Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR FF
Tenant: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*").

The Landlord's Application was received at the Residential Tenancy Branch on November 14, 2016 (the "Landlord's Application"). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenant's Application was received at the Residential Tenancy Branch on March 3, 2016 (the "Tenant's Application"). The Tenant applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order requiring the Landlord to return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf. The Tenant attended the hearing on her own behalf. Both parties provided a solemn affirmation at the beginning of the hearing.

At the beginning of the hearing, both parties acknowledged receipt of the other's documentary evidence. I find the parties have been sufficiently served with the evidence upon which they intend to rely for the purposes of the *Act*, pursuant to section 71 of the *Act*.

Neither party raised any issues with respect to service or receipt of the above documents. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. 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.

Preliminary and Procedural Matters

The original hearing took place on May 2 and June 13, 2017. Although the Landlord attended the hearing on May 2, 2017, he did not attend the reconvened hearing on June 13, 2017. The Tenant attended the hearing on both dates. The arbitrator's original decision, dated June 20, 2017, as corrected on August 25, 2017, reflected the Landlord's absence.

The Landlord submitted an Application for Review Consideration, dated September 22, 2017. After considering the Landlord's evidence and submissions, the arbitrator accepted the Landlord was unable to attend the reconvened hearing on June 13, 2017, due to circumstances that could not be anticipated and were beyond his control. Specifically, the Landlord submitted he had not received notice of the conference call on June 13, 2017. A new hearing was granted and was scheduled on November 30, 2017.

Prior to the hearing on November 30, 2017, the Tenant submitted to the Residential Tenancy Branch a copy of an email dated May 14, 2017. The email from the Landlord to the Tenant included a single attachment, which appeared to be the Interim Decision of the original arbitrator, which adjourned the hearing that commenced on May 2, 2017, to a later date and time. The Tenant asserted that the Landlord received this document from the Residential Tenancy Branch and forwarded it to the Tenant, and that I ought to conclude the Landlord also received notice of the reconvened hearing. The Tenant also submitted that the Landlord, if he did not receive the notice of the reconvened hearing, ought to have made further inquiries about the date and time of the reconvened hearing. The Tenant submitted it would be unfair to proceed with the new hearing on November 30, 2017.

After careful consideration of the Tenant's submissions, I find there is insufficient evidence to conclude the Landlord received notice of the reconvened hearing following the adjournment on May 2, 2017. In any event, I am unaware of and was not directed to any authority that would empower me to alter the Review Consideration decision or dismiss the Landlord's Application, as requested by the Tenant. Accordingly, as ordered by the arbitrator in the Review Consideration decision issued on October 3, 2017, a new hearing was conducted. The new hearing took place on November 30, 2017. The parties' evidence and submissions are summarized below.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order granting recovery of the filing fee?
3. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Tenant entitled to an order requiring the Landlord to return all or part of the security deposit and/or pet damage deposit?
5. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on December 15, 2003, and ended when the Tenant vacated the rental unit on July 5, 2017. At the end of the tenancy, rent was due in the amount of $843.36 per month. On December 8, 2003, the Tenant paid a security deposit in the amount of $400.00, which the Landlord holds.

The Landlord's Claim

The Landlord testified the Tenant did not pay rent when due for the months of April, May, June, and July 2016. In addition, the Tenant confirmed she moved out of the rental unit on July 5, 2016, after receiving a Two Month Notice to End Tenancy for Landlord's Use of Property, dated May 26, 2016 (the "Two Month Notice"). The Landlord suggested the Tenant breached the *Act* by failing to pay rent when due and should not be entitled to receive compensation equal to one month's rent, in accordance with section 51(1) of the *Act*.

The Tenant did not dispute that rent was not paid as alleged.

The Tenant's Claim

The Tenant's claim was summarized on a Monetary Order Worksheet, dated March 3, 2017. First, the Tenant claimed recover of double the amount of the security deposit, plus interest, as she had provided the Landlord with her forwarding address in writing by registered mail, and had not received the security deposit. A copy of the letter was included with the Tenant's documentary evidence.

In reply, the Landlord acknowledged receipt of the Tenant's forwarding address in writing. He testified that he was unaware of his obligation to return the security deposit to the Tenant or make and application for dispute resolution, in accordance with the *Act*, and acknowledged his obligation to pay double the security deposit to the Tenant.

Second, the Tenant claimed an amount equivalent to one month's rent under section 51(1). She stated she never received this amount from the Landlord.

In reply, the Landlord confirmed he did not make this payment to the Tenant because she did not pay rent for the months of April, May, June, and July 2016. He submitted that the Tenant should not be entitled to recover compensation under this provision because she was in breach of the *Act* by failing to pay rent when due.

Third, the Tenant claimed two month's rent on the belief that the Landlord did not serve the Two Month Notice in good faith. She stated she did not believe the Landlord intended to sell the property. However, on receipt of copies of the Contract of Purchase and Sale, dated April 28, 2016, and a copy of the purchaser's request that the Landlord issue the Two Month Notice, dated May 16, 2016, she became aware the property was sold. In reply, the Landlord confirmed the property was sold on August 1, 2016.

Fourth, the Tenant claimed $250.00 for moving costs incurred. She claimed to be entitled to recover this amount, again because of her belief the Two Month Notice was not issued in good faith. A Visa statement confirming payment of the amount claimed was submitted with the Tenant's documentary evidence.

Fifth, the Tenant claimed $2,530.08 for loss of quiet enjoyment of the rental property. She testified that the Landlord advised he wished to sell the property in January 2014. According to the Tenant, the Landlord arranged multiple viewings and installed a “lock box” on the door of the door without her consent. According to the Tenant, the property was viewed on multiple occasions over the following two years. In addition, she testified she made arrangements to vacate the rental unit from 8:00 a.m. to 6:00 p.m. three to four times per week. The Tenant described the many viewings that occurred in the following two years as an “insidious harassment tool” that created a “toxic” environment.

In a letter dated December 7, 2015, the Tenant requested that viewings be scheduled after 2:30 p.m. due to health concerns. Specifically, the Tenant indicated that “vertigo episodes, to the point of blacking out…[had] been going on for several years.” The Tenant advised that her efforts to find alternate accommodation and property viewings had limited her capacity to find time for household activities. She also stated she was suffering a sleep deficit which resulted in “dizzy spells”.

Further, the Tenant testified that the Landlord arranged a viewing of the rental property on February 3, 2016, but that she was not notified. When the Landlord’s representative entered the property on that date, the Tenant was on the toilet with the door open. Not surprisingly, the Tenant found the “surprise entry into the unit…embarrassing, awkward, and inconvenient”. She also expressed concern about the inconvenience of making herself available for a viewing when the parties do not show up. A copy of an email from the Tenant to the Landlord, summarizing these concerns and making suggestions for future viewings, was submitted with the Tenant’s documentary evidence. According to the Tenant, the Landlord offered to pay the Tenant $3,000.00 to vacate the rental unit because he wanted to move in. However, the Tenant did not do so.

The Tenant also described an incident on June 18, 2016, when the Landlord used “brute force” to gain access to the Tenant’s rental unit. According to the Tenant, the Landlord told the Tenant he intended to “play hardball” with her. The Tenant testified that she screamed and had to exercise “extreme restraint” to diffuse a potentially volatile situation.

The Tenant also characterized the Landlord's decision to issue notices to end tenancy for unpaid rent dated June 18 and 20, 2016, as further evidence of harassment. According to the Tenant, another occupant of the building saw the Landlord enter the Tenant's rental unit on June 20, 2016, to serve the second notice to end tenancy for unpaid rent or utilities, although the Tenant was not home.

In addition, the Tenant testified that the Landlord, in an email dated June 21, 2016, advised the Tenant that he understood she would be vacating the rental unit and had engaged the services of a private investigator. The Tenant characterized this as harassment.

The Tenant also described the Landlord's actions in sending the Landlord's Application to her directly, rather than to the forwarding address provided, as "predatory".

In reply, the Landlord denied the Tenant suffered a loss of quiet enjoyment of the rental unit. He testified the parties had an amicable relationship for most of the tenancy, and that Tenant was "great". In specific response to the Tenant's allegation of multiple viewings of the rental property while it was listed for sale, the Landlord advised the property was first listed in April 2015. It remained on the market for approximately 5-1/2 months. There was very little activity during this time. The Landlord testified the property was re-listed in November 2015 until the eventual sale in 2016. During this time, there were approximately 12 viewings.

In specific response to the Tenant's claim that she was interrupted while on the toilet on February 3, 2016, the Landlord acknowledge the real estate agent was late and entered the property. However, the Landlord testified that he spoke to the realtor and that this did not occur again.

In specific response to the Tenant's claim that the Landlord forced his way into the rental unit on February 18, 2016, the Landlord acknowledged entering the rental unit. The Landlord testified that he attended the rental unit to serve the Tenant with the first of two notices to end tenancy for unpaid rent or utilities, referred to above. However, there was no response. In light of the Tenant's earlier advice that she suffered from vertigo and black-outs – as confirmed in the Tenant's letter to the Landlord dated December 7, 2015 – the Landlord entered the unit to check on her to rule out a possible medical emergency.

In specific response to the Tenant's allegation the Landlord engaged the services of a private investigator, the Landlord acknowledged this was done. He again testified that the Tenant had not paid rent for several months and he was concerned she would vacate the rental unit without any recourse. He denied that his actions constituted predatory behaviour. Rather, by issuing the notices to end tenancy for unpaid rent or utilities and retaining a private investigator, he was protecting his rights as a landlord under the *Act*.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act.* An applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

The Landlord's Claim

The Landlord claimed unpaid rent for the months of April, May, June, and July 2016. The Tenant acknowledged rent was not paid for this period. Although the Tenant vacated the rental unit on July 5, 2016, in accordance with the Two Month Notice, the Landlord claimed the Tenant is not entitled to receive compensation in accordance with section 51(1) of the *Act* because she was at that time in breach of the *Act* as a result of her failure to pay rent when due.

In this case, the Tenant acknowledged rent was not paid when due as alleged by the Landlord. However, I find that, in accordance section 51(1) of the *Act*, the Tenant remained entitled to receive from the Landlord "an amount that is the equivalent of one month's rent payable under the tenancy agreement". Accordingly, I find the Landlord is entitled to recover unpaid rent for the months of April, May, and June 2016, which totals $2,530.08 ($843.36 x 3 months = $2,530.08).

The Tenant's Claim

With respect to the Tenant's claim for double the amount of the security deposit, I find the Tenant is entitled to recover double the amount of the security deposit. Policy Guideline #17(C)(5) provides assistance when calculating the amount of the security deposit and any interest owing. It states:

> *Interest is calculated on the original security deposit amount, before any deductions are made, and it is not doubled.*
>
> [Reproduced as written.]

Accordingly, I find the Tenant is entitled to recover double the amount of the security deposit, or $800.00 ($400.00 x 2 = $800.00). The Tenant is also entitled to receive interest on the amount of the original security deposit for the period from December 8, 2003, to November 30, 2017, which is $14.15. The total award is $814.15.

With respect to the Tenant's claim for compensation in the amount of $843.36 from the Landlord, pursuant to section 51(1) of the *Act*, I find the Tenant has been compensated in accordance with the *Act* and is not entitled to recover this amount. Although the effective date of the Two Month Notice was July 31, 2016, the Tenant elected to vacate the rental unit on July 5, 2016. This aspect of the Tenant's Application is dismissed.

With respect to the Tenant's claim for compensation in the amount of $1,686.72 based on her belief the Landlord did not issue the Two Month Notice in good faith, I find the Tenant is not entitled to recover this amount. Although the Tenant did not believe the Landlord intended to sell the property as claimed, documents and testimony provided by the Landlord confirmed the sale of the property on August 1, 2016. This aspect of the Tenant's Application is dismissed.

With respect to the Tenant's claim for $250.00 for moving costs, I find the Tenant is not entitled to recover this amount. As noted above, the Tenant incorrectly believed the Landlord did not intend to sell the rental property but subsequently did so on August 1, 2016. This aspect of the Tenant's Application is dismissed.

With respect to the Tenant's claim for $2,530.08 for loss of quiet enjoyment – the equivalent of three month's rent – I find it is reasonable to award the Tenant the sum of $1,000.00. The testimony of the parties with respect to when the property was listed for sale and the frequency of viewings is in conflict. While I am satisfied the Tenant was inconvenienced when potential purchasers viewed the Tenant's rental unit, I find that the inconvenience caused by reasonably scheduled appointments to show the property to potential purchasers is not compensable under the *Act*. A landlord is entitled to sell a rented property and a tenant is obligated to cooperate in that sale.

However, the Tenant also testified with respect to an incident on February 3, 2016, at which time a real estate agent entered the rental unit for a viewing without notice. The Tenant wrote of this incident in an email to the Landlord on the same date. The entry by the real estate agent was acknowledged by the Landlord, who advised the real estate agent was late for an appointment that had been scheduled with the Tenant.

In addition, the Tenant testified the Landlord entered the rental unit without notice on June 18, 2016. Although she tried to close the door, the Tenant testified the Landlord used "brute force" to enter and advised he would be "playing hardball" with the Tenant. The Landlord confirmed he entered the rental unit with a key out of concern for the Tenant's well-being but denied forcing his way in. I find there is insufficient evidence before me to conclude the Landlord used force to access the Tenant's rental unit. Pursuant to section 29(1)(f) of the *Act*, a landlord may enter a rental unit without notice if "an emergency exists and the entry is necessary to protect life or property".

The Tenant also claimed she suffered a loss of quiet enjoyment as a result of the Landlord issuing notices to end tenancy for unpaid rent or utilities. In particular, she testified that another occupant of the building saw the Landlord enter the Tenant's rental unit, although that person did not provide a written statement or attend the hearing to give testimony. As a result, I find there is insufficient evidence before me to conclude the Tenant experienced a loss of quiet enjoyment as a result of the Landlord exercising his rights under section 46 of the *Act*. As acknowledged by the Tenant, she had not paid rent for April, May, and June 2016.

Further, the Tenant claimed the Landlord disrupted the Tenant's right to quiet enjoyment and harassed her by engaging a private investigator. However, I find there is insufficient evidence before me to conclude the Tenant is entitled to compensation. In light of the Tenant's failure to pay rent when due, the Landlord was entitled to take steps to protect his rights under the *Act*.

The Tenant also suggested it was "predatory" for the Landlord to serve documents on the Tenant at her actual address rather than the forwarding address she provided. I find there is insufficient evidence before me to conclude the Landlord was acting in a predatory manner. Rather, I find the Landlord was merely taking steps to enforce his rights under the *Act*, specifically with respect to the payment of rent under section 46 of the *Act*.

After careful consideration of the Tenant's claims, I find she had demonstrated an entitlement to a monetary award in the amount of $1,814.15, which has been calculated as follows:

Item	**Amount**
Double security deposit:	$800.00
Interest on security deposit:	$14.15
Loss of quiet enjoyment:	$1,000.00
TOTAL:	**$1,814.15**

Set-off of claims

The Landlord has demonstrated an entitlement to a monetary award of $2,530.08.

The Tenant has demonstrated an entitlement to a monetary award in the amount of $1,814.15.

Setting off these amounts, I find the Landlord is entitled to a monetary order in the amount of $715.93 ($2,530.08 - $1,814.15 = $715.93).

As both parties have had some success, I decline to grant recovery of the filing fee to either party.

Conclusion

Pursuant to section 82(3), I set aside the original decision dated August 25, 2017, and substitute it with this Decision and Order. The Landlord is granted a monetary order in the amount of $715.93. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 4, 2017

Residential Tenancy Branch