do the move out inspection with the tenant and the landlord did not return it to the tenant within the 15 allowable days.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the landlord's application for unpaid rent; the landlord issued a One Month Notice to the tenant on October 28, 2016 this was deemed served three days later as it was posted to the tenant's door. The tenant filed an application to dispute that Notice and the landlord also filed an application for an Order of Possession. The hearing was scheduled for January 08, 2016. Meanwhile on November 12, 2015 the landlord also served the tenant with a Two Month Notice to End Tenancy for landlord's use of the property. Had the landlord not served the Two Month Notice then the tenant would have been responsible to pay rent for January, 2016. As the landlord did serve the Two Month Notice prior to a decision being made on the One Month Notice then the Two Month Notice remains in force and effect and as such I find the tenant relied on the Two Month Notice and planned to end her tenancy in accordance with that Notice if her application to cancel the One Month Notice was successful.

Even though the tenant's application was not successful the tenant is still entitled to compensation for the Two Month Notice as it remained in force and effect throughout the month of January. I refer the parties to the Residential Tenancy Policy Guidelines # 11 which provides guidance on the amendment and withdrawal of Notices. This guideline states, in part, that a landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

Furthermore, as a general rule it may be stated that the giving of a second Notice to End Tenancy does not operate as a waiver of a Notice already given.

Consequently, as the landlord gave the tenant the One Month Notice first and then the Two Month Notice both Notices remained in force and effect until the tenancy ended on January 29, 2016 after the tenant had unsuccessfully applied for a review consideration of the decision issued on January 08, 2016. To this end the tenant is still entitled to receive the compensation equivalent to one month's rent or is entitled to withhold the last month's rent due to the Two Month Notice pursuant to s. 51 of the *Act*. The landlord's application to recover rent for January, 2016 is therefore dismissed.

With regard to the landlord's application for compensation for changing the locks; the landlord has not actually suffered a loss as he agreed he has not changed the locks; furthermore, I am satisfied that the tenant returned the keys to the landlord and while the landlord attempted to bring the tenant's character into disrepute the landlord failed to proof that the tenant was not truthful at the previous hearing. In any event it would have no bearing on my decision. If the landlord thought the tenant was not truthful at the previous hearing the landlord had an opportunity to apply for a Review Consideration after that hearing on the grounds of fraud and he failed to do so. I am not now prepared to consider the landlord's testimony concerning this as it has no bearing on whether or not the landlord is entitled to cost incurred to change locks to the rental unit just because the tenant continues to reside in the building. I therefore dismiss the landlord's application to recover these costs.

With regard to the landlord's application to recover costs incurred for alternative accommodation for periods between December 01, 2015 and January 25, 2016; the landlord argues that as the tenancy ended on November 30, 2015 due to the One Month Notice that the tenant basically overheld in the rental unit until January 29, 2016. I am not persuaded by the landlord's arguments. The tenancy only ends on the effective date of the Notice if the tenant does not file an application to dispute the Notice within the allowable time frame. As the landlord posted the Notice to the Door of the unit it was deemed served on October 31, 2015. The tenant therefore had 10 days to dispute the Notice and filed her application on November 09, 2015. The tenancy continued until it was legally ended under the *Act*. The decision issued on January 08, 2016 did end the tenancy two days after the tenant was served the Order of Possession; however, under the Act the tenant still retains the right to file an application for a review of that decision within two days of being served. The landlord posted the Order of Possession on the tenant's door on January 12, 2016 and it was deemed served on January 15, 2016. As the following two days fell on a weekend and the Residential Tenancy Office is not open then the tenant had until January 18, 2016 to file her application for Review Consideration and she did so on that date. It is not relevant whether or not the tenant was successful the tenancy continued until the decision was made on the review consideration which was received by the tenant on January 29, 2016 and then the tenant had two days to vacate the rental unit in accordance with the Order of Possession. The tenant vacated on January 29, 2016.

Consequently, the tenancy was legally ended on that date and any costs the landlord incurred for alternative accommodation are not the responsibility of the tenant. This section of the landlord's application is therefore dismissed.

With regard to the landlord's application to recover the filing fee paid for the previous application of $50.00. The landlord's application was dismissed with leave to reapply on January 08, 2016 and therefore must bear the cost of filing that application. Furthermore, there is no provision under the *Act* for me to

award the landlord a filing fee from a previous application. This section of the landlord's claim is dismissed.

With regard to the landlord's application for compensation of $1,000.00 because the landlord claimed the tenant lied under oath at the previous hearing; first I will say here that there is insufficient evidence to prove that the tenant was untruthful at the previous hearing. The landlord testified that the tenant had testified that she had not received his evidence package yet the tenant used some of the landlord's evidence in her own evidence package for that hearing on January 08, 2016. It is clear from the previous decision that it was the landlord's application that the tenant testified that she had not received as this had been sent separately to the landlord's evidence. There is no mention in the previous decision that the tenant did not receive the landlord's evidence. Due to this the landlord's application was dismissed with leave to reapply. Furthermore, as stated above if the landlord felt the tenant had provided false information at the hearing then the landlord was at liberty to file an application for review consideration with the allowable time frame and to provide evidence of any fraudulent statements made. As the landlord failed to file for review consideration after the previous hearing then I find that the landlord may not now use this hearing as a forum to claim compensation for an alleged false statement. This section of the landlord's claim is dismissed.

As the landlord's application has been unsuccessful I find the landlord is not entitled to retain the security deposit of $800.00 and this must be returned to the tenant.

With regard to the landlord's application to recover the filing fee for this application; as the landlord's application has no merit the landlord must bear the cost of filing his own application.

With regard to the tenant's application, the tenant seeks compensation of $4,800.00 for harassment by the landlord. I refer the parties to the Policy Guidelines #6 which provides guidance on matters concerning a tenant's right to quiet enjoyment of the rental unit. This guideline states, in part, that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA. In determining the amount by which the value of the tenancy has been reduced, the Arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I have given due consideration to the tenant's claim that the landlord sent the tenant emails and text messages and put notices on her door which caused the tenant's health issues which affected her work. The tenant has provided insufficient evidence to show that the tenant's work was affected by the landlord's text messages or emails or that this caused health problems brought on by the tenant's feelings of being harassed. There is insufficient evidence to show that any health problems the tenant experienced were caused solely by the landlord's actions and not a previous health concern. I find the tone of the landlord's emails and text message to be reasonably respectful and a landlord is entitled to communicate with his tenant to determine what actions the tenant may be considering when she is made aware the landlord may want to move back into the rental unit.

The tenant referred to a witness letter and testified that the landlord approached her in the building and was aggressive and swore at the tenant. The landlord disputed this action. The tenant did not ask her witness to attend the hearing; the witness statement was not taken under oath and in not attending the hearing the witness could not be provide testimony under oath or submit to cross examination by the landlord. I can therefore put little weight on a witness statement provided from a friend of the tenants particularly when it is disputed. When a matter such as this is contradicted by the other party then it is a matter of one person's word against that of the other and while both explanations are equally probably the tenant having the burden of proof in the matter has insufficient corroborating evidence to meet that burden and therefore the tenant's claim for compensation is dismissed. There is insufficient evidence to show the extent the value of the tenancy was reduced through the landlords contact with the tenant and that the seriousness of the situation does not warrant a monetary award being made. The tenant could have ignored the landlord's requests for information or even blocked his emails or phone number if the tenant found this contact to be intrusive.

With regard to the tenant's claim for compensation of $3,000.00 because the landlord provided fraudulent rent deposits at the previous hearing; as explained to the tenant at the hearing; when a matter has already been decided on then the principal of Res Jucatia is applies which means that the matter cannot be heard again. The tenant was in attendance at the hearing held on January 08, 2016 and could have provided testimony concerning this matter at that time. The tenant also applied for a review consideration and did bring up these issues at that time; however, her application was dismissed as it was not deemed to be new and relevant evidence that was not available at the original hearing. I find therefore due to the principal of Res Jucatia I must dismiss this section of the tenant's application for $3,000.00.

With regard to the tenant's application for compensation of $5,000.00 for an alleged feudal offense by the landlord; I have considered the tenant's written submissions concerning her mail being opened by the landlord after it was sent to the rental unit. As explained to the parties I do not have the jurisdiction to

consider or deal with a feudal offence under the *Residential Tenancy Act* and therefore this section of the tenant's application for $5,000.00 is dismissed.

With regard to the tenant's application to recover the filing fee from the previous hearing of $50.00; the tenant's application was dismissed with leave to reapply for the Monetary Portion only on January 08, 2016. There is no provision under the *Act* for me to award the tenant a filing fee from a previous application. This section of the tenant's claim is dismissed.

With regard to the tenant's application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; as this tenancy ended on January 29, 2016 then there is no longer a landlord tenant relationship between the parties and any Orders, even if proven, would not be enforceable. This section of the tenant's application is therefore dismissed.

With regard to the tenant's application to recover double the security deposit. The tenant claims that as the landlord failed to complete the move out inspection report that he has extinguished his right to file a claim to keep the security deposit. I direct the parties to s. 36(2) of the *Act* which states:

> *(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for **damage** to residential property is extinguished if the landlord*
>
> > *(a) does not comply with section 35 (2)* [2 opportunities for inspection]*,*
> > *(b) having complied with section 35 (2), does not participate on either occasion, or*
> > *(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations*.
> >
> > *[My emphases added in bold]*

As the landlord did not file a claim to keep the security deposit for damage to the unit, site or property then he did not extinguish his right to file his application for other monetary claims such as unpaid rent; however, as the landlord was unsuccessful with his claim then the tenant is entitled to recover the security deposit of **$800.00** pursuant to s. 38(6)9b) of the *Act*.

The tenant has applied to have the security deposit doubled; I refer the parties to s. 38(1) of the *Act* which states:

> ***38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
> > *(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.

As the landlord was within his rights to file his application to keep the security deposit he did so within the allowable 15 days after receiving the tenant's forwarding address. Consequently, the tenant's application to have the security deposit doubled is dismissed.

As the tenant's application has some merit I find the tenant is entitled to recover the filing fee of **$100.00** from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant for the following amount **$900.00** consisting of the security deposit and the filing fee.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **$900.00.** The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The reminder of the tenant's application is dismissed without leave to reapply.

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: September 01, 2016

Residential Tenancy Branch