Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL, MNRL-S
FFT, MNSD

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed on March 7, 2018, the Landlord requested monetary compensation from the Tenant for unpaid rent, authority to retain the Tenant's security deposit and to recover the filing fee. In the Tenant's Application for Dispute Resolution, filed on September 5, 2018, the Tenant requested return of the security deposit paid and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on October 1, 2018. The hearing did not complete on that date and was adjourned to November 15, 2018 and again to February 15, 2019. In total the hearing occupied nearly four hours of hearing time.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Preliminary Matter

At the hearing on November 15, 2018 the Landlord stated that the Tenant submitted evidence after the original hearing date and contrary to my Interim Decision of October 1, 2018. A review of branch records confirms the Tenant submitted evidence on October 25, 2018. The Tenant stated that the evidence was a mere duplication of evidence which had previously been submitted such that it was therefore not new.

As the Tenant's October 25, 2018 evidence submission was submitted contrary to my Interim Order, and merely a duplication of evidence which had previously been submitted, I did not consider this evidence in making my Decision.

No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?

2. What should happen with the Tenant's security deposit?

3. Should either party recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of a tenancy agreement confirming that this tenancy began September 15, 2016. Monthly rent was noted as $2,850.00.

The Tenant gave 30 days' notice to end tenancy on January 27, 2018 for a vacancy date of February 28, 2018. The Landlord confirmed the Tenant moved out on this date.

In the within hearing the Landlord claimed the sum of $5,750.00 which included compensation for the following:

Rent for February 2018 $2,850.00 less a $50.00 credit from first month	$2,800.00
Loss of rent for March 2018	$2,850.00
Filing fee	$100.00
TOTAL CLAIMED	**$5,750.00**

The Landlord stated that the Tenant decided that he would not pay rent for February 2018 as he believed he should be compensated for his time maintaining and repairing the rental unit. She denied any such agreement existed.

The Landlord also claimed she was not able to rent the property as of March 2018 because of the "stress of the Tenant not paying rent for February 2018" and the requirement that she file for dispute resolution within the 15 days of the end of the tenancy. She also stated that she had difficulty renting the unit because it is furnished. She claimed that she advertised the rental unit on online sites. She did not provide a copy of these advertisements in evidence before me.

In response to the Landlord's claim that he did not pay rent for February 2018, the Tenant stated that he was credited $50.00 per month to mow the lawn and rake the leaves and that the amount owing for February's rent was covered by an agreement that he was to be similarly credited for his time repairing and maintaining the rental unit.

The Tenant stated that Landlord's agent, R.S., agreed to the Tenant's deductions for materials on a regular basis. The Tenant claimed R.S. also agreed that he would be credited $8.00 per hour (the same he was paid for mowing the lawn) at the end of the tenancy.

The Tenant confirmed that the agreement with R.S. was oral, but submitted it was also implied by the communications between the parties. The Tenant also submitted that the Landlord agreed to this arrangement as she also regularly thanked the Tenant for all the work he did over the course of the tenancy.

In terms of evidence to support his position, the Tenant claimed that he was authorized to deduct the specific repairs from his rent payment pursuant to the residential tenancy agreement, and in particular clauses 33 and 49 which read as follows:

> 33. REPAIRS, TENANT'S OBLIGATIONS. The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenancy has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. The tenant is not responsible for repairs for reasonable wear and tear to the residential property. If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may make an application for dispute resolution under the Act seeking an order of the director for the cost of repairs, serve a notice to end tenancy, or both. TENANTS WILL REPLACE PROVIDED FILTERS EVERY 3 MONTHS.

> 19. OTHER. THE TENANT AGREES TO PROVIDE A BASIC MAINTENANCE OF THE YARD, SUCH AS LAW MOWING, WEED WHACKING, LEAF RAKING, WATERING. IF MORE MAJORY LANDSCAPING WORK, SUCH AS BIG BROKEN BRANCHES, IS NECESSARY THE TENANT WILL NOTIFY THE LANDLORD.

The Tenant also noted that the Landlord's agent, R.S., signed a separate document titled: "Rental house at [address]". This document set out further the terms of the tenancy including the following clause:

> " 6) Minor repairs will be attended to if possible by [Tenant's name]."

In terms of the $2,850.00 in outstanding rent for February 2018 the Tenant suggested that the Landlord retain the $1,425.00 security deposit towards the February rent. The parties agreed that the Tenant was also to be credited $50.00 from an overpayment at the start of the tenancy. The Tenant proposed that the balance of $1,375.00 was to be considered payment of the Tenant's labour costs at $50.00 per hour for various repairs and maintenance of the rental unit including, but not limited to, repairs made after two floods at the rental unit and repairing the fence.

The Tenant also drew my attention to a document from October 1, 2017 wherein the Tenant wrote the following:

> TOTAL RENT OF $ 2850
> Less expenses total of $ (136.96)
> Net rent for month $ 2713.04
> As agreed Fence + Yard
> Material, no LABOUR COST yet!

The Tenant stated that the above was evidence that he was to be credited for his labour cost at a later time as he clearly indicated the Landlord had not *yet* been charged for his labour.

In reply to the Tenant's submissions the Landlord denied the Tenant was to be credited for his labour at all.

As noted, the hearing did not complete on October 1, 2018 and reconvened on November 15, 2018. By Interim Decision dated October 1, 2018 I Ordered the Landlord to have her former property manager, R.S., attend the hearing.

On the date the hearing reconvened, the Landlord's witness, R.S., testified. He confirmed that he looked after the property for the Landlord while she was out of the

country from September 1, 2016 to October of 2017. R.S. confirmed that he was hired to deal with any maintenance issues and rent issues.

R.S. sated that he did not have any discussions with the Tenant regarding work the Tenant was to perform or related compensation. He further stated that the only arrangement he recalled was that the Landlord agreed to have the Tenant cut the grass and rake the leaves. R.S. stated that he did not remember the amount the Tenant was to be paid for cutting the grass or raking the leaves.

In cross examination, R.S. stated that he had a vague recollection of the first time he met with the Tenant in September of 2016 to sign the first lease as he gave all his documents back to the Landlord.

R.S. confirmed that he accepted rent cheques from the Tenant which included deductions from the rent for out of pocket expenses and materials the Tenant incurred with respect to the property. R.S. confirmed that he was not authorized to compensate the Tenant for any labour/wages as that was entirely between the Tenant and the Landlord.

The Tenant also asked R.S. if he recalled complimenting the Tenant with respect to the condition of the property. R.S. stated that he agreed that the Tenant did a great job taking care of the property and making repairs and that he informed the Landlord accordingly after such visits.

The Tenant further asked R.S. if he recalled that there was a reduction in the rent from $2,900.00 to $2,850.00. R.S. stated that he recalled that was related to the Tenant doing the grass cutting and raking and yard maintenance.

The Tenant further asked R.S. if he recalled observing the fence repairs that the Tenant did for the Landlord. R.S. confirmed that he did and also testified that he recalled the Tenant provided photos of the fence repair.

The Landlord asked R.S. if he recalled her request that the Tenant not undertake any expenses without the express consent of the Landlord. R.S. confirmed that he recalled this as her request.

R.S. confirmed that when the Tenant deducted expenses for materials from the rent there was no issue save and except for a “little issue” with respect to the cleaning of the couch which they later agreed to split the cost.

The Landlord asked if R.S. was aware if the Tenant was ever able to charge the Landlord for labour and R.S. stated that he did not recall that as he believed those matters were discussed directly between the Landlord and Tenant. He also stated that as it had been 1.5 years since he managed the property his recollection was not entirely clear.

Following R.S.'s testimony, the Landlord continued her reply as follows. She confirmed that the Tenant was credited $50.00 per month as he took care of minor yard work. She stated that the rent she was originally asking was $3,000.00 but that included a gardener. When she agreed to the rent of $2,850.00 this included him doing the yard maintenance.

The Landlord also noted that section 15 of the residential tenancy agreement provided that no work was to be undertaken by the Tenant without the specific agreement of the Landlord.

The Landlord stated that to her knowledge, the Tenant undertook the following repairs: he removed a swing set; repaired the fence; he repainted the fireplace mantle; he replaced the kitchen faucet; he replaced a toilet seat in the bathroom. She confirmed that the Tenant was compensated for his out of pocket expenses related to the above. In terms of the Tenant's time and labour for all of the items, she confirmed that he was not compensated. She also stated that, aside from the kitchen faucet, she was informed *after the fact,* and he did not have her agreement to undertake this work.

The Landlord noted that while she informed the Tenant that he had done a nice job, she reminded him that she wanted to be informed *prior* to the work being done. In support she drew my attention to an email wherein the Tenant writes that he completed the fence repairs. In the final sentence he notes that he is not asking for labour, only materials. In response to this email, the landlord sent a reply in which she writes:

> Actually, I would ask you to please continue that way, and always consult [R.S.] or me before those type of situation, or before incurring expenses you wish to be refunded for. You never know, we might have a warranty solution or some other information necessary prior to make a proper informed decision.

[Reproduced as Written]

The Landlord noted that because she was far away, her property manager, R.S. checked on the property for her and informed her that everything was good and fine.

The Landlord also stated that when the Tenant gave the Landlord notice to end his tenancy on February 28, 2018 (which was provided in evidence) the Tenant informed the Landlord that she could keep his deposit towards the February 2018 rent. The Landlord noted that the first time she received his notice to vacate was this email. The Landlord also stated that this is the first time the Tenant detailed what he felt was owing to him, taking into consideration his security deposit. The Landlord replied to the Tenant that she wished to follow the procedure for return of the security deposit and that he should pay his full month of rent for February 2018. The Landlord testified that the next email from the Tenant was the first time he asked for payment for his labour.

The hearing did not complete on November 15, 2018 and was adjourned to February 15, 2019. On the date the hearing reconvened, I summarized the evidence and testimony to date (as set out above). The Landlord confirmed that she felt satisfied with my summary and did not require a further opportunity to provide testimony. The Tenant stated that he required a brief opportunity.

The majority of the Tenant's submissions on February 15, 2019 were a reiteration of his prior testimony. Only that which was not previously covered by the Tenant is included below.

The Tenant stated that the Landlord's claim that he did work without her consent is untrue. He noted that in an email dated January 28, 2018 the Landlord wrote as follows:

> I would like to take this opportunity to clarify a few things too. As you have written, I was happy with your accounts of how you helped maintain the house in good condition. As it is clearly required in the tenancy agreement, you have notified me and the property manager each time a need for repair occurred, and I appreciate that. At your request, the initial asking rental fee was reduced in exchange for your services to maintain the lawn and garden. All repairs by professional servicing companies and plumbers have been paid upon receiving of the invoice or within the expected 30 days timeframe.

The Tenant noted that she accepted the Tenant's notice to vacate such that she should not be entitled to claim rent beyond the effective date of his notice. The Tenant also stated that R.S. was no longer working for her as of December 31, 2017 such that the only way he could provide notice was to send her the email as she was out of the country.

The Tenant noted that the Tenant informed her, or her property manager, each time work was done and she was “happy with his accounts”.

The Tenant stated that he was credited $50.00 for lawn and garden maintenance. He stated that was $8.00 per hour based on how long it took to do the yard. He also stated that the $50.00 per month reduction was not related to the internet as originally stated by the Landlord.

Although not strenuously argued, the Landlord claimed the tenancy was for a fixed term to August 31, 2018. Tenant alleged that the tenancy was a month to month tenancy, not a fixed term to August 2018. The Tenant stated that there was no document signed which confirmed the alleged fixed term tenancy to August 31, 2018. The only document relating to the term was a handwritten document wherein the Tenant wrote:

> [Landlord’s name] has extended our rental to August 31/2018, and we have accepted on a month to month basis.

The Tenant continued arguing that there was an implied agreement that he would be paid for his labour at $8.00 an hour. In this respect he drew my attention to communication from the Landlord in which the Landlord thanked him for his work, confirmed he had been credited for his invoices and that she trusted his judgment.

The Tenant also noted that on the move out condition inspection report (which was done on February 28, 2018) the rental unit was noted as cleaner than when the moved in. The Tenant stated that the Landlord did not complete a move in condition inspection.

The Tenant stated that for 18 months while he was doing work for the Landlord, at all times the Landlord told him how happy she was with his work. The Tenant stated that every time he gave a rent cheque to her property manager he deducted expenses.

The Tenant stated that it was “ludicrous and illogical” to conclude that he should not receive $8.00 per hour for his other services over and above the amount of the lawn.

In conclusion the Landlord stated as follows. She stated that there was a move in condition inspection, but she didn’t submit it in evidence because she didn’t believe it was relevant because there was no issue with the condition of the rental unit at the end of the tenancy.

The Landlord acknowledged that the Tenant put his heart and soul into his work at the rental unit; however she did not, and does not agree that he was to be compensated for his time.

The Landlord wanted to express that it was never her intention that by lowering the rent for mowing the lawn by $8.00 that this would create a contract that she was to pay him for his time for other work.

The Landlord also noted that when he gave his notice to end his tenancy he initially wanted to pay his rent and then he changed his mind.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, *Regulation*, and *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at**:** **www.gov.bc.ca/landlordtenant**.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the parties each bear the burden of proving their own claims.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I will first deal with the Landlord's claims.

The Landlord seeks compensation for unpaid rent for February and March of 2018.

Section 12(3) of the *Residential Tenancy Regulation* provides as follows:

> (3) If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the *Residential Tenancy Act*.

Although the tenancy initially began as a fixed term, I find that it continued as a month to month tenancy. The Tenant aptly noted that there was no written communication confirming that the tenancy was for a fixed term ending August 31, 2018.

The evidence establishes that the Tenant provided notice to end his tenancy on January 27, 2018 by email to be effective February 28, 2018. While email notification is not always accepted, in this case I find the parties regularly communicated by email, and the Landlord accepted his notice to end his tenancy. Further, I accept the Tenant's testimony that as the Landlord was living out of country email was a practical and efficient means of communication between the parties. I therefore find the tenancy ended on February 28, 2018.

Section 26 of the *Act* requires a Tenant to pay rent when rent is due, even in the event the Landlord is in breach of the *Residential Tenancy Act* or the tenancy agreement. As such, the Tenant was required to pay rent for February 2018.

The Tenant suggested the Landlord retain his security deposit towards his last month's rent. Unless agreed to by the Landlord, a Tenant may not use their deposits towards the payment of rent. In this case, I accept the Landlord's testimony and documentary evidence that she did not agree to the Tenant's proposal regarding his security deposit.

I therefore find the Landlord is entitled to the sum of **$2,800.00** representing the outstanding rent for February 2018, less the $50.00 credit which was agreed to by the parties.

The Landlord testified that she was not able to re-rent the rental unit for March 1, 2018 because of the "stress of the Tenant not paying rent for February 2018" and the requirement that she file for dispute resolution within the 15 days of the end of the tenancy. She also stated that she had difficulty renting the unit because it is furnished. She claimed that she advertised the rental unit on online sites.

Section 7 of the *Act* requires a claiming party to minimize/mitigate their losses. In this case I find the Landlord has failed to meet this burden. Although she claimed to have advertised the rental unit, she provided no evidence of such efforts. I am not persuaded that the Tenant's failure to pay rent for February 2018 impacted her ability to re-rent the unit as of March 2018, as it would seem even more imperative that she re-rent the unit as quickly as possible. For these reasons I dismiss her claim for rent for March 2018.

I will now deal with the Tenant's monetary claim.

The Tenant seeks compensation for his time and labour associated with repairing and maintaining the rental unit. He submits that he was to be credited $50.00 per month for yard maintenance, which he equates to $8.00 per hour. He submits that he continued to do other repairs and maintenance with the full knowledge and consent of the Landlord and that there was an agreement that he was to be paid a further $8.00 per hour for those services.

The Landlord denies any such agreement existed.

During the original hearing the Tenant claimed it was the Landlord's property manager who agreed to this arrangement. The property manager was called as a witness, was cross examined by the Tenant and he did not confirm the Tenant's testimony in this regard.

The evidence confirms that the Tenant was compensated for his out of pocket costs for materials. However, and while it is clear the Landlord was pleased with the work the Tenant did for her, I find insufficient evidence to support a finding that the parties agreed he would be compensated or otherwise credited for his labour.

The relevant portions of the tenancy agreement and other documentary evidence have been reproduced in this my Decision. This evidence confirms that the parties were clearly aware of the need to document their discussions and any agreements. Had the parties intended the Tenant to be credited $8.00 an hour for his services over and above yard maintenance, I find it more likely this would have been similarly documented.

Although it is clear the Landlord benefited from the Tenant's considerable efforts in repairing and maintaining the rental unit, I find insufficient evidence to support a finding that the Tenant's rent was to be reduced by the value of his services, or that this work was otherwise tied to the payment of rent. I therefore dismiss the Tenant's claim for compensation for $1,375.00.

As the parties have enjoyed divided success, I find they should each bear the cost of their own filing fees.

Conclusion

The Landlord is entitled to the sum of **$2,800.00** representing outstanding rent for February 2018 (less the $50.00 agreed upon by the parties).

The Tenant's $1,375.00 claim for monetary compensation for his labour and time associated with repairing and maintaining the rental unit is dismissed.

The parties shall each bear the cost of their own filing fee and their claim for recovery of these amounts from the other is dismissed.

Pursuant to section 72 of the *Residential Tenancy Act,* the Landlord is authorized to retain the Tenant's $1,425.00 security deposit towards the amount awarded to her and is granted a Monetary Order for the balance due in the amount of **$1,375.00.** This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial 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: March 15, 2019

Residential Tenancy Branch