Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNDC MND FF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- a Monetary Order pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Both the property owner and agent for the landlord, K.H. (the "landlord") attended the hearing, while both tenants attended the hearing by way of a conference call. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Both the landlord and the tenants confirmed receipt of each other's evidentiary packages, while the tenants confirmed receipt of the landlord's application for dispute. All parties are found to have been duly served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee from the tenants?

Background and Evidence

At the hearing all parties in attendance agreed to the following facts. The tenants began occupying the rental unit in January 2016 on a fixed term tenancy agreement set to expire on January 31, 2017. Following the expiration of this agreement, the tenants signed a new fixed term tenancy agreement with the landlord, which was set to run from February 1, 2017 to May 31, 2018. Rent for this new fixed term tenancy agreement was $2,300.00 per month. A security deposit of $1,150.00, previously paid at the outset of the first fixed term tenancy was surrendered to the landlord by the tenants following their departure from the rental unit on March 1, 2017. The tenants acknowledged that because of some personal issues, they were unable to remain in the rental unit for the entire length of their fixed term tenancy set to expire in May 2018 and thus were forced to break their tenancy agreement.

The landlord has applied for a monetary award as follows:

Item	**Amount**
Unpaid rent for March 2017 & NSF	~~$1,700.00~~ **$1,170.00**
Fortis March 1 to 9, 2017	7.48
Fortis March 10 to 31, 2017	17.99
BC Hydro 1 to 9, 2017	68.48
BC Hydro 10 to 31, 2017	124.30
City of Chilliwack December 1, 2016 to March 28, 2017	257.48
City of Chilliwack prorated March 2 to March 31, 2017	36.57
Painting patch and paint	126.00
Yard Clean up	209.20
Handyman wash back area/deck	157.50
Agent's assistant time spent re-renting	141.50
K.H. Vacant dwelling inspection	580.00
K.H. Hiring trades/Insurance	300.00
K.H. Time Spent re-renting	320.00
Advertising/Re-rent fee	98.75
Return of Filing Fee	100.00
Total =	$3,715.00

The landlord said she suffered the loss as noted above because of the large amount of work and effort which was required to re-rent the unit on short notice. Furthermore, the landlord alleged that the tenants had failed to return the rental unit in a condition which she deemed adequate. For this reason, the landlord said that numerous small fixes were required in the home, particularly in the yard and with regard to the walls. The landlord said that the unit was last painted in 2014 and that she felt the amount of wear and tear which had occurred since it had been painted went beyond "normal use."

In addition to the amount claimed for loss of rent and for repairs/yard work, the landlord is seeking to collect for hydro, gas and city utilities which were not paid for the time period between the tenants moving out and the unit being re-rented.

As mentioned previously, the tenants acknowledged that they vacated the rental unit before the expiration of their tenancy agreement but they argued that the landlord's had difficulties re-renting the unit because the landlord had increased the monthly rental rate. The tenants explained that the rental unit was being offered by the landlord for $200.00 over what the unit had previously been rented for. The landlord explained that on February 3, 2017 she advertised the rental unit on Craigslist, on their company's website and on Facebook for $2,500.00 and quickly had five responses. This price was lowered on February 20, 2017 and the unit was ultimately rented for $2,350.00 starting April 1, 2017.

The tenants disputed that any damage was done to the rental unit walls or to the backyard. They said that they returned the yard to the state they found it in upon move in, and said that a large amount of snow and difficult winter weather had prevented the yard from blooming.

In an effort to show their good faith, the tenants said they agreed to surrender their security deposit to the landlord towards any loss which may have been suffered for the loss of rent for March 2017.

Analysis

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results… A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

The landlord provided undisputed testimony that tenants moved out of the property several months before their fixed-term tenancy was set to expire. The landlord said that immediately upon being informed of the tenants' intention to vacate the unit, she posted a notice on Craiglist, a Facebook listing and a website listing advertising the unit for rent. She explained that due to damage and repairs required in and outside the rental unit, and because of the late notice informing her of the tenants' intention to vacate the suite, she was unable to re-rent until April, 2017. The tenants argued that the rental unit was left in an adequate state, and suggested that

the true reason that the rental unit could not be re-rented was because of the increased rental rate sought by the landlord.

Section 5 of the *Residential Tenancy Policy Guideline* examines the issue of a person's duty to minimize loss. It says, "The victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The application will not be able to be entitled to recover compensation for loss that could reasonably have been avoided…the party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation…the legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed…if the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved."

This section continues by examining the issue of claims for loss of rental income. It notes, "the landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the tenant's notice takes effect."

At the hearing the tenants highlighted *Residential Tenancy Policy Guideline #3* which states, "in all cases the landlord's claim is subject to the statutory duty to mitigate loss by re-renting the premises at a *reasonable* economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale…In a fixed-term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord."

I find that a difference of $200.00 in rent originally being sought by the landlord to be a reasonable increase, and find that it was within the landlord's right to raise the rent; however, the landlord only ended up renting the unit for $50.00 more than they were already receiving. I find that this amount will be set off against any monetary award given to the landlord, in this case the difference between the rent paid by the tenants and the rent commanded by the tenants who took over the unit on April 1, 2017.

I find that the landlord made *reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect*, but, I find that the amount claimed for compensation related to this loss to be excessive. I allow the landlord to recover a monetary award for the ~~$1,700.00~~ **$1,170.00** unpaid rent for March 2017 and for the NSF cheque, less the above discussed $50.00 deduction.

As mentioned previously, I find many of the numerous fees that the landlord has attached to her work to be unnecessary. Little evidence was presented at the hearing that numerous "dwelling inspections were required" or that the tenants agreed to pay any form of liquidated damages. A reading of the tenancy agreement reveals no such clause was agreed to. While I acknowledged that some work was required to re-market the rental unit, I find the amount and number of

services for which the landlord is seeking repayment to be extreme. I allow the landlord to recover the fees related to advertising and re-renting of $98.75.

Residential Tenancy Policy Guideline #40 provides a table on what is to be considered the "useful life" of household goods and when items are considered to have been damaged beyond "normal wear and tear." I find that the paint on the walls was nearly beyond their useful life as the *Guideline* says that interior walls are to be repainted every 4 years. The landlord testified that the walls were last painted in 2014 and that the tenants vacated in 2017. The landlord is therefore entitled to recover 25% of the amount sought for repairs to the walls or $31.50.

The landlord has also applied for repair work related to the back deck which and yard which she claimed were left in a poor state. As no structural damage was reported, these claims will be examined in light of *Residential Tenancy Policy Guideline #1* which discusses a Landlord and Tenant's responsibility related to residential premises.

It states, "This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning and repairs of residential property, and obligations with respect to services and facilities. Section 32(2) &(4) of the *Act* states, "A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access…a tenant is not required to make repairs for reasonable wear and tear." While Section 33(3) of the *Act* notes, "A tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

I find that the tenants were under no obligation per the terms of their tenancy agreement to power wash the outside deck following the conclusion of the tenancy. Based on the photographic evidence submitted to the hearing by the landlord, I find that the deck was left in a reasonable state. Furthermore I note that no comment regarding power washing or cleaning of the exterior deck was made on the condition inspection report performed by the parties at the end of the tenancy. *Policy Guideline #1* notes, that the tenant is responsible for washing and cleaning of interior walls, but the *Guideline* is silent on the issue of responsibilities to the exterior of the home. I find that the landlord is not entitled to the costs associated with cleaning the exterior deck of the rental home.

This *Guideline* continues by noting that "generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds."

Based on a reading of the *Guidelines* and the photo submitted to the hearing, along with the testimony of the parties, I find that the tenants fulfilled their obligation related to property maintenance and were under no responsibility per the terms of the tenancy agreement to maintain the yard in a pristine manner. For these reasons, I dismiss the landlord`s application for a return of the funds related to yard work.

The final portion of the landlord`s application relates to unpaid hydro, gas and municipal bills. I will examine this portion of her application pursuant to section 67 of the *Act*.

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 bears the burden of proof. The claimant 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove her entitlement to a monetary award.

The tenants acknowledged the presence of these bills but argued that they should not be responsible for the gas or hydro bills as their accounts were closed upon the February move out. The fact remains that gas and hydro continued to be used and was billed by the supplier. Furthermore, they argued that the figure cited for the city utilities was excessively high. Based on a reading of the evidence presented at the hearing and the oral testimony, I find that the tenants are responsible for the city unities as these were the supported by invoices supplied to the hearing. Any dispute about over charging should be brought up with directly to the city.

While the tenants explained that they contacted the gas and hydro provider to shut off their connection upon move out, I find that the landlord suffered a loss under section 67 of the *Act*, and that the tenants are therefore responsible for mitigating this loss. As described above, in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. In this case, the landlord suffered a loss related to the tenants' unpaid bills. These bills were unpaid because of a violation of the tenancy agreement on the part of the tenants who vacated the premises before the agreed on termination date and who had outstanding obligations related to the hydro and gas. For these reasons, I allow the landlord to recover the unpaid amounts related to hydro and gas.

As the landlord was partially successful in her application, she may recover the $100.00 filing fee from the tenants.

Conclusion

I issue a Monetary Order of ~~$2,411.05~~ **$1,862.55** in favour of the landlord as follows:

Item	**Amount**
Unpaid rent for March 2017 & NSF less	~~$1,700.00~~ **$1,170.00**
Fortis March 1 to 9, 2017	7.48
Fortis March 10 to 31, 2017	17.99
BC Hydro 1 to 9, 2017	68.48

BC Hydro 10 to 31, 2017	124.30
City of Chilliwack December 1, 2016 to March 28, 2017	257.48
City of Chilliwack prorated March 2 to March 31, 2017	36.57
Advertising/Re-rent fee	98.75
¼ painting costs	**31.50**
Return of Filing Fee	100.00
Less $50.00 for difference in rent commanded	**(-50.00)**
Total =	~~$2,411.05~~ **$1,862.55**

The landlord is provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: March 5, 2018

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON MARCH 15, 2018
AT THE PLACES INDICATED ABOVE IN **BOLD**.