Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on April 13, 2018, wherein the Landlord sought monetary compensation from the Tenant for unpaid rent and damage to the rental unit, authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing was scheduled for 1:30 p.m. on October 16, 2018 and continued on November 29, 2018. Only the Landlord's Agent, S.S., called into the hearings on both dates. He gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into the hearing on November 29, 2018, although I left the teleconference hearing connection open until 10:15 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing for the October 16, 2018 hearing and the Notice of Adjourned Hearing for the November 29, 2018 hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's Agent testified that he served the Tenant with the Notice of Hearing and the Application on April 19, 2018 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

> Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served with Notice of the original hearing as of April 24, 2018. Branch records confirm that the Notice of the Adjourned Hearing was mailed to the Tenant on October 17, 2018. I therefore find that the Tenant was served with notice of the hearings and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent, unpaid utilities and damage to the rental unit?

2. Should the Landlord be authorized to retain the Tenant's security deposit?

3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's agent testified that the tenancy began September 1, 2017 for a 1 year fixed term ending on August 31, 2018. Monthly rent was payable in the amount of $2,800.00 and the Tenant paid a $1,400.00 security deposit. After the Landlord's agent discovered the Tenant had a pet, in approximately November 2017, the Tenant also paid a $1,400.00 pet damage deposit such that the Landlord continues to hold the sum of $2,800.00 in deposits.

The Tenant sent a letter to the Landlord's Agent, dated March 18, 2018, wherein she indicated she wished to end her tenancy on March 31, 2018; a copy of that letter was provided in evidence. The Landlord's Agent confirmed the Tenant vacated the rental unit as of March 31, 2018.

In the within action the Landlord sought monetary compensation in the amount of $14,052.44 for the following:

Carpet cleaning	$132.80
Utility bill	$189.81
Utility bill	$981.83
New carpet	$4,000.00
House cleaning	$350.00
April rent	$2,800.00
May rent	$2,800.00
June rent	$2,800.00
TOTAL CLAIMED	**$14,052.44**

The Landlord's Agent testified that the carpet was approximately five years old when the tenancy began. He stated that when the tenancy ended the carpet, particularly in the living room, was extremely damaged and permanently stained. Despite attempts to clean the stains could not be removed. He stated that the substance appeared to be similar to gum or a crayon, and in any case, could not be removed from the carpet fiber.

The Landlord paid $132.80 to have the carpet cleaned (a copy of the receipt was provided in evidence) and when that did not remove the stains the Landlord determined that the carpet needed to be replaced. The Landlord's Agent stated that he recently had carpet installed in his personal condo at a cost of $5,000.00 for 600 square feet such that he estimated the carpet replacement for the rental unit at $4,000.00. In the within action the Landlord sought the sum of $4,000.00 for the estimated cost to replace the carpet.

The tenancy agreement provided that the Tenant was responsible for 100% of the utilities until such time as the lower unit was tenanted at which time the Tenant was responsible for 66% of the utility costs. The Landlord's Agent confirmed that as of January 2018 the rental unit was tenanted.

At the end of the tenancy the sum of $981.83 was outstanding for the October 31, 2017 water utility invoice and $189.81 for the February 28, 2018 water utility bill; copies of those utility accounts were provided in evidence.

Photos of the rental unit indicated that the rental unit was not cleaned at the end of the tenancy. The Landlord's Agent stated that he paid someone he found on a popular buy and sell website the sum of $350.00 in cash to clean the rental unit. He stated that the rental unit is 3,300 square feet including two kitchens, such that the cost of $350.00 was considerably less than he would have paid had he hired professionals.

The Landlord's Agent claimed that the rental unit was not re-rented until July 2018. He stated that despite the fact there is a housing crisis in B.C. there isn't the same demand for high end rentals, particularly in the community in which the rental unit is located. He stated that he listed the rental unit as soon as possible and in support he provided a copy of a rental ad dated March 22, 2018. Although the unit was advertised for $2,800.00, the rental unit was re-rented as of July 1, 2018 for $2,600.00 per month as a result of negotiations with the new renters.

Analysis

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website**:** **www.gov.bc.ca/landlordtenant**.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;

- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

> **37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
>
> (2) When a tenant vacates a rental unit, the tenant must
>
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
>
> (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlord's Agent's undisputed testimony that the carpets required cleaning at the end of the tenancy. While it would have been preferable to have photos of the carpet in evidence for my consideration, I accept the testimony of the Agent that the carpet was stained and required cleaning. I therefore award the Landlord the **$132.80** claimed.

The tenancy agreement provided that the Tenant was responsible for paying the utilities, including the water utility. I therefore find that she is responsible for paying 100% of the **$981.83** outstanding for the October 31, 2017 water utility.

As the rental unit was tenanted as of January 1, 2018, the Tenant is only responsible for 66% of the water utility bills from that date forward. The February 28, 2018 water utility bill $189.81 includes two months for which she was fully responsible (November and December 2017) as well as two months she was only responsible for 66% (January and February 2018). Presuming each month was equal, I find she is responsible for paying the sum of **$157.55** of the $189.81 bill; calculated as follows:

> $189.81 /2 = $94.91 (November and December 2017)
> + $62.64 (66% of $94.91 for January and February 2018)
> **= $157.55.**

Without supporting evidence such as photos of the carpet, or an invoice/estimate from a flooring specialist, I find the Landlord has failed to submit sufficient evidence to support a finding that the carpet required replacement, or that the cost would be $4,000.00. I therefore dismiss this portion of the Landlord's claim for insufficient evidence.

Similarly, I find the Landlord has failed to submit sufficient evidence that he paid $350.00 to have the rental unit cleaned. While the photos submitted by the Landlord indicate the rental unit required cleaning, the Landlord failed to provide any documentary evidence such as a copy of the ad placed on the buy and sell website, a cash withdrawal slip from the bank, or a handwritten receipt from the persons who purportedly cleaned the rental unit to support his claim that he paid this sum. As I am satisfied the rental unit was not cleaned as required by section 37, I award the Landlord the nominal sum of **$100.00** for cleaning of the rental unit.

I will now turn to the Landlord's claim for loss of rent. A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act,* which provide as follows:

> **Tenant's notice**
>
> **45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice, and

> (b) 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.
>
> (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice,
>
> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
>
> (c) 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.
>
> (3) 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.
>
> (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

In this case I accept the Landlord's Agent's testimony that the Tenant gave notice to end her tenancy on March 18, 2018. As this was a fixed term tenancy, the effective date of her notice was the date specified in the tenancy agreement as the end of the tenancy.

Often tenants will allege deficiencies in the rental unit when attempting to end a fixed term tenancy early. The letter sent by the Tenant contains such allegations. The tenant is cautioned that unless the landlord breaches a *material* term, as provided for in section 45(3), a tenant must make an application for a repair order, and may not simply end their tenancy. Further, the onus of proving a term is a material term is on the tenant, and is to be decided by an Arbitrator, not the tenant alone. Similarly, the Tenant is cautioned that even in the case of emergency repairs, which are narrowly defined in section 33, a tenant's remedy is to reduce their rent by the cost of those specific emergency repairs *after* they have followed the required steps in section 33; again, they may not simply end their tenancy early.

I accept the Landlord's Agent's evidence that he listed the rental unit as soon as possible. I further accept his evidence that rentals of such high end properties are not subject to the same demands currently seen for one and two bedroom units. The Landlord's evidence also confirms that the monthly rent was reduced to entice the current renters such that I find the Landlord has made their best efforts to mitigate their

losses. I therefore award the Landlord the amounts claimed for loss of rent for April, May and June 2018.

As the Landlord has been substantially successful I find he is also entitled to recover the filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlord is awarded monetary compensation in the amount of **$9,872.18** calculated as follows:

Carpet cleaning	$132.80
Utility bill (October 31, 2017)	$981.83
Utility bill (February 28, 2018)	$157.55
House cleaning	$100.00
April rent	$2,800.00
May rent	$2,800.00
June rent	$2,800.00
Filing fee	$100.00
TOTAL AWARDED	**$9,872.18**

I authorize the Landlord to retain the Tenant's security and pet damage deposit in the amount of $2,800.00 and I award the Landlord a Monetary Order for the balance due in the amount of **$7,072.18**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) 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: November 29, 2018

Residential Tenancy Branch