Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On December 30, 2016 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that on January 02, 2017 the Landlord's Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenants. The male Tenant acknowledged receipt of these documents.

On January 01, 2017 the Tenants filed an Application for Dispute Resolution, in which they applied for a monetary Order for money owed or compensation for damage or loss, for the return of all or part of the security deposit, for an Order requiring the Landlord to return personal property, and to recover the fee for filing an Application for Dispute Resolution.

The male Tenant stated that the Tenants' Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, although he cannot recall the date of service. The Landlord acknowledged receipt of these documents.

On January 05, 2017 the Landlord submitted 3 documents to the Residential Tenancy Branch. The Landlord stated that these documents were served to the Tenants, via registered mail, although she cannot recall the date of service. The male Tenant stated that these documents were never received. As these documents simply relate to service of the Application for Dispute Resolution to the Tenants and service of the Application is not in dispute, I find that I do not need to consider these documents at this adjudication.

On April 05, 2017 the Tenants submitted 18 pages of evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the

Landlord, via registered mail, although he cannot recall the date of service. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 06, 2017 the Landlord submitted 22 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via registered mail, although she cannot recall the date of service. The male Tenant acknowledged receiving this evidence and it was accepted 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 and they were advised of their legal obligation to speak the truth.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for lost revenue, and to keep all or part of the security deposit?
Are the Tenants entitled to the return of their security deposit?
Is there a need to issue an Order requiring the Landlord to return personal property?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on September 03, 2016;
- the monthly rent was $1,200.00;
- the Tenants paid a security deposit of $600.00;
- a condition inspection report was not completed at the beginning of the tenancy;
- the keys to the rental unit were returned to the Landlord on December 01, 2016;
- a condition inspection report was not completed at the end of the tenancy;
- the Tenants did not authorize the Landlord to retain any portion of the security deposit, in writing; and
- the Landlord did not return any portion of the security deposit

The male Tenant stated that a forwarding address was provided to the Landlord, via registered mail, on December 20, 2016. The Landlord acknowledged receiving the forwarding address in the mail, although she cannot recall when it was received.

The Tenants are seeking the return of double their security deposit on the basis that the Landlord did not complete condition inspection reports.

The Landlord is seeking compensation, in the amount of $640.50, for replacing the kitchen countertop.

The Landlord stated that the countertop was burned in two places during the tenancy. She stated that the female Tenant apologized to her for the damage and told her it was damaged when she dropped a hot pot on the counter. She stated that the countertop was 26 months old at the start of the tenancy.

The male Tenant stated that he does not know how the countertop was damaged and that the female Tenant did not apologize for damaging the countertop.

The Landlord submitted photographs of the damaged countertop. The Landlord submitted two estimates for replacing the countertop, in the amount of $638.73 and $905.11.

The Landlord submitted a screen shot of a text message, dated December 2nd, in which she informs the Tenant that she found a second burn and they will have to replace the entire countertop. In the screen shot the male Tenant appears to inform the Landlord that if there is other damage that counter should also be replaced.

The male Tenant stated that his text message was intended to mean that the Landlord could replace the counter only if he agreed on the cost of replacing the counter; that the Landlord never informed him of the cost of replacing the counter; and that he never agreed to replace the counter because he was not provided with the cost for doing so.

The Landlord is seeking compensation for lost revenue for December of 2016, in the amount of $1,200.00, because the Tenants did not give adequate notice of their intent to vacate the unit.

The Landlord stated that rent was due on the first day of each month. The male Tenant stated that rent was due on the third day of each month.

The Tenants submitted a screen shot of text messages exchanged between the parties in October, in which the parties discuss when rent is due. In these exchanges the Landlord is asking that rent be paid on the first day of each month and the Tenant indicates he thinks rent is due on the third day of each month.

The Landlord and the Tenants agree that on November 04, 2016 the male Tenant sent the Landlord a text message informing her of the Tenants' intent to end the tenancy. The male Tenant stated that he also verbally informed the Landlord of his intent to end the tenancy, which the Landlord denies.

The male Tenant stated that in the text message he informed the Landlord of his intent to end the tenancy on December 03, 2016. The Landlord stated that in the text message the Tenant informed her of his intent to end the tenancy on December 01, 2016.

The Tenants submitted a screen shot of a text message sent to the Landlord on November 04th, in which the Tenants, in part, ask the Landlord about the notice period

because they would like to move out by December 3rd. The Landlord responds to this test message in which she, in part, informs the Tenant that it is short notice and she will advertise the rental unit.

The male Tenant stated that he vacated the rental unit on December 01, 2016 at the request of the Landlord, to facilitate the re-renting of the rental unit and he believes the Landlord verbally agreed to end this tenancy without a full month's notice.

The Landlord agreed that she asked the Tenants to vacate by December 01, 2016. She stated that she agreed she would not seek compensation for rent for December only if the Tenants fixed the damaged countertop.

The Tenants submitted a series of text messages exchanged between the parties after November 05, 2016. In these text messages the Landlord writes, in part: ''in light of your short notice to us and the fact that we are not holding you to a full months notice we need to rent our suite for the first''. In these text messages the male Tenant writes, in part: ''so we need to leave on the 1st of December now? ''. In these text messages the Landlord responds, in part, by offering to help the Tenants move and by writing: ''we do not have a tenant yet so if it is not rented you may take your time to move''.

The Landlord stared that she advertised the rental unit on November 05, 2016 and found a new tenant for January 01, 2017.

The Tenants are seeking an Order requiring the Landlord to return the adapter that converts electrical current which the Tenants inadvertently left in the rental unit at the end of the tenancy.

The Landlord stated that she located this adapter and has offered to return it to the Tenants. The Landlord stated that she still as the adapter; that she is willing to return it to the Tenants if they wish to pick it up; and that she is willing to mail it to the Tenants.

The male Tenant stated that he does not intend to return to the rental unit for the purposes of retrieving the adapter and that the Landlord may dispose of the adapter.

The Tenants applied for compensation for mailing documents to the Landlord and to the Residential Tenancy Branch.

Analysis

On the basis of the undisputed evidence I find that the keys to the rental unit were returned to the Landlord on December 01, 2016. I therefore find that the tenancy ended on that date.

On the basis of the undisputed evidence, I find that the Tenants mailed their forwarding address to the Landlord on December 20, 2016. As the Landlord does not recall when

she received the forwarding address, I find that it is deemed received on December 25, 2016, pursuant to section 90(a) of the *Residential Tenancy Act* (*Act*).

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. As the Landlord is deemed to have received the Tenants' forwarding address on December 25, 2016 and she filed her Application for Dispute Resolution on December 30, 2016, I find that she has fully complied with section 38(1) of the *Act.*

As the Landlord has complied with section 38(1) of the *Act*, I find that the Tenants are not entitled to the return of double their security deposit pursuant to section 38(6)(b) of the *Act.*

On the basis of the undisputed evidence, I find that the Landlord did not complete a condition inspection report at the beginning or at the end of the tenancy.

Section 24(2) of the *Act* stipulates that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete a condition inspection report at the start of the tenancy, in accordance with section 23 of the *Act.* Section 36(2) of the *Act* stipulates that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete a condition inspection report at the end of the tenancy, in accordance with section 35 of the *Act.*

I specifically note that sections 24 and 36 of the *Act* specify that the Landlord's right to claim against a security deposit for damage to residential property is extinguished. These sections do not extinguish the Landlord's right to claim against a security deposit for other matters, such as unpaid rent or lost revenue. As the Landlord has made a claim against the security deposit for lost revenue, I find that has the right to file a claim against the security deposit. As such, I find that the Tenants are not entitled to the return of double their security deposit on the basis that the Landlord did not complete condition inspection reports.

As the Tenants have failed to establish that they are entitled to the return of double their security deposit, I dismiss their claim for $1,200.00.

Residential Tenancy Branch Policy Guideline #17, with which I concur, reads, in part:

> 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 for damages arising out of the tenancy, including damage to the rental unit.

Although the Landlord has extinguished her right to claim against the security deposit for damage to the residential property by not completing condition inspection, I find that she still has the right to apply for a monetary Order for damage to the property. I therefore will consider her claim for damage to the countertop.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has 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.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the countertop that was damaged during their tenancy. I therefore find that the Landlord is entitled to compensation for the cost of replacing the damaged countertop.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of countertops is 25 years. The evidence shows that the countertop was 26 months old at the beginning of the tenancy and was, therefore, 29 months old at the end of the tenancy. I therefore find that the counter had depreciated by 9.6% at the end of the tenancy and that the Landlord is entitled to 90.4% the cost of replacing the countertop. Using the lowest replacement estimate of $638.73, I award the Landlord $577.41 for replacing the countertop.

On the basis of the text message submitted in evidence, I find that on November 04, 2016 the Tenants informed the Landlord of their intent to end the tenancy on December 03, 2016.

Section 44(1)(a) of the *(Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act.* As there is no evidence that the Landlord served the Tenants with written notice to end the tenancy, I find that the Landlord did not end this tenancy pursuant to section 44(1)(a) of the *Act.*

Section 45(1) of the Act authorizes a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Even if I concluded that serving a notice to end tenancy by text message was a valid method of serving a notice to end tenancy, I would not conclude that the Tenants served notice to end this tenancy in accordance with section 45(1) of the *Act.* In reaching this conclusion I was heavily influenced by the undisputed evidence that the text message was not sent until November 04, 2016 which is not the day before the day in the month the rent is due, regardless of whether the rent was due on the first or the third day of each month.

The earliest day the text message of November 04, 2016 could have served to end this tenancy was December 31, 2016 if rent was due on the first day of each month or January 02, 2017 if rent was due on the first day of each month. As the text message did not properly end the tenancy on December 01, 2016, I find that Tenants did not end this tenancy pursuant to section 44(1)(a) of the *Act.*

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act.*

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. Although the parties did discuss the end date of the tenancy via text message, I am not satisfied that these messages constitute a written agreement to end the tenancy. I therefore find that the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act.*

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended pursuant to section 44(1)(d) of the *Act*, when the Tenant returned the keys to the renal unit on December 31, 2016.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act.*

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act.*

I find that the Tenants failed to comply with section 45 of the *Act* when they failed to provide the Landlord with proper written notice to end the tenancy. I find that the Tenants' failure to provide proper notice interfered, to some degree, with the Landlord's ability to locate a new tenant for December 01, 2016. Had the notice been served prior to November 01, 2016 (if rent was due on the first day of each month) or prior to

November 03, 2016 (if rent was due on the third day of each month) the Landlord would have been able to advertise in a timelier manner and may have been able to locate a tenant for December 01, 2016.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act,* the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize her lost revenue.

In determining that the Landlord did not take reasonable steps to minimize her lost revenue, I was heavily influenced by the text messages submitted in evidence. In particular I was influenced by the excerpt that reads: ''in light of your short notice to us and the fact that we are not holding you to a full months notice we need to rent our suite for the first''. I find that this text message clearly informs the Tenants that they are accepting the Tenants' late notice to end the tenancy and that this information likely contributed to the Tenants' decision to vacate the rental unit on December 01, 2016. I find it entirely possible that the Tenants would have remained in the rental unit for the month of December, thereby negating any lost revenue experienced by the Landlord, if the Landlord had informed the Tenants that she would be seeking compensation for lost revenue.

As the Landlord has failed to adequately mitigate the lost revenue experienced for December of 2016, I dismiss her application for lost revenue for that month.

On the basis of the undisputed evidence I find that when this tenancy ended the Tenants inadvertently left an adapter that converts electrical current in the rental unit.

As there is nothing in the *Act* that requires landlords to package and return items inadvertently left behind at the end of the tenancy, I dismiss the Tenants' application for an Order requiring the Landlord to return the adapter.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that she still has the adapter and was, at the time of the hearing, willing to return it to the Tenants. As the male Tenant stated that he does not intend to return to the rental unit for to retrieve the adapter and that the Landlord may dispose of the adapter, I find that the Landlord may dispose of the adapter.

The Landlord may, at her own discretion, mail the adapter back to the Tenants but she is not legally required to do so and will not, therefore, be entitled to compensation for any mailing costs incurred.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process,

including mailing costs. I therefore dismiss the Tenants' application to recover costs of mailing items related to these proceedings.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution.

I find that the Tenants have failed to establish the merits of their Application for Dispute Resolution and I dismiss their application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Tenants have failed to establish a monetary claim.

The Landlord has established a monetary claim, in the amount of $677.41, which includes $577.41 for replacing the countertop and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Section 72(2) of the *Act* authorizes me to permit a landlord to deduct an amount that I order a tenant to pay to the landlord from any security deposit due to the tenant. I therefore authorize the Landlord to retain the security deposit of $600.00 in partial satisfaction of this monetary claim**.**

Based on these determinations I grant the Landlord a monetary Order for the balance $77.41. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 03, 2017

Residential Tenancy Branch