



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCL-S, MNRL-S, FFL

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The male Landlord stated that the Dispute Resolution package and the Landlord's evidence were sent to the Tenant, via registered mail. The Tenant acknowledged receiving these documents, with the exception of a copy of the Monetary Order Worksheet, a copy of the tenancy agreement, and a copy of a letter dated February 19, 2018. The evidence the Tenant acknowledged receiving was accepted as evidence for these proceedings.

On October 09, 2018 the Tenant submitted 24 pages of evidence to the Residential Tenancy Branch and on October 12, 2018 the Tenant submitted another 9 pages of evidence. The Tenant stated that this evidence was served to the Landlords, via registered mail, on October 09, 2018. The Landlords acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were advised that the Monetary Order Worksheet submitted in evidence by the Landlords could not be accepted as evidence for these proceedings, as the Tenant did not acknowledge receiving that document. The Tenant acknowledged that the hearing documents provided to him declared that the Landlords were seeking to recover rent of \$750.00 plus the filing fee of \$100.00. As the Tenant is aware of the information disclosed on the Monetary Order Worksheet, I find that this matter can proceed without the need to accept the Monetary Order Worksheet.

The parties were advised that the tenancy agreement and the letter dated February 19, 2018 that were submitted in evidence, which the Tenant did not acknowledge receiving, not be accepted as evidence for these proceedings. The parties were advised that I believed this matter could be determined without me physically viewing those documents. The Landlords were advised that they could discuss these documents in the hearing and that they could request an adjournment if, during

the hearing, they deemed it necessary for me to physically view those documents. The hearing was concluded without the Landlords requesting an adjournment.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Are the Landlords entitled to compensation for unpaid rent/lost revenue and to keep all or part of the security deposit?

Background and Evidence

The Landlords and the Tenant agree that:

- the tenancy began on May 01, 2017;
- the rental unit was vacated on April 01, 2018;
- the Tenant agreed to pay monthly rent of \$750.00 by the first day of each month;
- the Tenant paid a security deposit of \$375.00; and
- on April 01, 2018 the Tenant provided the Landlords with a forwarding address, in writing.

The female Landlords stated that on March 19, 2018 the male Landlord personally served the Tenant with a One Month Notice to End Tenancy for Cause, which had an effective date of April 30, 2018. The Tenant stated that he received this Notice to End Tenancy on March 20, 2018.

The Landlords and the Tenant agree that on April 01, 2018 the Tenant served the Landlords with a letter, a copy of which was submitted in evidence. In this letter the Tenant declares, in part, that:

- “effective immediately” he is terminating the tenancy “because you have breached the Material terms of our contract agreement”;
- the Landlords have failed to repair a bathroom heater, in spite of his numerous requests;
- “ongoing construction work in the suite is not reasonable for a tenant”;
- he does not agree with “all of your accusations towards me in your letter, 1 Month Notice to End Tenancy, and addendum”; and
- he will not challenge the Notice to End Tenancy as he is moving.

The Landlords and the Tenant agree that the Tenant gave the Landlords three previous written requests to repair the heater in February and March of 2018, which were submitted in evidence. The parties agree that the Landlords made several attempts to have the heater repaired.

The male Landlord stated that the heater was repaired in October of 2017. The Tenant says the heater was never repaired during his tenancy.

The Landlords submitted a letter from an electrician, dated April 04, 2018, in which the author declares, in part, that:

- he replaced a fault thermostat in the bathroom of the rental unit;
- after the thermostat was replaced there was a report that it was still not functioning properly;
- the “site supervisor” inspected the thermostat and could not identify a problem with it;
- the homeowners asked him to inspect the thermostat again as it was still not allegedly working; and
- on March 01, 2018 he inspected the thermostat and heater again and concluded that they were functioning properly.

The Tenant stated that he disagrees with the findings in the letter from the electrician.

The Tenant submitted a photograph of the thermostat, which was set at 20, and a thermometer which indicates the temperature is 13.3. He stated that this is a photograph of the thermostat in the bathroom, which was taken sometime in 2017.

The Landlords and the Tenant agree that some flooring and drywall repairs occurred during the tenancy.

The Landlords are seeking compensation, in the amount of \$750.00, for unpaid rent/lost revenue for April of 2018. The Landlords contend that the Tenant did not provide proper notice to end the tenancy on April 01, 2018.

The male Landlord stated that the rental unit was re-rented for May 04, 2018. The Tenant stated that he does not believe this statement.

The male Landlord stated that they advertised the rental unit sometime during the first week of April of 2018. The female Landlord stated that there was a delay in advertising the rental unit because:

- they were expecting the Tenant to remain in the rental unit until April 30, 2018 and they were “caught off guard” when he vacated on April 01, 2018;
- she did some additional cleaning in the rental unit; and
- her ability to clean was impaired by the fact she cares for a young child and has just recently learned she is pregnant.

The Landlords and the Tenant agree that when this tenancy ended the Landlords signed a document that declares the rental unit was in the same condition at the end of the tenancy as it was at the start of the tenancy. The female Landlord stated that she identified some areas in need of cleaning after the rental unit was vacated. The Tenant stated that the rental unit was clean at the end of the tenancy.

The Tenant contends that the Landlords did not properly mitigate their losses by advertising in a timelier manner.

Analysis

Section 47 of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy for a variety of reasons by providing the tenant with notice to end the tenancy that is effective on a date that is not earlier than one month after the date the notice is received 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. On the basis of the undisputed evidence I find that the Landlords served the Tenant with a One Month Notice to End Tenancy, which was served in accordance with section 47 of the *Act*, which declared that the tenancy would end on April 30, 2018.

Section 45(1) 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.

On the basis of the undisputed evidence I find that the Tenant did not provide the Landlord with written notice that he wished to end the tenancy on a date that is not earlier than one month after the Landlords received the notice.

Section 45(3) of the *Act* stipulates that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

On the basis of the undisputed evidence and the letter that was served to the Landlords on April 01, 2018, I find that the Tenant informed the Landlord that the heater in the bathroom was not working and that he believed the repeated failure to fix the heater was a breach of a material term of the tenancy and that he was ending the tenancy immediately.

When a tenant wishes to end a tenancy pursuant to section 45(3) of the *Act* the tenant bears the burden of proving that the landlord breached a term of the tenancy agreement and did not correct it within a reasonable period after the tenant gives written notice of the failure. In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events.

Regardless of whether a failure to repair a bathroom heater constitutes a breach of a material term of this tenancy, I find that the Tenant submitted insufficient evidence to establish that the bathroom heater had not been repaired by the time the Tenant vacated the rental unit on April 01, 2018. I favour the testimony of the male Landlord, who stated that the heater was repaired in October of 2017, over the testimony of the Tenant, who stated that the heater was not repaired prior to the end of his tenancy.

I favoured the testimony of the male Landlord in regards to the heater, in large part, because it was corroborated by a written declaration by an electrician who declared that he replaced a faulty

thermostat and who declared that he inspected the heater on March 01, 2018 and concluded that it was functioning properly. I find that this evidence from the electrician is the most reliable evidence as it is from a qualified professional who is not directly impacted by this dispute and is, therefore, a reasonably unbiased party.

In adjudicating this matter I have placed less weight on the three written requests to repair the heater the Tenant gave to the Landlords in February and March of 2018. Although I am satisfied on the basis of these letters that the Tenant believed the heater was not working, I am not convinced that his assessment of the functionality of the heater is more reliable than the electrician's assessment.

In adjudicating this matter I have placed little weight on the photograph of the thermostat, which was set at 20, and a thermometer which indicates the temperature is 13.3. As the Tenant acknowledged that the photograph was taken sometime in 2017, I find that it does not refute the electrician's declaration that the heater was functioning properly when he inspected it on March 01, 2018.

In adjudicating this matter I have placed little weight on the undisputed evidence that flooring and drywall repairs occurred during this tenancy. As those repairs occurred prior to the rental unit being vacated on April 01, 2018, they do not constitute grounds for ending a tenancy pursuant to section 45(3) of the *Act*.

As the Tenant has submitted insufficient evidence to establish that the bathroom heater was not repaired by the time he vacated the rental unit on April 01, 2018 or that the Landlords had failed to remedy any other breach of the tenancy agreement by the April 01, 2018, I find that the Tenant did not have the right to end this tenancy pursuant to section 45(3) of the *Act*.

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 the rental unit was vacated prior to the effective date of the One Month Notice to End Tenancy that was served by the Landlord, I find that this tenancy did not end pursuant to sections 47 and 44(1)(a) of the *Act*.

As the Tenant did not give proper notice in accordance with section 45(1) of the *Act* and he has failed to establish that he had the right to end this tenancy in accordance with section 45(3) of the *Act*, I find that this tenancy did not end pursuant to sections 45 and 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. As there is no evidence that the parties agreed in writing to end 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. On the basis of the undisputed evidence that this rental unit was vacated on April 01,

2018, I find that this tenancy ended, pursuant to section 44(1)(d) of the *Act* when the Tenant vacated the rental unit on that date.

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 Tenant failed to comply with section 45 of the *Act* when he failed to provide the Landlord with proper written notice of his intent to end the tenancy on April 01, 2018. I find that the Tenant's failure to comply with section 45 of the *Act* and the late notice that he provided to the Landlords on April 01, 2018 prevented the Landlords for finding a new tenant for April 01, 2018. Regardless of whether or not someone moved into the rental unit on May 04, 2018, there is absolutely no evidence to establish that the Landlords received any rent for April of 2018. I therefore find that the Tenant must pay \$750.00 to the Landlords for the loss of revenue they experienced in April of 2018.

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 took reasonable steps to minimize the lost revenue they experienced.

I find that taking a week to advertise a rental unit is not unreasonable when a landlord is provided with absolutely no notice that a rental unit will be vacated. I find that it is not unreasonable for a landlord to complete additional cleaning prior to the start of a new tenancy even if the rental unit is left in reasonably clean condition by the outgoing tenant. I find that additional cleaning and preparing to advertise a rental unit can takes a few days, particularly when a landlord has a young family.

Given that the vast majority of tenancies begin on the first day of the month, I find it unlikely that the Landlords could have located a new tenant for any time prior to May 01, 2018, even if they had advertised the rental unit on April 02, 2018.

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

Conclusion

The Landlords have established a monetary claim, in the amount of \$850.00, which includes \$750.00 in lost revenue and \$100.00 in compensation for the fee paid to file this Application for

Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlords to retain the Tenant's security deposit of \$375.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$475.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, 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: October 23, 2018

Residential Tenancy Branch