Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on October 24, 2018 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

In January of 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant on a DVD, via registered mail, on January 24, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On February 04, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on February 03, 2019 or February 01, 2019. The Landlord acknowledged receiving this evidence on February 07, 2019 and it was accepted as evidence for these proceedings.

The Landlord stated that he did not have sufficient time to submit evidence in response to the evidence submitted by the Tenant. In particular, he did not have time to submit two emails that are relevant to an email chain exchanged between the parties. The

Landlord was given the opportunity to read out relevant portions of the two emails he would have submitted as evidence if he had more time and he was advised that I would consider those emails during this adjudication. As the Landlord was able to introduce these emails orally he stated that he did not require an adjournment for the purposes of submitting the emails.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed but is only referenced in this written decision if it is relevant to my decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on November 15, 2017;
- at the start of the tenancy the Tenant agreed to pay monthly rent of $800.00 by the fifteenth day of each month;
- the Tenant paid monthly rent of $900.00 on June 15, 2018, July 15, 2018, August 15, 2018 and September 15, 2018;
- there is a clause in the addendum to the tenancy agreement that declares, in part, that only the Tenant may occupy the rental unit;
- the same clause declares, in part, that rent will increase by a minimum of $25.00 for each additional occupant, which will be discussed “if and when the time comes”;
- the Tenant paid a security deposit of $400.00;
- on September 17, 2018 or September 18, 2018 the Tenant gave the Landlord written notice of his intent to vacate the rental unit, effective October 15, 2018;
- the rental unit was vacated on October 07, 2018;
- the Landlord did not return any portion of the security deposit;
- the Tenant did not give the Landlord written authority to retain any portion of the security deposit;
- a condition inspection report was completed at the beginning of the tenancy; and

- a condition inspection report was completed when the rental unit was vacated on October 07, 2018.

The Tenant stated that he left his forwarding address in the Landlord's mailbox on September 18, 2018 or September 19, 2018. The Landlord stated that he received the forwarding address of September 19, 2018.

The Landlord stated that on the basis of the email dated May 19, 2018, he believes the Tenant's wife moved into the rental unit sometime prior to May 19, 2018, as the email indicates the wife was living in the unit at the time the email was written. The Tenant stated that his wife stayed with him on May 19, 2018 and May 20, 2018; that they left the country after the visit; and that she moved into the rental unit on a permanent basis on June 10, 2018.

The Landlord and the Tenant agree that the Landlord asked the Tenant to pay $900.00 in rent because the Tenant's wife moved into the rental unit, but the Tenant did not agree that the amount was fair. The Tenant stated that he started paying rent of $900.00 simply because the Landlord told him it was required.

Both parties submitted a copy of an email, dated May 19, 2018, in which the Tenant declared that the parties had agreed to a rent increase of $50.00 because his wife moved in. The Landlord stated that he never agreed that the rent would increase by $50.00.

The Landlord read out relevant portions of an email he sent to the Tenant in response to the above email, which was also sent on May 19, 2018. In this email the Landlord explains that he would like to increase the rent by $100.00 to offset costs of a second occupant and he asked the Tenant to advise him is he did not agree to an increase of $100.00. The Tenant does not dispute this email was sent.

The Landlord read out relevant portions of an email he sent to the Tenant on June 19, 2018. In this email he declared that the parties had not discussed the cost of someone else occupying the rental unit.

The Landlord is seeking compensation for lost revenue for the period between October 15, 2018 and November 14, 2018. The Landlord submits that he is entitled to compensation for lost revenue for this period because the Tenant did not give proper notice to end the tenancy on November 14, 2018.

The Landlord stated that he advertised the rental unit on two popular websites on October 19, 2018; that he initially advertised it for $990.00; that he subsequently reduced the rent to $970.00; and that he re-rented it for December 01, 2018.

The Landlord is seeking compensation, in the amount of $370.78, for replacing the carpet in the master bedroom of the rental unit.

In support of this claim the Landlord stated that:

- there was mold in many locations in the rental unit;
- there was a large accumulation of mold on the carpet in the master bedroom where the bed had been;
- he was told that the carpet needed to be replaced as a result of the mold;
- the Tenant first informed him of the presence of mold on September 15, 2018;
- he placed a dehumidifier in the unit to address the reported problem;
- on September 24, 2018 he inspected the rental unit but could not locate any moisture that would cause the mold;
- because he was unable to identify a moisture source he concluded that the mold accumulated because the Tenant was leaving the bathroom door open while showering;
- the bathroom fan was packed with mold and dust;
- a new oven fan was installed in September of 2018, which is vented to the exterior;
- the old oven fan vented to the interior of the rental unit, which it was designed to do;
- the old fan could not have contributed to the presence of mold as it was in the rental unit for many years and there has been no previous mold problem;
- the Tenant keep the temperature in the rental unit very high;
- the Landlord programmed the programmable thermostat to keep the temperature at 15 degrees when the Tenant was not home and 20 degrees when he was home;
- the Tenant had the ability to manually override the programmable thermostat;
- there was no source of heat in the bathroom;
- the bathroom is very small so it did not require a heat source;
- the heat vents near the entry to the unit were working properly;
- the carpet in the bedroom was approximately 2.5 years old;
- in spite of the age of the carpet he concluded, on September 19, 2018, that it should be replaced; and

- he located mold on the carpet after he decided the carpet should be replaced.

In response to the presence of mold that Tenant stated that:

- a new stove fan was installed in September of 2018, which is vented to the exterior;
- the old stove fan vented to the interior of the rental unit;
- the old fan may have contributed to the presence of mold;
- the Landlord asked him to keep the temperature in the rental unit very low;
- the Landlord programmed the programmable thermostat to keep the temperature at 10 degrees when the Tenant was not home and 15 degrees when he was home;
- he had the ability to manually override the programmable thermostat;
- there was no source of heat in the bathroom;
- 2 heat vents near the entry to the rental unit were not working;
- he believes the cold temperatures may have contributed to the presence of mold;
- he always showers with the bathroom door closed;
- he runs the bathroom fan for approximately 30 minutes after a shower; and
- if the mold were related to showering he would expect to see more mold in the bathroom than in the bedroom, which was not the case.

The Tenant submitted a document from Health Canada which declares, in part:

> Mould will grow indoors if moisture is present. Moisture problems in homes may result from:
> daily activities such as showering or bathing, washing clothes or cooking, if exhaust fans are not working properly or are not used;
> infiltration of water from the outside when there are cracks or leaks in the foundation, floor, walls or roof;
> plumbing leaks;
> moisture condensation on cold surfaces;
> flooding due to weather conditions (snow melt, storm surges, prolonged or heavy rainfall);
> inadequate ventilation.
>
> Moisture indoors accumulates when it cannot be vented outside and becomes a problem when building materials become damp or wet.

The Tenant submitted a text message from the Landlord, in which the Landlord asked the Tenant to keep the temperature at 10 degrees when he is not home, and the Tenant replied that “it’s always has been”.

The Landlord submitted several photographs of the rental unit which clearly show a moisture problem in the unit, particularly in the bedroom.

Analysis

On the basis of the undisputed evidence I find that when this tenancy began the Tenant agreed to pay monthly rent of $800.00 by the fifteenth day of each month.

Section 41 of the *Residential Tenancy Act (Act*) stipulates that a landlord must not increase rent except in accordance with this Part.

Section 40 of the *Act* stipulates that "rent increase" does not include an increase in rent that is for one or more additional occupants and is authorized under the tenancy agreement.

On the basis of the undisputed evidence that there is a clause in the addendum to the tenancy agreement that requires the Tenant to pay additional rent of a minimum of $25.00 if a second person occupies the rental unit, I find that the Tenant was obligated to pay additional rent of $25.00, effective June 15, 2018, because his wife moved into the rental unit.

My conclusion that the additional rent was not due until June 15, 2018 was based on the absence of any evidence that establishes the Tenant's wife was living in the unit when rent was due on May 15, 2018.

On the basis of the undisputed evidence I find that the clause in the tenancy agreement stipulates that the rent increase will be discussed "if and when the time comes". I interpret this to mean that the parties will discuss whether or not the rent should increase by more than $25.00 if a second person moves into the unit.

On the basis of the undisputed evidence I find that the Tenant did not agree to pay a rent increase of $100.00 on the basis of the second occupant and that the Landlord did not agree to accept a rent increase of $50.00 on the basis of the second occupant. As the evidence clearly shows that the parties did not agree to a rent increase of more than $25.00, I find that the Landlord did not have authority to collect more than $25.00 on the basis of the addendum to the tenancy agreement.

Section 42(1) of the *Act* stipulates that a landlord must not impose a rent increase for at least 12 months after whichever of the following applies: (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit; or (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this *Act.*

As this tenancy began on November 15, 2017, I find that the Landlord did not have the right to increase the rent, pursuant to section 42 of the *Act*, until November 15, 2018. This does not apply to the rent increase which took effect on the basis of the additional occupant.

As the Tenant was required to pay $825.00 in rent for the period between June 15, 2018 and October 14, 2018, I find that he should have paid $3,300.00 in rent for that period. As the Tenant paid $900.00 in rent for the period between June 15, 2018 and October 14, 2018, I find that he actually paid $3,600.00 in rent for that period.

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. On the basis of section 43(5) of the *Act* I find that the Tenant is entitled to recover the rent overpayment of $300.00. I am unable to order the Landlord to refund that overpayment at these proceedings, however, as that claim is not before me. In the event the Landlord does not voluntarily refund the overpayment to the Tenant, the Tenant may file an Application for Dispute Resolution to recover this amount.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on October 14, 2018 in accordance with section 45 of the *Act*, the Tenant was required to give notice of his intent to vacate on, or before, September 14, 2018.

Section 53 of the *Act* stipulates that if a tenant gives notice to end a tenancy on a date that is earlier than the earliest date permitted by the legislation, the effective date is deemed to be the earliest date that complies with the legislation. In these circumstances, the earliest effective date of the notice that was given on September 17, 2018 or September 18, 2018 was November 14, 2018. Therefore, I find that the notice to end tenancy that was given in September effectively ended this tenancy on November 14, 2018.

As the rental unit was vacated on October 07, 2018, I find that the tenancy ended on that date, pursuant to section 44(d) of the *Act.*

I find that the Tenant failed to comply with section 45 of the *Act* when he failed to provide the Landlord with notice of his intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. I find that if the Tenant ended the tenancy in accordance with section 45 of the *Act* and the written notice he served to the Landlord, the Landlord would not have lost revenue for the period between October 15, 2018 and November 14, 2018.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. I find that the Landlord did not take reasonable steps to minimize his damage or loss.

I find that the Landlord's decision to initially advertise the rental unit in for $990.00 likely contributed to his inability to find a new tenant for October 15, 2019. Had the Landlord advertised it for $825.00, which is the amount the Tenant was required to pay at the end of the tenancy, I find it entirely possible that he would have been able to locate a new tenant for October 15, 2018. As the Landlord has failed to establish that he properly mitigated his loss of revenue, I dismiss his claim for lost revenue.

Although this calculation is not relevant to my decision, I find it fair to point out that the Landlord will recover his lost revenue of $825.00 in less than six months, given that he is now collecting monthly rent of $970.00.

On the basis of the undisputed evidence I find that mold was discovered in the rental unit during the last month of this tenancy. I find that the Landlord has submitted

insufficient evidence to establish that the Tenant was responsible for the presence of mold. As the Landlord has failed to meet the burden of proving the Tenant was responsible for the mold, I cannot conclude that the Tenant was required to remediate the mold. As the Landlord has failed to establish that the Tenant was required to remediate the mold, I dismiss the Landlord's claim for compensation for replacing the carpet that was damaged by mold.

In concluding that there was insufficient evidence to establish that the Tenant was responsible for the presence of mold, I was influenced by:

- the document from Health Canada that suggests mold could be the result of daily activities such as showering or bathing if exhaust fans are not working properly or are not used;
- the absence of evidence to corroborate the Landlord's suspicion that the mold was the result of the Tenant showering with the bathroom door open;
- the Tenant's testimony that he kept the bathroom door closed when showering;
- the Tenant's testimony that the bathroom fan was used after showering for approximately 30 minutes;
- the testimony of the Landlord and the photograph of the interior of the bathroom fan which establishes it was clogged with an unknown pink substance, which raises the possibility that it was not ventilating the room properly;
- the logic of the Tenant's submission that if the mold were related to showering one would expect to see more mold in the bathroom than in the bedroom, which was not the case;
- the document from Health Canada that suggests mold could be the result of moisture condensing on cold surfaces;
- the Tenant's testimony that the Landlord programmed the programmable thermostat to keep the temperature at 10 degrees when the Tenant was not home, which raises the possibility that the mold was the result of low temperatures in the unit;
- the text message from the Landlord in which the Landlord asked the Tenant to keep the temperature at 10 degrees when he is not home, which corroborates the Tenant's testimony that the Landlord programmed the thermostat to 10 degrees when the Tenant was not home and refutes the Landlord's testimony that it was set at 15 degrees when the Tenant was not home; and
- the undisputed evidence that there was no heat source in the bathroom, which could have contributed to low temperatures in the home.

I find it entirely possible that the mold was the related to the actions of the Tenant. However when several other plausible explanations exist, I find that the burden of proof has not been met.

In adjudicating this matter I was mindful of Residential Tenancy Branch Policy Guideline #1, which stipulates, in part, that a tenant is required to clean the screen of a vent or fan at the end of the tenancy and that the landlord is required to clean out the dryer exhaust pipe and outside vent at reasonable intervals. Although the policy guideline does not specifically which party is required to clean out the interior of a bathroom fan, I find that it would be consistent with this policy guideline to conclude that this would be the Landlord's responsibility.

I find that the Landlord has failed to establish the merit of his Application for Dispute Resolution and I therefore dismiss his application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has failed to establish a monetary claim and I therefore dismiss his Application for Dispute Resolution. As the Landlord has failed to establish that he has the right to retain any portion of the Tenant's security deposit of $400.00, I find that the Landlord must return the entire deposit to the Tenant.

Based on these determinations I grant the Tenant a monetary Order for $400.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, 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 *Act*.

Dated: February 17, 2019

Residential Tenancy Branch