Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNRL-S, MNDCL-S, FFL
For the tenant: MNSD

Introduction

This hearing dealt with cross applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the "Act").

The landlord's application for dispute resolution was made on December 14, 2018 (the "landlord's application") and amended their application on March 27, 2019. The landlord applied for the following relief pursuant to sections 67 and 72 the Act:

1. a monetary order for unpaid rent;
2. a monetary order for unpaid utilities; and,
3. a monetary order for recovery of the filing fee.

The tenant's application for dispute resolution was made on March 14, 2019 (the "tenant's application"). The tenant applied for the return of their security deposit, pursuant to section 32 of the Act.

The landlord, the tenant, and the tenant's legal advocate (an articling student) attended the hearing before me on April 16, 2019 and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues of service.

I have reviewed all oral and documentary evidence submitted and presented that met the *Rules of Procedure,* under the Act, but only relevant evidence pertaining to the issues of these applications are considered in my decision.

Issues

1. Is the landlord entitled to a monetary order for unpaid rent and/or unpaid utilities?
2. If yes, is the landlord entitled to recovery of the filing fee?
3. Is the tenant entitled to the return of their security deposit?

Background and Evidence

The landlord testified that the tenancy began on July 1, 2018 and ended on November 30, 2018. The rental unit—a two-level house, the upper portion of which was rented out—was at that time managed by a property management company (the "property manager"). The landlord had minimal involvement with the property, instead relying on the supposed expertise of the property manager. The monthly rent was $2,300.00 (though the landlord had wanted it to be rented for $2,400.00). The tenant paid a security deposit of $1,150.00.

The rent did not include utilities, which were extra and the responsibility of the tenant. A copy of the written tenancy agreement was submitted into evidence, along with an Addendum which included the term "All utilities are paid by the tenant as outlined in clause 3 of the agreement."

The tenancy was for a six-month term, though the landlord had really wanted the property manager to rent it for a year. A year-long term would coincide with the landlord's intentions to move into the property, as she was expecting a baby and intended to move back to the Island.

Nonetheless, the property manager—who acted as agent for the landlord—rented the rental unit and within a month or so, the tenant was interested in leaving the property and ending the tenancy. The property manager, in response to the tenant's exploring of options for ending the tenancy early, sent an email to the tenant on August 10, 2018, which read in part (a copy of the email was tendered into evidence):

> You may vacate with one months' [*sic*] notice, and will not be required to fulfill the term of the lease. Please let me know and we will fill out a mutual agreement to end tenancy.

On October 19, 2018, the tenant issued a termination of tenancy notice to the property manager, advising the property manager that the tenant was ending the tenancy

effective November 30, 2018. This notice included the tenant's forwarding address. A copy of this notice was submitted into evidence.

On October 26, 2018, the property manager sent a letter to the tenant in which the property manager states

> Because your lease expiry is Dec. 31. 2018 you will be responsible for Decembers [*sic*] rent.
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> The Landlord will begin advertising ASAP to mitigate any damages, but if a tenant is not found, you will be responsible for the short fall. [. . .] If a suitable tenant is found for December 1, 2018 you will not be responsible for December's rent. If you wish to alter your notice to vacate date to December 31, 2018 this would alleviate any concern over the rent for December.

The tenant and property manager completed a move out inspection on November 30, 2018. The tenant's forwarding address was also included in the move out inspection. And, while there was no evidence or testimony regarding how or when the property manager handed over related documentation to the landlord, I note that the landlord applied for dispute resolution within the 15-day time limitation under section 33 of the Act with respect to a claim against the security deposit of $1,150.00.

The landlord testified that she immediately attempted to rent the rental unit by placing advertisements online (some of which were submitted into evidence), but was unsuccessful in finding new, suitable tenants until January 2019. The rental unit was listed for the same rent of $2,300. (One unsuitable couple included a fellow who owned a vape shop and who wanted to vape in the rental unit. This was a definite "no go" in terms of a suitable tenant.)

On December 7, 2018, the property manager advised the tenant that the property manager was no longer acting as the landlord's representatives for the rental unit.

The landlord seeks compensation for rent for December 2018 in the amount of $2,300.00, and additional compensation for unpaid utilities in the amount of $522.18.

The tenant's articling law student advocate submitted that they do not dispute the utility bills for the period that the tenant was in the rental unit. However, they dispute the December 2018 heat pump rental charge of $53.04. She further submitted that the

tenant was “not aware of SSL-type charges.” I note, however, that the tenant did not testify as to this point and I cannot consider the advocate’s submissions to be evidence of fact of the tenant’s unawareness. In rebuttal, the landlord argued that a tenant must exercise due diligence in knowing the terms of a tenancy agreement, including any charges for utilities for example.

The tenant’s advocate submitted that, minus the utilities not owed by the tenant, that the balance of the security deposit to be returned would be $680.85.

Regarding the circumstances leading to the end of tenancy, the advocate argued that as the property manager was acting as the agent for the landlord, that any actions taken by the property manager are legally binding. Once the property manager accepted and acknowledged that the tenant could move out early, before the end of the term of the tenancy, without being under an obligation to fulfil the remainder of the tenancy, then the property manager is estopped from then changing its mind, the advocate argued.

The tenant’s advocate further argued that a mutual agreement to end tenancy had been created throughout the email correspondence between the parties.

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.

Landlord’s Claim for Unpaid Utilities

The tenant does not dispute that they owe utilities for the period during which they occupied the rental unit. The expenses for utilities for the period up to November 30, 2018 were as follows:

Tenant Ledger	Outstanding utilities via [property manager]	$227.22
SSL bill	November energy usage	93.84
SSL bill	November water usage only	29.66
BC Hydro Electricity	Nov 7 – Nov 30, 2018	118.43

Given the position of the tenant as submitted by his advocate, I grant the landlord a monetary award in the amount of $469.15.

However, I do not grant the landlord a monetary award for the December 2018 heat pump rental for the reasons explained below.

Landlord's Claim for December 2018 Rent

The landlord had the double misfortune in 2018 of not only having a difficult c-section and birth, but also the misfortunate of having a rather incompetent property manager. Unfortunately, the property manager was hired by the landlord to act as her agent for all matters related to the rental unit. As such, any actions and decisions of the property manager are the same as if the landlord had herself been acting.

In this case, the property manager very clearly in its email of August 10, 2018, stated that if the tenant gave them one month's notice (which he did), that the tenant would "not be required to fulfill the term of the lease." A plain language and reasonable person intepretation of this statement leads me to find that this meant the tenant would not have to pay rent for any month after the last month of the tenancy. In this case, the tenant is and would not be responsible for rent after November 2018.

The tenant's advocate argued that the correspondence between the parties created a mutual agreement to end the tenancy.

Section 44(1)(c) of the Act states that "A tenancy ends only if one or more of the following applies: [. . .] the landlord and tenant agree in writing to end the tenancy." In this case, the property manager agreed in writing that if the tenant provided notice that the tenancy would end. As such, there is, I find, a mutual agreement to end the tenancy created by the property manager's emails. Any obligations between the parties ends at the time that the tenant ends, including the obligation for a tenant to continue paying after the end of the tenancy. In effect, a mutual agreement to end the tenancy closes off the loop of any further obligations between the parties, at least in respect of rent.

The tenant's advocate argued, in the alternative, that "the Landlord is estopped from collecting December's rent from [the tenant] because they represented that they would not enforce their legal rights under the contract and [the tenant] reasonably relied on that representation in changing his position and taking action."

The advocate's written submissions further stated, in part, that

> The doctrine of promissory estoppel was originally stated in the case Hughes v Metropolitan Railway, [1877] UKHL 1, [1877] 2 AC 439 (HL) and reaffirmed in Canada, in the the Supreme Court case of *Maracle v Travellers Indemnity Co of Canada,* [1991] 2 SCR 50 (SCC):
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> *"The principles of promissory estoppel are well settled. The party relying on the doctrine must establish that the other party has, by words or conduct, made a promise or assurance which was intended to affect their legal relationship and to be acted on. Furthermore, the representee must establish that, in reliance on the representation, he acted on it or in some way changed his position."*
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> The relationship between the Landlord and the Agent in this case is such that the Agent may legally bind the Landlord (for example, signing tenancy contracts). In this case, the Agent made a promise on behalf of the Landlord that the Landlord would not enforce their rights under the fixed term contract as long as [the tenant] gave a months' notice. In reliance on this, [the tenant] found another place to rent, signed a separate tenancy agreement elsewhere (see document #10) and gave his notice (which, absent the agreement in August, would open him up to the potential for damages). We submit that he significantly changed his position as a result of the representation; had there been no agreement or representation he states he would simply have stayed for the extra month.

I agree. As unfortunate as it was for the landlord to have had an incompetent property manager (against which she may have a legal claim outside the residential tenancy dispute process), the landlord was bound by the actions taken on her behalf. That is, the property manager's statement that the tenant would not be responsible for the remainder of the lease after proper notice was given.

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, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the 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 the damage or loss?

In this case, the landlord has not proven that the tenant failed to comply with the Act, the regulations, or the tenancy agreement. On the contrary, the property manager's representations released the tenant from any such obligations under the Act or the tenancy agreement—specifically, to pay rent—after the end of the tenancy. By extension, the tenant was not responsible for any utility charges incurred after November 30, 2018, and I dismiss that specific claimed amount of $53.03.

Having found that there was no non-compliance with the Act or the tenancy agreement, I need not consider the remaining three parts of the above-noted test.

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 her claim for compensation in relation to the rent and utilities for December 2018. As such, I dismiss that aspect of her claim.

However, I grant the landlord a monetary award of $100.00 for the filing fee, for a total monetary award of $569.15 (which includes the undisputed utilities). The landlord is entitled to retain $569.15 of the tenant's security deposit in full satisfaction of this award.

Tenant's Claim for Return of Security Deposit

I grant the tenant a monetary award of $580.85, which represents the balance of the security deposit owed after the award to the landlord. Issued along with this Decision is a monetary order for the tenant, should the landlord not refund the balance within a reasonable period. A reasonable period is to be negotiated between the parties.

Conclusion

I grant the landlord a monetary award of $569.15 and order that the landlord retain this amount in full satisfaction of the award.

I grant the tenant a monetary award of $580.85 and issue a corresponding order which may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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: April 17, 2019

Residential Tenancy Branch