Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord seeks compensation under section 67 of the Act for various items, including hydro, natural gas, repainting of a ceiling in the rental unit, new balcony floor installation, and three days of rent, all of which total $3,418.66. In addition, the landlord seeks compensation in the amount of $100.00 for the filing fee, pursuant to section 72 of the Act, and additional compensation for registered mail expenses.

A dispute resolution hearing was convened on November 20, 2018, at which time I adjourned the matter to allow the landlord to serve her documentary evidence in accordance with the Act. This is outlined in greater detail in my Interim Decision of November 21, 2018. The hearing resumed on today's date of January 10, 2019, and the landlord and tenants attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any substantive issues of service.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues

1. Is the landlord entitled to compensation for the items claimed in her application?

2. Is the landlord entitled to compensation for the filing fee?

Background and Evidence

The landlord testified that the tenancy commenced on November 15, 2016 and ended on May 3, 2018. Monthly rent was $2,400.00 and the tenants paid a security deposit of $1,200.00. There was no pet damage deposit. A copy of the written tenancy agreement was in evidence.

The landlord claims the following amounts, as set out in a submitted Monetary Order Worksheet and a Landlord's Request to Amend an Application for Dispute Resolution:

ITEM	AMOUNT CLAIMED
BC Hydro	$17.00
Fortis BC	3.97
Painting quote	768.94
Balcony floor quote	2,388.75
Rent	240.00
Registered mail	33.90
Registered mail	33.90
Residential Tenancy Branch filing fee	100.00
TOTAL	$3,586.46

In respect of the quote for repainting (for a specific area that had been repainted a different sheen than the existing paint) and the quote for the balcony, the landlord testified that the painting and balcony repair was not performed, but that she was required to sell the property at a reduced price because of these damages. She stated that, after I asked her a few questions, the townhouse was a relatively new build, completed in 2016. The painting in the rental unit was the original paint when the townhouse was built, and the tenants moved in, and the balcony was likewise new, also installed in 2016.

In respect of the BC Hydro and Fortis BC amounts, these were calculated by the landlord to be what the tenants owed for time they were in possession of the rental unit beyond when they were to vacate. That is, until May 3, 2018.

In respect of the rent, this was calculated to be the three days that the tenants had occupancy of the rental unit beyond the end of the monthly, again, until and including May 3, 2018. It represents a per diem amount of $80.00 per day.
In respect of the registered mail costs, the first was the landlord's expense of sending her documentary evidence to the tenant (which was never picked up), and the second

was her second service after my Interim Decision directed her to send it by email.

The tenant (A.S.) disputed most of the charges being claimed by the landlord. He pointed out that on the Condition Inspection Report next to the balcony damage the landlord had written “OK.” In reviewing the Report, however, I note that the landlord has written the comment “balcony floor is damaged by hotpot round mark.” The condition of the balcony at move in was “OK / brand new”. The tenant argued that he does not believe that the landlord ended up selling the property below what she could have otherwise gotten it for, and that the landlord “could’ve easily fixed it” before selling had these items really been an issue.

The tenant disputed the registered mail costs, and referred to the Interim Decision in which I directed the landlord to serve evidence by e-mail. That is, he disputed that registered mail was necessary and thus the expenses claimed are not valid.

The tenant took a slightly different approach to the calculation of the BC Hydro and Fortis BC charges, with BC Hydro being calculated in the amount of $5.40 and Fortis BC being calculated in the amount of $2.24. Finally, regarding rent, the tenant argued that the tenancy ended April 30, 2018, and as such they should not be required to pay for rent beyond the end of the tenancy date.

In rebuttal, the landlord pointed out that the BC Hydro calculation included late charges because the tenants paid the hydro late, and, she pointed out that the tenants had their personal property in the rental unit beyond April 30, and that the rental unit was not actually vacated by the tenants until May 9, 2018.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

I will address each of the landlord's claims in a roughly descending order of amount.

Claim for Loss for Painting and Balcony Issues

In this case, the Condition Inspection Report confirms that there was an issue with the painting in one part of the rental unit, and damage caused to the balcony. As such, I find that the tenants breached section 37(2) of the Act which states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

However, the loss claimed by the landlord is in respect of her having to sell the townhouse at a lower price that she would have otherwise been able to sell it but for the painting and balcony issues. The landlord provided no documentary evidence establishing what, if any loss, occurred in respect of what she could have sold the property for versus what she sold it for. There was no information, oral testimony or documentation (such as communication between the landlord and a potential buyer), to prove how and to what amount the balcony damage and the repainting had on the final sale price. The quotes for repainting and the balcony do not prove that these were the amounts "lost" by the landlord in the sale of the property.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the amount or value of her claim in respect of the painting and balcony issues.
While the landlord has not proven the value of the loss claimed, she has proven that there was an infraction of section 37 of the Act, and as such I award nominal damages in the amount of $1.00.

Claim for Rent

There is a difference between when a tenancy ends and when a tenant vacates a rental unit. In this case, the tenancy ended on April 30, 2018. This was confirmed in testimony of the parties, the Condition Inspection Report, and in an email sent by the tenants to the landlord on March 30, 2018 in which the tenants state that “we will move out April 30th by 1pm”.

A tenant who continues to occupy a rental unit after the tenancy ends is referred to as an “overholding tenant.” Section 57(3) of the Act states that a “landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.”

“Occupy” may be defined as the act, state, or condition of holding, possessing, or residing in or on something; actual possession, residence, or tenancy, especially of a dwelling or land (Black’s Law Dictionary, 7th Edition).

In this case, the tenants continued to possess the keys to the rental unit, left their personal property in the rental unit beyond the end of tenancy date, and did not finally vacate the rental unit until at least May 3, 2018, with the final inspection not occurring until May 9, 2018. As such, I find that the tenants were overholding and thus the landlord is entitled to claim for the three days’ rent in the amount of $240.00.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for rent in the amount of $240.00

Claim for Fortis BC and BC Hydro

Having found that the tenants overheld their tenancy for a period of three days, I now turn to the landlord’s claims for the hydro and natural gas charges.

Regarding the Fortis BC charges, I find that the landlord’s calculation of the amount of the previous bill ($15.90) divided by the number of days in the month (28) to be fairly accurate. However, given that Fortis BC reevaluates gas usage on an annual basis, I would calculate the per diem rate as follows: $15.90 (monthly bill) x 12 months divided by 365 days = $0.523 / day. Thus, $0.523 x 7 days = $3.66.

Regarding the BC Hydro charges, the total for the billing period of February 27 to April

26, 2018, inclusive is $145.18. This works out to $2.46 per day for BC Hydro. Seven days multiplied by $2.46 is $17.23.

Given the above, I find that the landlord has proven her claims for BC Hydro and for Fortis BC and I find that the amounts owing is $17.23 and $3.66, respectively.

Claim for Registered Mail

Having found in my Interim Decision that the landlord complied with the Act in attempting to initially serve the tenants with her evidence, I award her $33.90 for the cost of the Canada Post registered mail expense.

However, as pointed out by the tenant, I ordered in my Interim Decision that the landlord serve the tenants with her evidence by e-mail, which would not have incurred a cost. As such, I decline to grant the landlord her second claim for $33.90.

Claim for the Filing Fee

Any applicant who pays a filing fee when applying for dispute resolution may seek to recover that cost under section 72(1) of the Act. Generally, an arbitrator will award the full amount to the applicant when they have been successful in their application, or not award any amount when the applicant was unsuccessful in their application. However, the final amount awarded is at the discretion of the arbitrator.

The tenant disputed the landlord's claim for this amount, but I found his argument rather unclear, and I am not persuaded that the landlord does not have a right under the Act to seek compensation for the filing fee.

As the landlord was partly successful in her application I grant her a monetary award in the amount of $50.00 as partial recovery of the filing fee.

Conclusion

I hereby grant the landlord a monetary order in the amount of $345.79, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 10, 2019

Residential Tenancy Branch