



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

On June 22, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting Monetary Order for damages, compensation and unpaid rent, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call on October 18, 2018.

Both parties attended at the October 18, 2018 hearing, and as a result of several issues regarding the service of evidence, the hearing was adjourned to December 11, 2018.

The Landlords and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlords stated that the Tenant’s evidence should not be admitted in this hearing as the Tenant received more time to properly serve her evidence to the Landlords, that the Tenant stated in the October 18, 2018 hearing that she only had 49 pages and the Landlords received 54 pages; and, that the Landlords only received one copy of the Tenant’s evidence.

During these preliminary matters, I confirmed that; the Tenant originally submitted 53 pages of evidence to the Residential Tenancy Branch and has not added any new documents to their evidence package; and, the Landlords received an evidence package, via registered mail, from the Tenant on November 13, 2018 (twenty-seven days prior to the hearing).

I find that the Tenant served her evidence package in accordance with the Act and that by not serving two packages, did not prejudice the Landlords in any manner. I have accepted that the parties exchanged evidence and gave the Landlords permission to contest the admission of any piece of evidence that the Tenant presented during the hearing; however, the Landlords did not do so.

Issues to be Decided

Should the Landlords receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlords receive a Monetary Order for compensation, in accordance with Section 67 of the Act?

Should the Landlords receive a Monetary Order for compensation for lost rent, in accordance with Section 67 of the Act?

Should the Landlords be authorized to apply the security deposit to the monetary claims, in accordance with Section 72 of the Act?

Should the Landlords be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlords and the Tenant agreed on the following terms of the tenancy:

The fixed-term tenancy began on May 15, 2015 and was renewed on an annual basis with the last term ending on July 1, 2018. The monthly rent of \$1,300.00 was due on

the first of each month. The Landlords collected and still holds a security deposit in the amount of \$625.00.

The Landlords and the Tenant provided conflicting evidence regarding the end of the tenancy. The Landlords stated that the Tenant moved out of the rental unit sometime between May 30-June 3, 2018 and did so without providing notice. The Landlord's attended the rental unit on June 3, 2018 to find a large amount of garbage on the front lawn of the rental property and although they could not gain entry into the unit, noted that the Tenant had moved all of her property out of the rental unit. On June 5, 2018, the Landlords testified that the Tenant had put a stop on her June 2018 rent cheque. As the Landlords believed that the Tenant had abandoned the rental unit, the Landlords attended the rental unit with a locksmith to gain entry to the rental unit and noted that the Tenant had also left a large amount of garbage in the garage. The Landlords testified that they had no communications from the Tenant since the end of May 2018.

The Tenant stated that the Landlords had issued her a One-Month Notice to End Tenancy for Cause in May 2018 and that the move-out date was for the end of June 2018. The Tenant testified that on May 26, 2018, she left a letter with the Landlords indicating that she was going to move out by mid-June 2018 and that she was going to be late paying her June 2018 rent. The Tenant did not provide a copy of this letter as evidence.

The Tenant admitted that she didn't pay her June 2018 rent and that she had moved (almost) everything out of the rental unit by the end of May 2018. The Tenant stated she had intended to go back to the rental unit to finish cleaning and haul away the garbage.

The Landlords testified that they did complete condition inspections with the Tenant every year when the lease was re-signed; however, did not submit the copies of the reports for this hearing as they thought they would be accessible from the last hearing. The Landlords stated that they could not arrange a move-out inspection with the Tenant as she abandoned the rental unit without providing any notice that she was moving out earlier than expected.

The Landlords claimed that the Tenant left the rental unit in poor condition that included: dirty carpets that needed steam cleaning; unwashed floors, toilets and appliances; several large holes in the walls; walls that had an excessive number of small holes for art; partially painted rooms; and, several rooms that had multiple stickers all over the walls. The Landlords submitted pictures to support their testimony.

The Landlord submitted an invoice from a painting and cleaning company that detailed the labour for cleaning, prepping and painting the interior of the home. The invoice also billed for labour in relation to sanding cabinets, helping with yard work and loads to the dump, cleaning floors and bathrooms, and hanging window coverings. The total invoice is for \$1,500.00.

The Tenant testified that the Landlords had given her permission to paint the interior of the house and had paid for the paint. The TT submitted pictures and stated that the pictures showed the condition of the house at the end of the tenancy. The pictures indicated that some of the rooms were in good condition; however, also confirmed that many stickers were left on some of the bedroom walls. The Tenant did not take any pictures of the areas where the Landlord had indicated holes in the walls. The Tenant said that the Landlords took over occupancy of the rental unit before she could finish cleaning the unit, remove the decals from the walls and make any repairs.

The Landlords stated that they made multiple trips to the dump to remove the Tenant's items from the front lawn of the rental property and garbage from the garage. The Landlords noted that there was a sign on the Tenant's pile of belongings on the front lawn that stated, "please help yourself-everything is free." The Landlords claimed \$77.00 for the cost of the dumping fees.

The Tenant stated that she intended on coming back to haul away the belongings from the lawn and the garage; however, when she last attended the rental unit on June 3, 2018, she couldn't gain entry and the Landlords had already moved the belongings.

The Landlords testified that the Tenant had abandoned the rental unit and locked the doors without providing a key. The Landlords had to hire a locksmith to pick open the locks and install new locks for a total cost of \$232.60.

The Landlords stated that their latest Tenancy Agreement with the Tenant indicated that the one-year term would end on July 1, 2108. The Landlords had issued a One-Month Notice to End Tenancy to the Tenant in May, with a move-out date of June 30, 2018. The Landlord testified that the Tenant failed to provide them notice of when she was moving, placed a stop on her June 2018 rent cheque and abandoned the rental unit leaving it in poor condition. The Landlords are claiming a loss of the June 2018 rent in the amount of \$1,300.00.

The Tenant stated that she did provide the Landlords written notice that she would be moving out by mid-June 2018 and acknowledged that she did not pay her June 2018 rent as she could not afford two rents at the same time. The Tenant stated that the Landlords took over the rental unit prior to her officially moving out; therefore, doesn't feel she should have to pay for June's rent.

Analysis

Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Firstly, I will consider whether the Landlords are authorized to apply the security deposit to a claim of damages to the rental unit. Sections 23, 24, 35 and 36 of the Act speak to the requirements for condition inspection reports and the extinguishment of rights to claim against the security deposit. Although I heard conflicting testimony regarding the specifics of the condition inspection reports, I find that the Landlords showed diligence in participating in the inspections and completing written reports. I accept the Landlords' testimony that they could not arrange a move-out inspection with the Tenant as she abandoned the rental unit. I find that the Landlords are authorized to make a claim against the security deposit in regard to damages to the rental unit and property.

I accept the undisputed testimony of the Landlords' that the Tenant placed a stop on her June 2018 rent cheque and failed to pay rent for June 2018. The Tenant stated that she gave notice to the Landlords that she intended to occupy the rental unit until mid-June yet failed to pay the June rent and did not attempt any communication with the Landlords when she could not access the rental unit in early June 2018. Based on a balance of probabilities, I find Tenant abandoned the rental unit at the end of May 2018, failed to provide proper notice to end the tenancy in accordance with Section 45 of the

Act and as such, is in rental arrears of \$1,300.00 for the June 2018 rent. I find that the Landlords have established a monetary claim of \$1,300.00.

I accept the Landlords' evidence that there were some holes in the walls that required patching and painting and that several rooms in the rental unit required prep-time to remove stickers and to re-paint. I accept the Tenant's testimony that she had left stickers on the walls and that she did not (could not) return to complete the removal of the stickers or to finish the cleaning of the rental unit. I find that both parties provided testimony and evidence that certain rooms in the rental unit were clean and did not require painting and that other rooms did require repairing, prepping and repainting.

The Landlords submitted an invoice for services that included repair, cleaning, prepping and painting of the entire rental unit. I find that the Landlords have established a monetary claim for losses as a result of the Tenant breaching Section 37 of the Act. Section 37 states that when a tenant vacates the rental unit, the tenant must leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear. However, I find that the Landlords' claim for damages is overreaching as it includes painting for the entire rental unit. I, therefore, award the Landlords half of their claim of \$1,500.00, for a total of \$750.00.

I accept the Landlords' evidence that the Tenant abandoned a large amount of property and garbage on the front lawn of the rental unit and in the garage, contrary to Section 37 of the Act. The Landlords submitted receipts for dumping fees in the amount of \$77.00. Although the Landlord submitted other invoices for labour, they do not provide sufficient detail in relation to the dumping claim. I find that the Landlords have established a monetary claim for \$77.00 for the dumping fees.

I accept the Landlords' evidence that they attended the rental unit on June 3 and 5, 2018 and could not gain entry. I find that the Tenant breached Section 37 of the Act that states when a tenant vacates a rental unit, the tenant must give the landlord all the keys or other means of access that are in possession or control of the tenant and that allow access to and within the residential property. I find that the Landlords have established a monetary claim for the cost of changing the locks on the rental unit, in the amount of \$232.60

The Landlords submitted several pages of receipts indicating costs for paint, fuel costs, labour and miscellaneous items, however, I find that the Landlords failed to detail the relevancy of the receipts. Furthermore, the Landlords also indicated in their Application

that they would be seeking compensation for the yard work, a missing lawnmower and stolen blinds. Regarding these issues, I find the Landlords failed to provide sufficient evidence to prove a loss as a result of the Tenant's breach of the Tenancy Agreement or the Act and pursuant to Section 67 of the Act. I dismiss the Landlords' monetary claim in regard to these issues.

I find that the Landlords' Application has merit and I award the Landlords compensation for the amount of the filing fee, in the amount of \$100.00.

The Landlords have established a monetary claim, in the amount of \$2,459.60, which includes \$1,300.00 in unpaid rent, \$750.00 for cleaning and painting costs, \$77.00 for dumping fees, \$232.60 for locksmith expenses, 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 keep the Tenant's security deposit in the amount of \$625.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlords a Monetary Order for the balance of \$1,834.60, in accordance with Section 67 of the Act.

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlords a Monetary Order for \$1,834.60. In the event that the Tenant does not 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 *Residential Tenancy Act*.

Dated: December 12, 2018

Residential Tenancy Branch