Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MND FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's Application for Dispute Resolution as well as the additional evidence submitted for this hearing however the tenant submitted that the landlord was outside of the required timelines in serving her Application and therefore her application should be dismissed.

Preliminary Matter: Respondent's Receipt of Evidence within the Timelines

The tenant submitted that the landlord's evidence was not provided within a reasonable timeline. The tenant stated that, while she vacated the rental unit in September 2016 and the landlord made their application in April 2017, the tenant did not receive the landlord's Application for Dispute Resolution and evidence until May 2, 2017.The landlord testified that, due to budgetary restraints the landlord was unable to clean and repair for several months after the end of this tenancy and the landlord was unable to make their application for a monetary order from the tenant until April 2017.

Residential Tenancy Policy Guideline No. 12 describes the service provisions for a dispute resolution hearing. Section 88 and 89 of the Act as well as Policy Guideline No. 12 provide specific time period requirements for certain documents. With respect to an Application for Dispute Resolution package including the Notice of Hearing ("ADR"), an applicant must serve a respondent by a method approved by the director, personal service or by registered mail.

The landlord served the tenant with the materials for this hearing, including the ADR by registered mail. The landlord provided proof, by way of a registered mail receipt, a tracking

number and tracking information that indicated the tenant signed for the registered mail on May 2, 2017. The tenant confirmed receipt of the landlord's materials on this date. This date was 4 months prior to the dispute resolution hearing date. While section 59(3) of the Act provide a 3 day timeline (after making an application) for service of an ADR, Policy Guideline No. 12 and section 71 of the Act gives an arbitrator the authority and discretion to find that a document has been sufficiently served for the purposes of the Act with consideration to the principles of procedural fairness including any prejudice to the parties.

The landlord's application was served 19 days after making (filing) the application. The Policy Guideline provides the possible remedies if a document is not served in accordance with the Act including an adjournment or dismissal of an application. In considering an appropriate remedy in this case, I must be mindful of the importance of procedural fairness in the application and dispute resolution hearing processes.

I note that the tenant/respondent was provided with these materials over 4 months prior to the hearing of this application. The tenant acknowledged that she has had an opportunity to review the landlord's materials. However, the tenant testified that, in the time since her tenancy ended and prior to this hearing (a period of over one year), the tenant has been forced to relocate twice more because of her abusive partner. Furthermore, I note that the tenant testified that, because of the delay in the landlords' filing their application, she did not find it necessary or possible to retain the appropriate documents to dispute or provide a proper response to the claim made by the landlords.

The timely service of an Application for Dispute Resolution as well as the materials for a dispute resolution hearing are required in order to ensure that a responding party has a chance to understand the claim against them, respond to the claim against them and provide any evidence to support their response. I accept the tenant's argument that there has been an inordinate delay by the landlord in making their application however the landlord has made their application for a monetary order within the 2 year time frame allowed under the Act.

In consideration of the principles of procedural fairness and the application of the principles of natural justice as well as in consideration of the relaxation of the rules of evidence and the discretion of an arbitrator in a residential tenancy dispute resolution matter, I find that I must allow the landlord's application. While the tenant has explained well the limits in her ability to respond, I note that the landlord has taken all actions within the allowable timelines under the Act.

While I find the tenant has had sufficient time after the service of the landlord's application to arrange to attend the hearing, I accept the tenant's submissions that she is at a disadvantage to respond to the landlord's claim with her own evidence. The landlord would be prejudiced if this application were dismissed in its entirety however I will take into consideration the tenant's limits on her ability to respond to some portions of the landlord's claim and consider each claim individually with the timeline issue in mind.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and damage to the rental unit? Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on March 22, 2013 with a rental amount of $605.00 payable on the 1st of each month. The landlord did not request a security deposit from the tenant. The tenant provided her notice to the landlord on September 1, 2016. The tenant's notice indicated that she would vacate the rental unit on September 10, 2016. The tenant testified that her personal safety was in jeopardy at the rental unit due to a violent domestic situation. In her note to end the tenancy, the tenant wrote that she would make $50.00 per month payments until "everything is paid off." The landlord sought to recover $1500.00 from the tenant as a result of a failure to pay rent in April 2016 and May 2016 as well as an amount for cleaning and dry-walling at the end of the tenancy.

The landlord provided undisputed testimony that the tenant had failed to pay full rent in April 2016. She testified that, on May 25, 2016 the tenant agreed to a payment arrangement - the tenant would continue to pay rent as well as an additional amount to reduce her rental arrears. The agreement indicated that $645.00 was outstanding and owed by the tenant. She testified that, as of the date of this hearing, the tenant owes the landlord $655.00 in rental arrears. The tenant provided undisputed testimony that she had paid $100.00 towards that outstanding rental amount. The tenant also testified that she is on a very fixed income and that she does not have any additional money to pay the landlord. She testified that, after leaving the rental unit, she stayed at a women's shelter.

The landlord testified that the tenant did not leave the unit clean and the cost of cleaning totalled $200.00. The tenant testified that she did not have time to do a thorough clean at move-out given her circumstances. As evidence of her cost, she included an invoice for cleaning in the amount of $200.00 dated December 16, 2016 – over two and a half months after the tenant vacated the rental unit. The landlord explained again that there had been budgetary constraints that delayed the regular processes with respect to the tenant's move-out. The landlord testified that she believes the unit was re-rented as of January 1, 2017.

The landlord testified that the walls were dirty at the end of this tenancy and that the walls had multiple holes in them. The landlord provided photographs of a fist sized hole in the wall as well as one other, faint marking on a wall within the unit. The landlord provided an invoice dated December 13, 2016 that itemized painting and "3 holes and corners that needed …work as per quote." The invoice itemized $849.75 for painting the unit and $300.00 for repair of the holes. No quote for work to the rental unit was submitted by the landlord.

The landlord's move-out condition inspection report is dated September 12, 2016. The tenant has signed the report but did not indicate that she agreed with the condition of the unit as the report describes it. Most items under entry, kitchen and basement/laundry as "needs cleaning" however the bedrooms are described as "good". The notation by the landlord at the bottom of the move-out report indicates that the "upper bedrooms cleaned. 1st floor halls & basement require cleaning".

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss (in this case, the landlord) bears the burden of proof. The claimant/landlord must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the landlord's undisputed testimony that the tenant had failed to pay full rent in April 2016 and that, as of the payment agreement made on May 25, 2017, the tenant owed rental arrears totalling $645.00. I accept the undisputed testimony of the tenant that she paid to the landlord $100.00 towards that outstanding rental amount. Therefore, I find that the landlord is entitled to **$545.00** in unpaid rent.

The landlord also testified that the tenant did not pay $605.00 in monthly rent owed on September 1, 2016 however the tenant vacated the rental unit on September 10, 2016. The tenant's notice was insufficient in that, pursuant to the Act she was required to provide one months' notice to end her month to month tenancy and only provided 10 days' notice to end the tenancy. I also note however that the tenant had been provided with a 10 Day Notice to End Tenancy for Unpaid Rent on September 9, 2016 (1 day before the day she intended to move out) with an effective date of September 24, 2016.

When a tenancy ends and the landlord seeks compensation for rental loss, the landlord must show that they made efforts to mitigate their loss. The tenant did not vacate without providing notice to the landlord. The landlord was aware that the tenant intended to move out on September 10, 2016 and, as of September 9, 2016 the landlord had advised the tenant that the tenancy would end for non-payment of rent.

The landlord argued that the tenant should pay rent for the entire month of September 2016 however given that the landlord did not attempt to re-rent the unit for several months and that the tenant made efforts in an unusual and emergency situation to vacate the rental unit, I find that the landlord is entitled to a nominal amount for September 2016 and that the landlord could

have taken steps to re-rent the unit within the month of September 2016. The landlord is entitled to a nominal payment of **$200.00** toward September 2016 rent.

The landlord provided undisputed testimony that the tenant did not leave the unit clean and the landlord provided proof of the cost of cleaning at $200.00. The tenant is required pursuant to section 37(2) of the Act to leave the rental unit *reasonably clean* at the end of the tenancy. The landlord's invoice for cleaning is dated December 13, 2016 – 2 months after the tenant vacated the rental unit. Pursuant to section 21 of the Act, the condition inspection report is the best evidence of the state of repair of the unit at the start and end of the tenancy unless there is evidence to the contrary. The condition inspection report at move-out is dated September 12, 2016 and the tenant has signed but not agreed to the contents of the report.

I accept the tenant's testimony that she did her best to clean in the circumstances. I find that the photographs provide additional evidence of the condition of the unit. I find that the photographs show a reasonably clean rental unit with respect to the kitchen and bathroom (including floors). I find that the tenant cleaned the rental unit but that the entry and basement/laundry needed additional cleaning as indicated on the condition inspection report. The notation by the landlord at the bottom of the move-out report indicates that the "upper bedrooms cleaned. 1st floor halls & basement require cleaning. Therefore, I find that the landlord is entitled to a nominal cost for additional cleaning. I find that the landlord is entitled to **$50.00** to recover cleaning of the hall and downstairs basement area.

The landlord testified that the walls required repairs. The landlord's invoice for wall repair indicates that there were 3 holes in the walls. The landlord's photographs show 1 large hole. The condition inspection report refers to 1 large hole in the wall and 3 small nail holes. The other marks in the rental unit, by appearance in the photographic evidence appear to be reasonable wear and tear after a 3 year tenancy. The landlord is entitled to a portion of the $300.00 repair invoice for the 1 hole that she has proven was damaged as a result of this tenancy. I find that the landlord is entitled to recover **$100.00** for the cost of repairing the large hole shown in the landlord's photographs.

The landlord is entitled to a monetary order as follows,

Item	**Amount**
Rental Arrears	$545.00
Partial September 2016 Rent	200.00
Cleaning Unit	50.00
Repairing Hole	100.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	**$995.00**

As no security deposit was taken from the tenant, section 72(2) whereby a landlord is permitted to recover payment from a security deposit is not applicable. Given that the landlord was successful in this application, I find that the landlord is entitled to recover the **$100.00** cost of the filing fee.

Conclusion

I issue a $995.00 monetary order to the landlord.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: October 4, 2017

Residential Tenancy Branch