Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, RR, FF

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act, return of double the security deposit, compensation as rent reduction and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained 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.

Preliminary Matters

The tenants' monetary claim was reviewed at the start of the hearing. The landlord confirmed receipt of an amended application and monetary worksheet, included with evidence.

The tenant made two evidence submissions to the Residential Tenancy Branch (RTB); one on June 14, 2016 and another on July 19, 2016. The pages were not sequentially numbered. The landlord received a single evidence submission that was not sequentially numbered. In order to ensure a fair process I determined that any document referenced during the hearing would be confirmed as before each party.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss under the Act and compensation as rent reduction?

Must the landlord be ordered to return double the security deposit to the tenant?

Background and Evidence

The tenancy commenced on February 1, 2015 as a one year fixed term. Rent was $1,400.00 per month, due on the first day of each month. The landlord is holding a security deposit. Each party supplied a copy of tenancy agreement documents.

The tenancy ended effective May 21, 2016 after the tenant gave notice sent via text message on May 3, 2016. The landlord received the tenants' forwarding address on June 3, 2016.

The tenant has made the following claim:

Return pro-rated rent	$496.87
Late deposit refund	1,400.00
Utilities, other losses, interest	2,290.07
Breach – dishwasher	7,125.00
TOTAL	$11,311.94

The parties confirmed that initially there had been an agreement the landlord would return pro-rated rent for May, 2016, from the date the tenant vacated to the end of that month.

There was no dispute that on May 29, 2016 the landlord sent the tenant an electronic payment in the sum of $861.00. The tenant had expected to receive the $700.00 security deposit plus a sum for the pro-rated rent. The tenant confirmed that the transfer was not accepted as the payment was not in the amount the tenant had expected. The landlord had deducted $39.00 for a cleaning product not agreed to by the tenant.

The landlord said that he had initially thought the tenant should receive some compensation. Later the landlord realized the tenant had not given proper notice to end the tenancy and the landlord determined rent did not need to be returned.

The tenant has claimed the portion of rent paid beyond the date the tenancy ended, to the end of May 2016.

As the landlord failed to return the $700.00 deposit plus the rent refund the tenant had expected the tenant has claimed return of double the security deposit.

A copy of the tenancy agreement supplied as evidence showed that the check boxes that indicate electricity and heat would be included in the rent had been marked. Those boxes were then corrected, by crossing them out, and initialed by the landlord.

The tenant said that she was unsure when those boxes had been altered and that she did not initial the boxes, to remove the service of electricity and heat. Within several months of the start of the tenancy the hydro and natural gas services were terminated

by the providers. The tenant said that she was busy at work and needed the services so had an account created in her name. The tenant said that the matter of utilities was never discussed with the landlord. The tenant paid the utilities throughout the tenancy. At the end of the tenancy the tenant requested a copy of the tenancy agreement and noticed the term regarding heat and electricity had been changed. The tenant has submitted a claim for all utilities paid throughout the tenancy. A calculation of the bills paid was provided.

The landlord said that he had met with the tenant at a coffee shop, as he does with all tenants when reviewing a tenancy agreement. The landlord inadvertently checked the boxes for electricity and heat as being included with rent. When the landlord realized he had checked those boxes in error, he immediately crossed them out and initialed. The tenant was with the landlord when this occurred and when the correction was made the tenant had responded, “oh ya, fine.” The landlord said the tenant understood and knew that she should pay the utilities and that she did so throughout the whole tenancy. The tenant was sitting right in front the landlord when the agreement was corrected.

The tenant said that there were other items crossed off the agreement, such as details related to the security deposit. When asked how the change could have been made without the tenants’ knowledge, the tenant said she was unsure and could not recall. Toward the end of the hearing the tenant said she now recalled what had occurred. The tenant testified that after the tenant vacated the tenancy agreement was reviewed and the tenant realized the landlord had changed the tenancy agreement and had also written a name on the agreement.

The landlord stated the tenant was not telling the truth. The landlord asked why, after almost 1.5 years, without ever talking to the landlord about the fact that the tenant was paying for utilities, a claim would be made. The tenant put the utilities in her name as the tenant knew those services were not included with rent. The landlord said that he never includes utilities with rent and he immediately corrected the error in the presence of the tenant, with the tenant acknowledging the change.

The tenant has claimed $15.00 per day for 475 days for the loss of use of the dishwasher. The tenant said there were some copper wires that caused her concern and that she had pointed this out to the landlord at the start of the tenancy. The tenant said that a verbal request had been made requesting repair of the dishwasher. The tenant could not provide a date the request was made. The tenant supplied multiple copies of text messages sent to the landlord; none of these included any reference to a malfunctioning dishwasher. The tenant said the landlord told the tenant that he had spent $4,000.00 on new carpet and would not make any further repairs to the unit.

The landlord said that the night prior to the end of tenancy the tenant sent a text message. A copy of the May 20, 2016 message was located in the tenants’ evidence. The tenant wrote that she had always used the sink and the first time trying the dishwasher it would not clean the dishes and was not draining. The landlord said this was the first notice of any problem with the dishwasher. The landlord had the

dishwasher repaired the next day and would not have allowed that appliance to be left unrepaired during the tenancy. The dishwasher appeared to have soil in it.

At the start of the tenancy the landlord had explained the recent expenditures made for updates to the unit and told the tenant he was not interested in installing backsplash and tile, as had been suggested by the tenant. The tenant worked at a home repair outlet and could obtain discounts for those materials, but the landlord declined due to the recent expenditures made. The landlord said he had not declined to repair an appliance and that he would never refuse a repair of this nature.

Analysis

From the evidence before me I find that the tenancy ended effective May 21, 2016, when the tenant vacated. Section 45 of the Act allows a tenant to end a periodic tenancy by providing written notice not less than 30 days before the day in the month rent is due. Notice given on May 3, 2016 would have been effective June 30, 2016.

There is no requirement for a landlord to return rent to a tenant when improper notice is given to end a tenancy. The landlord may, have one point, agreed to do so, but that agreement is now in dispute. The tenant has requested a remedy; however the Act does not entitle a tenant to compensation when a tenant ends a tenancy in breach of the Act. Therefore, I find that the claim for pro-rated rent is dismissed.

The parties agreed that the landlord attempted to return a sum greater than the security deposit on May 29, 2016. The tenant chose not to accept the payment. Section 38(1) of the Act requires a landlord to return the deposit or submit a claim against the deposit within 15 days of the end of tenancy or the date the written forwarding address was given. If a landlord fails to do so section 38(6) of the Act requires a landlord to return double the value of the deposit.

The landlord did not receive the written forwarding address until June 3, 2016 and had 15 days from that time to comply with the legislation. However, I find the landlord did attempt to return a sum of money to the tenant before the required time limit set out in the Act. I find that the tenants' decision to reject the attempted e-transfer from the landlord does not then confer a right to double the value of the deposit. The sum sent to the tenant may have been in dispute, but the amount transferred exceeded the value of the security deposit paid by the tenant. Therefore, I find that the landlord complied with the Act and that the claim for double the deposit is dismissed.

I have considered the submissions made regarding the change to the tenancy agreement for electricity and heat costs and have weighed the credibility of the each. I found the tenants' testimony was vague and contradictory. First the tenant had no recollection of the changes made to the utility terms; then after hearing from the landlord the tenant declared, toward the end of the hearing, that she now recollected the events and suggested that the landlord had made the changes to the tenancy agreement in the absence of the tenant.

I found the landlords' testimony consistent and believable. The landlord was able to describe what had occurred when he and the tenant met to sign the tenancy agreement. The landlord provided an account of the error made and the tenants' response to the correction. As a result I found this testimony more believable and reliable than that of the tenant. Further, either the tenant believed utility costs were to be paid or not. Initially the tenant said that the landlord made the change to the agreement and that this was not enforceable as the tenant did not also initial the change. Then the tenant said it was not until the end of the tenancy that she noticed the change and determined the utility costs should be paid by the landlord. Payment of utilities is a critical term of a tenancy. The tenants' behaviour, by paying utility costs throughout the tenancy leads me to conclude on the balance of probabilities that the tenant always understood those costs would not be assumed by the landlord.

I find that the tenant has failed to prove, on the balance of probabilities that the landlord altered the tenancy agreement without the knowledge and approval of the tenant. Therefore, I find that the claim for utility costs is dismissed.

Where a party breaches a term of the tenancy agreement or Act the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This is set out in section 7 of the Act and is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The tenant submits that the landlord was informed of the need to repair the dishwasher at the start of the tenancy. There was no evidence supplied that indicated any conversation had occurred or that any written notice was provided to the landlord requesting repair. In fact at the end of the tenancy the tenant wrote that she had been using the sink. There was no indication that there had been a problem with the dishwasher since the start of the tenancy 15 months prior. There was no evidence before me that the tenant took any steps to mitigate the loss the tenant submits occurred as the result of a loss of the use of an appliance. I am not convinced that the tenant ever communicated a problem; particularly as there were multiple text messages sent to the landlord in relation to other matters during the tenancy. I found it remarkable that the tenant would not have mentioned the dishwasher in the same manner.

Therefore, in the absence of any evidence that the tenant informed the landlord of a problem with the dishwasher or took any steps to minimize the claim by placing the concerns in writing, that the claim for loss of the dishwasher is dismissed.

As the landlord is holding the security deposit I have issued a monetary order to the tenant in the sum of $700.00. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As this application has no merit I decline filing fee costs to the tenant. The tenant failed to accept payment of the security deposit sent by the landlord in May 2016; therefore the claim for the deposit could have been avoided. The tenant could have accepted the payment and proceeded with a claim for any sums the tenant believed were owed.

Conclusion

The application is dismissed, with the exception of return of the security deposit.

The landlord is to return the security deposit to the tenant.

Filing fee costs are declined as the tenant previously refused to accept payment of a sum that exceeded the value of the deposit.

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: December 01, 2016

Residential Tenancy Branch