Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened in response to an application by the corporate landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord tenant attended the hearing. The tenant was represented at the hearing by his counsel, B.M., while the corporate landlord was represented by its owner, M.A.F. All parties in attendance were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – Jurisdiction

Following opening remarks, counsel for the tenant requested a dismissal of the matter arguing that the *Residential Tenancy Branch* did not have standing to consider the matter. Counsel for the tenant argued that the parties had entered into a commercial agreement and therefore pursuant to section 4 of the *Act*, the matter should be dismissed for lack of jurisdiction. Counsel acknowledged the landlord and tenant had signed a residential tenancy agreement but explained the tenant never occupied the suite and said the main purpose for signing the agreement was to allow the tenant to have exclusive possession to unit so that it could be re-rented on AirBnb. Both the landlord and the tenant agreed this was their understanding of the rental arrangement. Counsel sought to establish the tenancy as a business relationship due to; the nature of the agreement, because the tenant never occupied the rental unit and because of wording contained in *Policy Guidelines* 17 and 27.

Section 4(d)(i) says the *Act* does not apply to living accommodation included with premises that are primarily occupied for business purposes while section 4(e) states the *Act* does not apply to living accommodation occupied as vacation or travel accommodation. This issue is expanded upon by *Policy Guideline* 27 which notes “the RTA does not apply to vacation or travel accommodation being used for vacation or travel purposes.” I find the landlord did not personally rent the unit as a vacation or travel accommodation himself and that the decision to re-rent the suite on AirBnb was done so by the tenants with whom he signed the tenancy agreement. Furthermore, I find the unit was not occupied primarily for business purposes as there was no evidence presented that business taxes were paid, furthermore the tenant could have been used the home at any point during the tenancy for his own personal accommodation.

I find *Policy Guidelines* 14 is not applicable to the tenancy in question. *Policy Guideline* 14 says, “Commercial tenancies are usually those associated with an operation like a store or an office…sometimes a tenant will use a residence for business purposes or will live in a premise covered by a commercial tenancy agreement. The *Residential Tenancy Act* provides that the *Act* does not apply [pursuant to the definitions provided by section 4 of the *Act*.]” The Guideline continues by noting, “to determine whether the premises are primarily occupied for business purposes or not an arbitrator will consider what the *predominant purpose* of the use of the premises is.”

I find the predominate purpose of the premises was to provide the tenant with exclusive possession of the rental unit in exchange for an agreed upon monthly amount. In fact, *Policy Guideline* 14 has contemplated such an arrangement stating, “Sometimes a tenant will rent out a number of rental units or manufactured home sites and re-rent them to different tenants. It has been argued that there is a "commercial tenancy" between the landlord and the “head tenant” and that an Arbitrator has no jurisdiction…The courts in BC have indicated that these relationships will usually be governed by the Residential Tenancy Act.”

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Background and Evidence

The landlord testified that this tenancy began on May 1, 2017 and ended on April 30, 2018. Rent was $3,500.00 per month and a security deposit of $1,750.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said he was seeking a monetary award of $21,461.16 as follows:

ITEM	AMOUNT
Rent for May and June with Pet/Security Deposit	$7,000.00
Utility Bills for Two Periods (Jan – March) & (April-June)	1,479.77
Legal Fees	3,500.00
RTB and Supreme Court Filing Fees	420.00
Repair Costs	3,941.25
Fridge (service call and replacement)	1,901.13
Estimates	3,119.01
Miscellaneous	100.00
TOTAL =	$21,461.16

The landlord said the property was subject to a significant amount of damage following the conclusion of the tenancy. The landlord explained that while he had knowledge the home would be listed for short-term rental on AirBnb, he did not anticipate the property would be so heavily damaged. The landlord applied for compensation related to anticipated repair costs, legal fees associated with previous arbitrations and enforcement orders, along with unpaid rent and utilities and costs for landscaping, garage door replacements and the replacement of windows. In addition, the landlord requested compensation for cleaning of the home and furnace repair.

The tenant and his counsel sought a dismissal of the entirety of the landlord's application. They argued the property was old, had been in need of repairs prior to tenancy and was subject to normal wear and tear. Further, the tenant attributed some damage to an incident involving a bear's attempted access to the garage. The tenant explained he took care of the property to the best of his abilities and said any associated damage to the landscaping could not be prevented because of the dire state of the garden when he first took possession of the home. The tenant and his counsel argued the "miscellaneous" category did not contain sufficient detail and noted the fridge was beyond its useful life (present in the home prior to 2007), therefore, they argued no compensation should be due. Additionally, counsel questioned the tenant's responsibility as it related to the furnace repair.

Counsel for the tenant argued that pursuant to section 67 and 72 of the *Act* the only fees which could be recovered by the landlord were those associated with the application for dispute and therefore he was only permitted to recover the $100.00 filing fee.

The tenant explained that an Order of Possession and a Monetary Award were granted to the tenant by way of Direct Request Proceedings after the landlord's successful application. The tenant said no rent should be due for May and June 2018 because the tenant had vacated the suite after the issuance of an Order of Possession and Monetary Award on May 22, 2018.

The tenant said he accepted that some utility bills remained unpaid but said he owed only 2/3rd of the amount requested and questioned the amounts being charged for the time that he was not in the rental unit.

Analysis

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 his claim for a monetary award.

This section must be read in conjunction with *Residential Tenancy Policy Guideline* #16 which notes, "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due." I will therefore, as noted above, only be examining whether the tenant failed to comply with the *Act*, regulations or tenancy agreement.

I will begin my analysis by examining the "fees" for which the landlord seeks compensation.

I find that a close reading of sections 67 and 72 of the *Act* do not allow for a return of Supreme Court or legal fees. Section 72 states, “The director may order payment or repayment of a fee under section 59(2)(c) [starting proceeding] or 79(3)(b) [application for review] by one party to a dispute resolution proceeding to another party or to the director. While as noted above section 67 of the *Act* allows for a compensation stemming directly from a violation of the tenancy agreement or a contravention of the *Act.* I find the fees for which the landlord seeks compensation to fall beyond the scope of is permitted under the *Act* and for these reasons, dismiss this portion of the landlord’s application.

Next, I turn my attention to the replacement of a fridge along with its associated service fees. The landlord explained the fridge was present in the unit in 2007 when he purchased the home. *Residential Tenancy Policy Guideline #40* notes the “useful” life of a refrigerator is 15 years. I find the fridge for which the landlord seeks compensation to be beyond its useful life and therefore decline to award any compensation related to the fridge.

A large portion of the landlord’s application related to estimates for damage done to a garage, a window, the landscaping along with various other minor repairs. The landlord included a broken thermostat, damage to the carport, doors, fans, floors and cleaning the property. The landlord argued it was a clause of the tenancy agreement that the tenant would maintain responsibility of the property. A review of the tenancy agreement states, “Any damage by tenants will be fixed by tenant. Tenant is responsible for all standard house maintenance (gutters, gardening etc.).”

Residential Tenancy Policy Guideline #1 states as follows, “Generally the tenant who lives in a single-family dwelling is responsible for a reasonable 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.” It continues by noting, “The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer’s specifications, or annually where there is no manufacturer’s specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.” Based on a review of the guidelines, I find the tenant had a responsibility to perform routine yard maintenance but no responsibility related to the furnace. I therefore award the landlord $150.00 in return for expenses related to landscaping pursuant to an invoice supplied in evidence. The landlord supplied a second invoice for $2,810.00 related to landscaping and repairs but I find that the items for which the landlord sought compensation are beyond the scope of a tenant’s

responsibility. Specifically, the landlord submitted expenses related to irrigation lines, trees and bedroom walls. As noted above, the *Policy Guidelines* provide only for "routine yard maintenance" and I find the landlord's argument that the tenant caused damage to the trees and grass to be unsupported by sufficient evidence. Furthermore, the walls were beyond their four year "useful" life as provided by section 1 of the *Act*.

After having considered the testimony of both parties and following a review of the evidence submitted, I find the landlord has only demonstrated his entitlement to a portion of his application. Specifically, I find sufficient evidence was provided that the tenant did not leave the property in a state that could be considered "reasonably clean" pursuant to section 26 of the *Act*. I therefore award the landlord $141.75 for cleaning.

I find this tenancy ended by way of Direct Request Proceedings on May 22, 2018. The landlord was granted a Monetary Award for the unpaid rent for May 2018 and I decline to award any rent for May or June 2018.

The tenant said he accepted that some utilities remained outstanding but argued only 2/3rd was due and noted he vacated the rental suite on April 30, 2018. A review of the tenancy agreement makes no mention of the tenant being responsible for only 2/3rd of utilities. I find the tenant is therefore responsible for all unpaid utilities from January to April 30, 2018. A review of the utility bill supplied by the landlord from April 1, 2018 to June 30, 2018 for $1,479.77; as the tenant was out of the rental unit by April 30, 2018 I grant the landlord an award of 1/3rd this amount or $493.00.

The final portion of the landlord's application concerned repairs to the carport door/window and repairs to the fan and floors. *Residential Tenancy Policy Guideline #1* notes, "The tenant is…generally required to pay for repairs where damages are caused either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site, or for cleaning to bring the premises to a higher standard than that set out in the *Act*…Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion." I find insufficient evidence was provided by the landlord to support his allegation that repairs to the fan, floor and window were the result of damage that went beyond reasonable wear and tear. I accept the tenant's testimony that a bear damaged the garage door and that the property was in a poor state of repair when he first took possession of the rental unit. For these reasons, I dismiss this portion of the tenant's application.

As the landlord was partially successful in his application he may recover the $100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

I find that the landlord is entitled to a monetary Order in the amount of $884.75 as follows:

ITEM	AMOUNT
Unpaid utilities	$493.00
Return of Filing Fee	100.00
Landscaping	150.00
Cleaning	141.75
TOTAL =	$884.75

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 26, 2018

Residential Tenancy Branch