Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNCL-S, MNRL-S, MNSD, MNDCT, FFL

Introduction

This hearing was convened in response to cross applications.

The Landlords filed an Application for Dispute Resolution in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, 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 the Application for Dispute Resolution, the Notice of Hearing, and all the evidence the Landlords submitted in regards to this matter were sent to the Tenant, via registered mail, although she cannot recall the date of service. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Tenant filed an Application for Dispute Resolution, in which he named the Landlord in attendance at the hearing as a Respondent. The Tenant applied for a monetary Order for money owed or compensation for damage or loss, to cancel a Notice to End Tenancy for Unpaid Rent, and for the return of his security deposit. At the hearing the Tenant withdrew the application to dispute a Notice to End Tenancy, which he applied for in error.

The Tenant stated that on January 08, 2019 the Application for Dispute Resolution, the Notice of Hearing, and all the evidence the Tenant submitted in regards to this matter were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

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 directly relevant to my decision.

Preliminary Matter #1

The Landlord contends that the Residential Tenancy Branch does not have jurisdiction in this matter as the Tenant was not living in the rental unit and, rather, was renting it out for short term rentals.

In support of this submission that Landlord stated that:

- the Tenant has a business license for the rental unit;
- the Tenant told her he has a business license for the unit;
- she did not submit a copy of the business license;
- the print out from the popular website the Tenant used to advertise the rental unit shows he has been a member since 2014;
- the print out from the popular website the Tenant used to advertise the rental unit shows 568 reviews for the listing; and
- based on the number of reviews listed she does not believe the Tenant could have been living in the rental unit, even on a part-time basis;

In response to the Landlord's submission the Tenant stated that:

- he lived in the rental unit, on a full-time basis, for the first year of the tenancy;
- since February of 2016 he has lived in the unit for approximately 50% of the time;
- while he was living in the rental unit he did not have an alternate residence;
- when he was renting out the unit for short term rentals he would stay with friends or parents, or he would camp;
- he does not have a business license for the unit;
- in 2014 he began renting his father's home for short term rentals;
- at various times between 2014 and 2018 he was offering up to six separate homes for short term rentals; and
- the 568 reviews the Landlord refers to relates to all of the homes he used for short term rentals.

Section 4(d) of the *Residential Tenancy Act (Act)* stipulates that this *Act* does not apply to living accommodation included with premises that are primarily occupied for business

purposes and are rented under a single agreement. This section of the *Act* is intended to exclude premises in which a significant portion of the premises is designed to be used for business, such as an artist's studio, and a smaller portion of the premises are used for living accommodation. It is not, in my view, intended to be applied to situations where the rental unit is a home that is rented out, periodically, on the basis of a short term rental. I therefore do not decline jurisdiction in this matter pursuant to section 4(d) of the *Act.*

Section 4(e) of the *Act* stipulates that this *Act* does not apply to living accommodation occupied as vacation or travel accommodation. On the basis of this section, I would likely decline jurisdiction over any dispute between the Tenant and a person renting this unit on the basis of a short term rental.

Section 4(e) of the *Act* is intended to exclude premises in which the primary tenant is renting the unit for vacation or travel accommodation. On the basis of the evidence before me, I cannot conclude that the Tenant was using this unit for vacation or travel accommodation. On the basis of the Tenant's testimony and in the absence of evidence to the contrary, I find that this was the Tenant's primary residence; he did not have an alternate residence; and that he used temporary accommodations when he was renting out the unit on a short term basis. I therefore do not decline jurisdiction in this matter pursuant to section 4(e) of the *Act.*

In adjudicating this matter I find the Tenant's undisputed evidence that at various times between 2014 and 2018 he was offering up to six homes for short term rentals provides a reasonable explanation for the large number of reviews posted on the popular website the Tenant used to advertise the rental unit. I therefore find that the number of reviews does not serve to refute the Tenant's testimony that he lived in the rental unit for approximately 50% of the time.

Section 2 of the *Act* stipulates that the Act applies to tenancy agreements entered into after 2002, unless the tenancy is exempted by section 4 of the *Act*. As I have not concluded that this tenancy is exempted by section 4 of the *Act*, I find it appropriate to assume jurisdiction over this tenancy.

Preliminary Matter #2

At the hearing the Landlord stated that she submitted photographs to the Residential Tenancy Branch, in support of her claim for cleaning. The Tenant acknowledged being served with this evidence. The parties were advised that I could not locate these photographs in the on-line evidence.

As the photographs were served to the Tenant, I find it reasonable to conclude that the Landlord intended to submit these photographs in evidence and that they were not available to me for technical reasons. I therefore concluded that it would be reasonable for the Landlord to re-submit these photographs to the Residential Tenancy Branch. The Landlord stated that she would re-submit those photographs after the hearing and the parties were advised that I would view the photographs prior to rendering a decision.

As the parties reached a settlement agreement regarding the claim for cleaning after the aforementioned discussion, I find that viewing the aforementioned photographs is no longer relevant. I therefore rendered this decision prior the Landlord re-submitted these photographs to the Residential Tenancy Branch.

Preliminary Matter #3

On two occasions during the hearing the Tenant disconnected from the teleconference. On both occasions I stopped any meaningful discussion as soon as I became aware that the Tenant had disconnected from the teleconference. On both occasions the Tenant dialed back into the teleconference within one minute of disconnecting. I am satisfied that these brief interruptions did not disrupt these proceedings in any meaningful manner.

Preliminary Matter #4

In the Tenant's paper Application for Dispute Resolution the Tenant claimed $365.80 in compensation for being without laundry facilities. This was the claim that was discussed at the hearing.

In support of the claim for $365.80 the Tenant submitted copies of hydro bills to the Residential Tenancy Branch. As the Tenant did not apply for compensation for hydro costs, this issue was not considered at the hearing.

Issue(s) to be Decided

Are the Landlords entitled to compensation for cleaning, to compensation for unpaid rent/lost revenue, and to keep all or part of the security deposit?
Is the Tenant entitled to compensation for being without laundry facilities and to the return of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on June 01, 2015;
- at the end of the tenancy the rent was $1,350.00 per month;
- rent was due by the first day of each month;
- the Tenant paid a security deposit of $625.00, which has not been returned;
- on September 24, 2018 the female Landlord asked the Tenant to move out of the rental unit because she learned he had been renting out the unit for sort-term accommodations;
- on September 24, 2018 the parties mutually agreed that he would vacate the rental unit by October 10, 2018;
- on September 24, 2018 the female Landlord sent the Tenant a text message in which she confirmed their agreement that the unit would be vacated by October 10, 2018;
- neither party served written notice to end the tenancy;
- the Tenant did not respond to the text message of September 24, 2018;
- the Tenant had most of his property out of the unit by October 10, 2018;
- the Tenant returned the keys and removed all of his property on October 15, 2018;
- rent was not paid for October or November of 2018; and
- the Tenant did not give the Landlord written permission to keep any part of the security deposit.

The Tenant stated that on November 17, 2018 he sent the Landlord his forwarding address, via email. He stated that he sent the forwarding address again, via text message, on December 08, 2018. He stated that the Landlord did not respond to either of these electronic messages, although the text message indicated it was “delivered”.

The Landlord stated that she was out of the country when the aforementioned electronic messages were sent. She stated that she saw the messages when she received the Tenant’s evidence for those proceedings but she did not receive them prior to being served with them as evidence.

The Landlord stated that she did not receive the Tenant's forwarding address until she was served with the Tenant's Application for Dispute Resolution. She stated that she does not recall when she received the Tenant's Application for Dispute Resolution, although she guesses it was January 29, 2019.

The Landlord is seeking compensation for unpaid rent for October of 2018 and lost revenue for November of 2018. Her claim for lost revenue is based on her understanding that since neither party gave proper notice to end the tenancy, the Tenant did not have the right to vacate the rental unit.

The Landlord claimed compensation, in the amount of $200.00, for cleaning the rental unit. At the hearing the Landlord stated that she only paid $100.00 to clean the unit and she reduced the amount of the claim to that amount.

After some discussion about the state of the rental unit at the end of the tenancy, the Landlord and the Tenant agreed to settle this portion of the Landlord's claim by agreeing that the Tenant will pay the Landlord $50.00 for cleaning.

The Tenant is claiming compensation of $365.80 for being without a washer and dryer for a period of time. In support of this claim the Tenant stated that:

- the dryer stopped working in June of 2018;
- he reported the problem to the Landlord on June 17, 2018;
- sometime prior to July 01, 2018 he told the Landlord he would purchase a new washer and dryer and deduct the cost of those items from his rent;
- he did not purchase the items, although he does not recall why he did not do so;
- he is aware that the Landlord order those items on July 25, 2018;
- on August 04, 2018 the new appliances were delivered and the old ones were removed;
- the appliances were not installed as they were not suitable for use in the unit; and
- he never informed the Landlord that the appliances were not installed as he understood the store was going to do so.

In response to the claim for compensation for being without a washer and dryer the Landlord state that:

- on June 17, 2018 the Tenant informed her that the dryer was not working;
- on July 01, 2018 she and the Tenant agreed that the Tenant would purchase a new washer and dryer and deduct the cost of those items from his rent;

- on July 25, 2018 she became aware that the Tenant had not arranged for the purchase of those items;
- on July 25, 2018 she ordered these items from a local store;
- the local store delivered the new appliances and removed the old ones, although she does not know the date of the delivery;
- she now understands neither appliance was installed because the dryer was not suitable for use in the unit;
- she was not informed the appliances were not installed until September 21, 2018; and
- the appliances were not installed until after the Tenant had vacated.

Analysis

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act.* The evidence shows that neither party gave proper notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act.*

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act.*

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act.*

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. On the basis of the undisputed evidence I find that this rental unit was fully vacated on October 15, 2018 and I therefore find that this tenancy ended on that date, pursuant to section 44(1)(d) of the *Act*.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act.*

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act.*

Section 26(1) of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act,* the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

On the basis of the undisputed evidence I find that rent of $1,350.00 was due by the first day of each month. As neither party had properly ended the tenancy by October 01, 2018, I find that rent of $1,350.00 was due on October 01, 2018. On the basis of the undisputed evidence that rent for October of 2018 was not paid, I find that the Tenant owes the Landlord $1,350.00 in rent for that month.

As the tenancy ended on October 15, 2018, pursuant to section 44(1)(d) of the *Act*, I find that rent was not due on November 01, 2018.

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 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.

When a landlord loses revenue because a tenant breaches the *Act* and vacates a rental unit without proper notice, a landlord may be entitled to compensation for lost revenue providing they have taken reasonable steps to mitigate their losses.

In these circumstances, I find that the Landlord did not take reasonable steps to mitigate any lost revenue she experienced in November of 2018. Rather, I find that by her words and actions she initiated the end of the tenancy by asking the Tenant to move out of the unit by October 10, 2018. Had she not asked the Tenant to leave I find it entirely likely that the tenancy would have continued and she would not have lost revenue for

November of 2018. I therefore dismiss the Landlord's application for lost revenue for November.

Section 63(1) of the *Act* authorizes me to assist the parties, or offer the parties an opportunity, to settle their dispute. On the basis of the information provided to me by the parties at the hearing, I find that they mutually agreed to settle the Landlord's claim for cleaning by agreeing that the Tenant will pay the Landlord $50.00 for cleaning. On the basis of this agreement, I find that the Tenant must pay $50.00 to the Landlord for cleaning.

Section 27(2)(b) of the *Act* stipulates that a landlord may restrict a non-essential or non-material service or facility providing they reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. In circumstances where a washer/dryer was provided with the tenancy and a landlord opted to not repair the appliances, it is highly likely that a tenant would be entitled to a rent reduction as compensation for the loss of service.

In these circumstances, however, where the Landlord has opted to replace a washer/dryer, the Tenant would only be entitled to compensation if the Landlord did not repair or replace the washer/dryer within a reasonable period of time.

On the basis of the undisputed evidence I find that the problem with the dryer was reported on June 17, 2018 and by July 01, 2018 the parties had agreed that the Tenant would purchase a new washer/dryer and deduct those costs from his rent. I find that an initial delay of less than two weeks is reasonable and I therefore find that the Tenant is not entitled to compensation for being without a dryer for that period of time.

On the basis of the undisputed evidence I find that the Tenant did not act on his agreement to purchase a washer/dryer and that the Landlord did not become aware that the items had not been purchased until July 25, 2018. As the Landlord was not aware of the problem there can be no reasonable expectation that she could repair or replace the dryer prior to July 25, 2018. I therefore find that the Tenant is not entitled to compensation for being without a dryer for the period between July 01, 2018 and July 25, 2018.

On the basis of the undisputed evidence I find that the Landlord acted reasonably and appropriately when she ordered a new washer and dryer on July 25, 2018. On the basis of the undisputed evidence I find that the appliances purchased by the Landlord were

delivered on August 04, 2018 at which time it was determined they were not suitable for the rental unit. I find that a delay of less than ten days is not unreasonable and I therefore find that the Tenant is not entitled to compensation for being without a dryer for this delay.

On the basis of the undisputed evidence I find that the Landlord did not become aware that the appliances had not been installed until September 21, 2018. As the Landlord was not aware of the problem there can be no reasonable expectation that she could replace the appliances prior to September 21, 2018. I therefore find that the Tenant is not entitled to compensation for being without these appliances for the period between August 04, 2018 and September 21, 2018.

On the basis of the undisputed evidence I find that the washer and dryer were not replaced until after the rental unit was vacated on October 15, 2018. Even though the Landlord understood the rental unit was to be vacated on October 10, 2018, I find that find a delay of 19 days is beyond the limits of reasonable. I therefore find that the Tenant is entitled to compensation of $50.00 for being without a washer and dryer for 19 days. This award is a subjective award based on my opinion of how much being without a washer/dryer for 19 days would reduce the value of the tenancy.

Section 38(1) of the *Act* stipulates that except as provided in subsection (3) or (4) (a), within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit of make an application for dispute resolution claiming against the security deposit.

I find that a text message or email meets the definition of written as defined by Black's Law Dictionary. In reaching this conclusion I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that a text message or email meets the definition of written as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As text messages and emails are capable of being retained and used for

further reference, I find that a text message or email can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act.*

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act,* must be served*.* Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*. I therefore cannot conclude that the Tenant served the Landlord with his forwarding address pursuant to section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. In circumstances such as these, where the Landlord does not acknowledge receiving the text message or email in which the Tenant provided his forwarding address, I cannot conclude that the Landlord was sufficiently served with the Tenant's forwarding address on the basis of the Tenant's text message or email.

On the basis of the Landlord's testimony, I find that she received the Tenant's forwarding address when she received the Tenant's Application for Dispute Resolution.

I find that it would be inappropriate and unfair to conclude that a tenant has provided a landlord with a forwarding address for the purposes of section 38 of the *Act* if the landlord only received the address when the landlord was served with a tenant's Application for Dispute Resolution. I find that the legislation contemplates the forwarding address be provided, in writing, prior to a tenant filing an Application for Dispute Resolution. I therefore dismiss the Tenant's application for the return of his security deposit, as he did not serve his forwarding address in accordance with the legislation and the Landlord did not acknowledge receiving it prior to being served with the Tenant's Application.

Typically I would grant the Tenant leave to reapply for the return of his security deposit. That is not necessary in these circumstances, as I will be addressing the security deposit on the basis of the Landlord's Application for Dispute Resolution.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $1,500.00 which includes $1,350.00 in rent; $50.00 for cleaning; and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. The Tenant has established a monetary claim, in the amount of $50.00 for being without a washing machine and dryer. After offsetting these two claims I find that the Tenant owes the Landlord $1,450.00.

Pursuant to section 72(2) of the *Act,* I authorize the Landlord to retain the Tenant's security deposit of $625.00 in partial satisfaction of this monetary claim.
Based on these determinations I grant the Landlord a monetary Order for the balance $825.00. In the event the Tenant does not voluntarily 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 *Act*.

Dated: April 30, 2019

Residential Tenancy Branch