



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL MNDCL-S MNRL MNRL-S

Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During testimony, the landlord applied to adjourn the hearing pending the outcome of a Judicial Review Procedure and a hearing in the Provincial Court of British Columbia, Small Claims Division. A hearing was conducted by the director, Residential Tenancy Branch on June 5, 2018 and a copy of the resulting Decision dated June 18, 2018 has been provided for this hearing. The tenant was successful in obtaining a monetary order as against the landlord for double the amount of the security deposit. The landlord has filed a Judicial Review Proceeding in the Supreme Court of British Columbia, which has no outcome yet, and the Provincial Court hearing for enforcement of the order of the director, Residential Tenancy Branch is scheduled for January 26, 2019. The landlord testified that this hearing is premature to the outcomes because the landlord has applied to keep the security deposit, and the matter of the security deposit is the subject of both Court cases. The tenant opposed the adjournment.

There is nothing preventing this hearing to continue, and I do not see how an adjournment may offer a different outcome after the Judicial Review Procedure has been decided. If the landlord is successful in obtaining a monetary order for unpaid rent or damages, any

enforcement of either monetary order may be set off from the other. I declined to adjourn the hearing.

Since the security deposit has already been dealt with, I decline to make any orders with respect to it. The parties can offset any monetary orders that are made by the Courts or the Residential Tenancy Branch.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damages to the rental unit, a missing fridge, administration fees and registered mail costs?

Background and Evidence

The landlord testified that this fixed term tenancy began on February 1, 2010 and reverted to a month-to-month tenancy after February 28, 2011. The tenant moved out of the rental unit on April 2, 2018. Rent in the amount of \$740.00 was payable on the last day of each month at the beginning of the tenancy, but was raised to \$821.70 during the tenancy. There are no rental arrears to the end of March, 2018. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$370.00. The landlord testified that the rental unit is a 4-plex, and the tenant's rental unit is directly above the landlord's suite. A copy of the tenancy agreement has been provided as evidence for this hearing. A move-in condition inspection report was completed at the beginning of the tenancy, and a copy has been provided for this hearing.

The landlord had made an application to evict the tenant due to an additional occupant in the rental unit, contrary to the tenancy agreement, and the tenant threatened the landlord. A hearing was conducted, and the landlord was successful in obtaining an Order of Possession. A copy of the Decision and Order of Possession have been provided for this hearing. The Order of Possession is effective on 2 days notice to the tenant and is dated February 21, 2018. The Decision states that the parties agreed at the hearing to end the tenancy no later than 1:00 p.m. on March 31, 2018, and the landlord was granted an Order of Possession on 2 days notice to the tenant, on the condition that the tenant pays the March 2018 rent in full and on time. If the tenant failed to do so, the landlord could enforce

the Order of Possession. The landlord testified that out of good faith, the landlord allowed the tenant till the end of March to vacate the rental unit.

The landlord further testified that on April 2, 2018 the tenant taped a note to the landlord's door containing the tenant's forwarding address, along with the keys to the rental unit, which the landlord submits is deemed to have been received 3 days later.

No move-out condition inspection report was completed because the tenant didn't vacate in time. An assault had taken place and the police told the landlord to stay away from the tenant, and the tenancy agreement specifies that the inspection is to be completed by no later than 1:00 p.m. on the moving out day which was also ordered at previous Arbitration. The inspection wasn't possible because the tenant hadn't vacated.

The tenant did not leave the rental unit in the same condition as when he moved in. When the landlord entered the rental unit, having severe lung issues, the smell of chemicals was heavy and the landlord could not breathe, which prolonged the time before entering. The tenant had used a steam cleaning machine with heavy chemicals and the rental unit had to be ventilated. The landlord inspected without the tenant on April 9 or 10 and has provided photographs which he testified were taken then.

No smoking was permitted in the rental unit, and the tenant had smoked and the entire rental unit had to be repainted. Since the tenant smoked, it was the tenant's responsibility to repaint. The tenant tried to complete some patching but didn't finish. The landlord had to repaint the ceilings twice.

The tenant also used the rental unit as a warehouse. The carpet and laminate were ruined; spots wouldn't come out and it had to be removed.

At the end of the tenancy, the fridge was missing.

Several photographs and receipts have been provided for this hearing and the landlord gave descriptions of each and testified that the tenant had dumped oil down the drain and the landlord found grease in the trap as well as screws.

The tenant also used a storage area that was not part of the tenancy, and the landlord gave the tenant written notice about that.

The landlord claims the following:

- \$908.11 for new flooring;
- \$116.29 for paint;
- \$228.03 for more paint;

- \$194.96 for Home Depot receipts of \$15.97, \$7.14 and \$171.85;
- \$63.64 for Rona receipts of \$22.38; \$15.43 and \$25.83;
- \$16.80 for plumbing;
- \$240.75 for a used fridge;
- \$206.25 for baseboard tiles;
- \$175.99 for the kitchen sink;
- \$1,157.75 for the landlord's labor at \$27.50 per hour;
- \$821.70 for loss of rental revenue due to the tenant's late departure;
- \$396.67 for previous charges accumulated:
 - \$224.19 for an invoice for a drain, etc. on January 23, 2018;
 - \$11.34 for registered mail on February 1, 2018;
 - \$11.79 for registered mail on February 9, 2018;
 - \$65.00 for the storage fee on September 29, 2014,
 - \$25.00 administration fee;
 - \$25.00 additional fee for storage on September 30, 2014;
 - \$9.35 for registered mail on December 7, 2017;
 - \$25.00 for a storage upgrade February 3, 2016; and
- \$100.00 for filing this application.

The \$25.00 administration fee is for late payment of rent, and the receipt of \$908.11 from Home Depot is for the cost of flooring, and Rona receipts are for glue, and calking for ceramic baseboards, a wax seal for the toilet and saw blades to cut laminate. The landlord also testified that he gave the tenant the option of removing items from the storage area or pay for it. The tenancy agreement also provides of \$50.00 for each additional occupant, and the tenant's brother moved in without the landlord's approval, but the landlord does not recall when.

The rental unit was re-rented for June 15, 2018, and the landlord claims only 1 month of rent for the tenant's failure to vacate by March 31, 2018.

The tenant testified that he was evicted on February 21, 2018 and had to be out of the rental unit by March 31, 2018 at 1:00 p.m. and he was. The tenant denies leaving later. The tenant tried many times to do a walk-through at the end of the tenancy. Rent was always paid by cash, at the insistence of the landlord, through the landlord's bathroom window, but the tenant could not deposit the keys in there because the landlord had deliberately locked it.

The tenant had the carpet cleaned professionally, and the landlord said that he ought not to have done that because the landlord was going to replace it.

The tenant also denies ever smoking in the rental unit.

No upkeep was done by the landlord during the tenancy. The tenant's sink wasn't plugged, it was another one and the landlord said his sink kept backing up. The landlord also told the tenant that the City made the landlord change to plastic pipes and that he has had problems ever since. The tenant installed inserts and traps and the landlord put Vaseline on it. The tenant told him that would not suffice, but the landlord refused to fix it.

The fridge stopped working and the landlord told the tenant to retrieve another from the basement, but the landlord knows the tenant has COPD and could not do so. The tenant bought a used fridge and stove, and that fridge broke. The landlord refused to replace it, but suggested several times that the tenant abstain from using the freezer part to make the fridge part more functional, and suggested that the tenant fix it himself.

The landlord had no problem with the tenant using the storage area and the landlord helped the tenant change a motor in a BMW in the landlord's carport.

The tenant asked the landlord for paint, and he said he had some. The tenant filled all holes, and cleaned as much as he could which left a cleaning chemical smell.

There are actually 7 suites, not 4 in the rental building. When the tenant was evicted on February 21, 2018, the landlord had 6 weeks until March 31, 2018 to schedule the move-out condition inspection but didn't do so. There was no protection order in place by either party as far as the tenant is aware, and no one was charged with an offence. If the landlord wanted an escort, he had plenty of opportunity to arrange that. The tenant knocked on the landlord's door at 1:00 and waited for the landlord at his door on March 31, 2018 until 2:00. The landlord wouldn't do the walk-through so the tenant does not know what damages were done after that.

Analysis

I have reviewed all of the evidentiary material of the parties. The landlord contends that the tenant breached the tenancy agreement by failing to complete the move-out condition inspection report prior to the end of the tenancy, March 31, 2018 at 1:00 p.m. However, the *Residential Tenancy Act* places the onus on the landlord to ensure that the reports are completed before a new tenant occupies the rental unit, and on or after the day the tenant ceases to occupy the rental unit, or another mutually agreed day.

In order to be successful in a claim for damage or loss, the landlord must establish the 4-part test:

1. that the damage or loss exists;

2. that the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

The law requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy except for normal wear and tear, and states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I do not accept that it was impossible for the landlord to complete the move-out portion at the end of the tenancy. There is nothing in the law that permits a landlord to avoid that for any reason. The landlord could easily have obtained an agent to complete the move-out portion or had an escort or police officer attend to keep the peace if required. The landlord hasn't provided a move-out condition inspection report but testified that he did the inspection. All that has been provided, other than receipts, are photographs that the landlord testified were taken on April 9 or 10, 2018, well after the tenancy ended.

The landlord testified that at the end of the tenancy, the rental unit was not left in "move-in condition." A landlord cannot expect that after an 8 year tenancy, and any cost to repair or replace items or building elements cannot put the landlord in a better position financially than the landlord would be if no damage or loss had occurred. In other words, to expect a tenant to pay for new items when the landlord would not otherwise have new items is not permitted under the *Act*.

With respect to new linoleum, the photographs appear that the linoleum is very old. The tenant testified that the house is 100 years old, and although I have no evidence to support that, I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of tile at 10 years, which includes linoleum. Since the tenancy lasted 8 years, I find that any award would put the landlord in a better financial position. I find that the linoleum had outlived its useful life, and the landlord's claim is dismissed.

With respect to painting, the useful life of indoor paint is 4 years. Since the rental unit hasn't been painted in over 8 years and the move-in condition inspection report shows that the walls were "washed," not newly painted, I find that it has outlived its useful life and any award would put the landlord in a better position. The landlord's photographs, particularly of doors and walls, show normal wear and tear, not negligence or deliberate or unrepaired damage. The claim for painting and paint is dismissed.

The landlord's photographs also include some of worn kitchen or bathroom cupboards and a damaged hinge, but the landlord has made no claim for cabinets.

I do not accept, however, that the tenant left the rental unit reasonably clean at the end of the tenancy, and the photographs provided by the landlord do not show markings that could have been made by another person or person between March 31 and April 10, 2018. The landlord claims 2.5 hours at \$27.50 per hour, and I accept the claim for cleaning at \$68.75.

A fridge is part of what's included in the tenancy and the landlord had an obligation to repair or replace it. The only testimony I've heard is that the landlord suggested several times that the tenant avoid using the freezer to make the fridge part more functional, and told the tenant there was another in the basement that the tenant could retrieve. I cannot find that the tenant is responsible for the missing fridge when the landlord had the obligation of repairing it during the tenancy.

The landlord also claims 4 hours for shopping for materials, which I find is not recoverable under the *Act*.

With respect to the landlord's claim for replacing baseboard tiles, none of the photographs depict ceramic or tiled baseboards at all, but narrow painted wooden or perhaps plastic. I dismiss the landlord's claim for baseboards.

The landlord's photograph of the kitchen sink shows that the countertop under the taps was worn away. The landlord testified that the tenant dumped motor oil down the drain, and the tenant testified that the counter around the sink is rotted out. That's very clear in the landlord's photographs. The tenant also testified that he replaced inserts, traps and the landlord refused to fix it. Looking at the landlord's photographs, I am not satisfied that the landlord has done anything in the last 8 years to mitigate any damage to the countertop or sink, and I dismiss the landlord's claim for the sink.

With respect to the landlord's claim for plumbing expenses, the tenant didn't dispute the screws found in the drain pipe, or the landlord's testimony that the tenant dumped oil down the drain. I accept the landlord's claim of \$16.80 and \$224.19 for plumbing supplies.

Registered mail or other costs relating to serving documents or preparing for a hearing are not recoverable under the *Act*.

With respect to storage costs, the landlord claims \$90.00 for storage costs in 2014 and a storage upgrade of \$25.00 in 2016. I'm not certain what that means, however the tenant testified the landlord was fine with the tenant using such storage. There is nothing in the tenancy agreement specifying an extra cost for storage, nor anything in writing that the tenant agreed to that or that the landlord asked for storage fees, and I dismiss the landlord's claims for storage.

With respect to the late rent fee, no one testified as to when rent may have been late, and the only evidence of that is a text message. However, the tenant did not dispute that, and the tenancy agreement provides for it. I find that the landlord has established the \$25.00 claim.

With respect to unpaid rent for April, 2018, for the tenant's failure to leave the rental unit by 1:00 p.m. on March 31, 2018, the landlord has no evidence to satisfy me that that even happened. Just because the landlord found the keys and forwarding address on April 2, 2018, that doesn't mean the tenant hadn't vacated on March 31, 2018, and the tenant testified that he did vacate on March 31, 2018 and waited until 2:00 for the landlord. I find that the landlord has failed to establish that any loss of rental revenue was a result of the tenant's failure to comply with the *Act* or the tenancy agreement, and I dismiss that portion of the landlord's claim.

Since the landlord has been partially successful with the application, the landlord is entitled to recovery of the \$100.00 filing fee.

In summary, I find that the landlord has established claims of \$68.75 for cleaning, \$16.80 and \$224.19 for plumbing supplies, \$25.00 for a late fee, and recovery of the \$100.00 filing fee, for a total of \$434.74.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord in the amount of \$434.74. This order is final and binding and may be enforced.

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 05, 2018

Residential Tenancy Branch