Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This is an Application for Dispute Resolution (the "Application") brought by the Landlords requesting a monetary order for rent loss, repairs and other damages; the Landlords ask to retain the security deposit in partial satisfaction of the award. The Landlords also request an order for payment of the filing fee.

The Landlords and Tenant appeared for the scheduled hearing. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

A considerable volume of evidence was uploaded to the Residential Tenancy Branch in this Application. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Are the Landlords entitled to a monetary order for payment of rent losses, repairs and other damages, pursuant to section 67 of the Residential Tenancy Act ("Act")?

Are the Landlords entitled to retain the security deposit, pursuant to section 38 of the Act?

Are the Landlords entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began March 17, 2017 and ended March 2, 2018 when the Tenant vacated the rental unit. The written tenancy agreement was for a fixed term to March 16, 2018 and rent was $1,900.00 per month, payable on the 1st of each month. The Tenant also agreed to pay 70% of the utility expenses, which the Landlords would calculate based on their invoices. A security deposit of $950.00 was paid to the Landlords. A copy of the signed tenancy agreement was submitted into evidence.

The Tenant states that in December, she was beginning to search for a new residence as she knew the tenancy would be ending March 16, 2018 and the Landlords had expressed an interest in moving back into the home as they were expecting a new baby.

On January 31, 2018, the Tenant was served with a One Month Notice to End Tenancy for Cause, however, it had a stated effective date of March 31, 2018; the reason stated was that the Tenant was repeatedly late with rent. It was served by posting it on the Tenant's door on January 31, 2018.

The Tenant states that she began looking for a new rental unit to move to. She prepared a notice once she was finalizing her plans to rent a new place, however, on February 9th, 2018, the Landlords cancelled their own notice ending the tenancy by way of a written notice to the Tenant dated February 2, 2018 which reads: "*This letter is to cancel the 30-day end tenancy notice and warning letter for breach of contract that was given to {*tenant's name redacted*} on the night of January 31, 2018. There will be no eviction required as the matter has been resolved between landlord and tenant*". The notice is signed by the Landlord only.

On February 19, 2018, the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property. The reason given was that the Landlords intended to reside in the rental unit. It had a stated effective date of April 30, 2018.

The Tenant, having already made plans to relocate, served her own notice to vacate that same day (February 19) and her notice stated that she was vacating effective March 2, 2018. The Tenant had paid her rent to the end of February, although the Landlords acknowledge that she is entitled to one months' compensation for having been served the Two Month Notice to End Tenancy. Copies of all documents and notices were submitted into evidence.

The parties made an arrangement for a final walk-through inspection on March 2, 2018, the Tenant stating that she worked for hours cleaning and waiting for the Landlord to arrive; by the time the Landlord came to the rental unit, the Tenant had a ride waiting to take her to pick up her children and to continue with her schedule for the day. The Landlord provided a statement that the Tenant became angry when she realized she would not receive her security deposit that day and walked out of the inspection.

The Tenant says she asked to postpone the walk-through until March 3, 2018. The Landlords statement indicates that they performed a move-out inspection on March 2, 2018 and filed a

report which was witnessed by a third party. The Tenant states that she showed up March 3rd but that the Landlords had already moved into the rental unit by then, and she felt it was too late to properly document any damage or concerns as the family was already living in the rental unit.

On March 3, 2018, the Tenant gave a written notice of her forwarding address and a formal demand for the return of her security deposit within 15 days, to the Landlords. The Landlords state that they attempted several times to upload the filing fee from March 15 through March 18 to ensure that they filed their Application within the 15 day deadline, but the Residential Tenancy Branch online system kept bouncing and logging them offline; copies of these attempts were submitted into evidence.

The Tenant had paid rent to the end of February, 2018. The Landlords are claiming rent revenue losses from March 1 to March 16, 2018 as it is their position that the Tenant's obligation to pay rent could not be terminated earlier than the date of the fixed term; the Landlords state that a tenant is not allowed to terminate a fixed term lease prior to the date of the end of that fixed term, which was March 16, 2018.

The amount of $980.65 is claimed against the Tenant, as rent revenue losses for that time period. The Landlords confirm that no compensation payment was made to the Tenant for the one months' rent for having given the subsequent Two-Month Notice to End Tenancy, as the Landlords were waiting for direction from an arbitrator on how the rent claim was to be determined and used to offset the compensation to be paid.

The Tenant claims that she was within her rights to give notice and to vacate when she did, and that she does not owe for additional rent as the Landlords immediately moved back into their own home.

In addition, the Landlords presented evidence and testimony (including photographs and receipts), for the following items also claimed against the Tenant:

1. New toilet seat $28.00
2. Door knob replacement $23.52
3. Light bulbs $35.91
4. Dishwasher dispenser repair $142.35
5. Washing machine door $132.02
6. Hood fan filter $97.68
7. Cleaning services (8 hrs) $268.80
8. Fortis Jan 11 – Feb 8 $109.31
9. Fortis Feb – Mar 2 $97.97
10. BC Hydro Jan 26-Mar 2 $152.53
11. Water bill Dec 7- Mar 7 $128.58
12. Labour for repairs $252.00

Total claim for cleaning/damages: $1,468.67 , plus $100.00 for their filing fee.

The Landlords confirmed that the rental unit was new when the Tenant moved in, the Tenant being the first occupant.

The Tenant agrees with the following items claimed against her: door knob replacement, toilet seat, light bulbs, dishwasher dispenser, and stove fan filter replacement. She also accepts responsibility for the utility charges, but that the Landlords simply did not turn over the invoices to her at the end of the tenancy. However, she disputes the remainder of the claims against her and requests the return of her security deposit.

With respect to the washing machine door, the Landlords claim it had to be replaced because an interior door had broken and an error number was showing, rendering the machine unusable; the Tenant disputes this and states that the machine worked perfectly fine throughout the tenancy and that it was not damaged in any way.

The Tenant disputes the cleaning charges as she was prepared to carry out any additional cleaning that the Landlords felt may be required, but that she waited an additional two hours for the Landlords to arrive before leaving to pick up her children on March 2, 2018. It was too late to do a move out inspection or additional cleaning after that, the Landlords having moved in the following day.

The Landlords submitted photographs and summarized the areas that required additional cleaning, stating that the floors were quite dirty, the appliances needed more cleaning as well as the inside of cupboards, sinks and countertops. The Landlord did point out that they were taking over possession and that this may have meant their standard for cleaning was somewhat different than what would normally be expected between renters.

The Tenant also disputes the labour charges, stating that she had friends who could have installed the dishwasher soap dispenser for no additional cost, and that she is not responsible for the labour to replace the washer door.

Analysis

Rent Claim:
The Landlords state that they withdrew their initial One-Month Notice to End Tenancy for Cause. However, under Policy Guideline 11 of the Residential Tenancy Branch, a landlord cannot unilaterally withdraw a notice to end tenancy, which states in part:
with the consent of the party to whom it is given, but **only with his or her consent**, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived and a new or continuing tenancy created, only by the **express or implied consent of both parties**.

I find that the Tenant did not provide her consent to withdraw the initial One Month Notice to End Tenancy. Section 47 of the Act deals with the One Month Notice to End Tenancy and reads, in part:

Landlord's notice: cause

> ***47*** *(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*
>
> *…*
>
> *(b) the tenant is repeatedly late paying rent;*
>
> *…*
>
> *(2) A notice under this section must end the tenancy effective on a date that is*
>
> *(a) not earlier than one month after the date the notice is received, and*
>
> *(b) 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.*
>
> *(3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
>
> *(4) A tenant may dispute a notice under this section by making an application for dispute resolution* ***within 10 days*** *after the date the tenant receives the notice.*
>
> *(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*
>
> *(a) is* ***conclusively presumed to have accepted that the tenancy ends on the effective date of the notice,*** *and*
>
> *(b) must vacate the rental unit by that date. {bolding added}*

I have reviewed the One Month Notice to End Tenancy and find that it meets the requirements of section 52 in form and in content. I further find that the Tenant did not file a dispute application within 10 days and therefore she is *conclusively presumed* to have accepted that the tenancy was to end that and that she must vacate the rental unit no later than March 31, 2018, the stated effective date.

The Landlords take the position that they are owed $980.65 for rent from March 1 through March 16 as the Tenant was not entitled to end the tenancy prior to the March 16, 2018 fixed term end date as stated in the tenancy agreement. I find that the Landlords had made arrangements to move their family to the home by March 3, 2018 and that the rental unit was no longer available for the use and enjoyment by the Tenant from that date forward. Accordingly, I

do not find that she is liable for the rent for the entire period claimed. However, I do find that she is obligated to pay the rent for the first two days of the month and I pro-rate that amount to be **$122.58**.

Cleaning and Repairs:
Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

The Applicant bears the burden of proving their claim, on a balance of probabilities.

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I have reviewed the photographs and considered the evidence of both parties, and find the following:

- additional cleaning was required to bring the condition up to an acceptable standard of "reasonably clean". Some surfaces required extra cleaning and the appliances needed some more work. Although the Tenant argued that she would have completed any required cleaning upon request but was not given the opportunity, I cannot agree. There was opportunity, but the Tenant had other obligations that took precedence the day of the move out.
- However, I find that the Landlords claim for $268.80 to be excessive and that given their verbal testimony, it was admitted that they wanted to move into a home that met their personal standards of cleanliness and that this standard may not align with that expected by subsequent renters; Accordingly, I am prepared to award the Landlords the sum of **$135.00** for the additional cleaning to bring the rental unit up to acceptable standard of "reasonably clean", based on the testimony and evidence before me.
- The Landlords stated the washer had an error code and purchased a new washer door for $132.02 which was then installed by a professional for an additional cost. The Tenant claims that the doors were working and the machine was being used up until the end of the tenancy, without any issue. I find that there is insufficient evidence that the washing machine was in need of repair due to the negligence of the Tenant and am dismissing that part of the claim.
- The Tenant also disputes the labour cost to replace the dishwasher soap dispenser, although she agreed to pay for the replacement part. There is insufficient evidence

before me to determine whether or not this part could be installed without a professional. However, the invoice indicates that in addition to replacing the dispenser, the repairman also had to clean and check the dishwasher to get it to operate properly. Accordingly, I am allowing ½ of the repair bill in the sum of **$125.00** in favour of the Landlords for this repair.

The final monetary award in favour of the Landlords for cleaning, repairs and utilities is as follows (items with an asterisk are those claimed by the Landlords to which the Tenant does not dispute and for which she admits she is liable for the repair or replacement):

1. *New toilet seat $28.00
2. *Door knob replacement $23.52
3. *Light bulbs $35.91
4. *Dishwasher dispenser $142.35
5. *Hood fan filter $97.68
6. Cleaning services $135.00
7. *Fortis Jan 11 – Feb 8 $109.31
8. *Fortis Feb – Mar 2 $97.97
9. *BC Hydro Jan 26-Mar 2 $152.53
10. *Water bill Dec 7- Mar 7 $128.58
11. Labour for repairs $125.00

Total: $1,075.85

Security Deposit Claim:
The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or file an application to claim against it. Section 38(4) (a) of the Act also provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept that this tenancy ended on March 2, 2018 when the Tenant vacated the rental unit and that she provided her forwarding address in writing to the Landlords on March 3, 2018 along with her request for the security deposit of $950.00.

Therefore, the Landlord would have had 15 days from March 3, 2018 onwards, to deal properly with the Tenant's security deposit pursuant to the Act. I have considered the testimony of the Landlords and reviewed the evidence showing attempts to login to the Residential Tenancy Branch site to pay the fee to launch the claim as of March 15, 2018 and I find that the Landlords have satisfied the requirements to file an application within the required timeline despite the technical issues that prevented the dispute notice from generating until March 19, 2018.

I am applying the offsetting provisions of section 72 to allow the security deposit to be used as a credit against any award owing to the Landlord.

Due to the mixed results of this Application, I am not awarding the filing fee of $100.00 to the Landlords. The final award is calculated as follows:

Item	**Amount**
Rent Arrears (March1, 2)	$122.58
Cleaning/repairs/utilities	$1,075.85
Less: security deposit	($950.00)
Balance owing to Landlords	**$248.43**

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant shall pay forthwith the sum of $248.43 to the Landlords.

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 22, 2018

Residential Tenancy Branch