



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL –S, MNRL –S, FFL

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent and other damages or loss under the Act, regulations or tenancy agreement, as amended; and, authorization to retain the tenants' security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision was issued on May 23, 2019. The Interim Decision should be read in conjunction with this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to the compensation claimed against the tenants for unpaid rent and other damages or loss under the Act, regulations or tenancy agreement?
2. Is the landlord authorized to retain the tenant's security deposit and pet damage deposit?

Background and Evidence

The fixed term tenancy commenced on June 1, 2018 and was set to expire on June 30, 2019. The tenants paid a security deposit of \$750.00 and a pet damage deposit of \$750.00. The tenants were required to pay rent of \$1,500.00 on the first day of every month. Utilities were not included in rent.

A condition inspection report was prepared and signed by both parties at the start of the tenancy.

It is undisputed that the tenants ended the tenancy early. Both parties provided consistent testimony that the tenants sent a Notice to End Tenancy to the landlord on January 9, 2019 to notify the landlord of their intention to end the tenancy early, on February 9, 2019. The landlord responded to inform the tenants they were responsible for paying rent until the end of the tenancy or no earlier than the end of February 2019. The tenants were of the position the tenants could end the tenancy with a month's notice due to the medical condition of the female tenant that required the tenant to relocate closer to a major city.

According to the tenants, on January 25, 2019 the tenants communicated to the landlord that they would be vacated by January 27, 2019. On January 27, 2019 the tenants communicated with the landlord again to inform her they were leaving. The landlord instructed the tenants to put the keys in the mailbox, but when the tenants expressed discomfort with that suggestion the landlord told the tenants to give the keys to the tenant in another unit, which the tenants did.

According to the tenant, they asked for the landlord to do the move-out inspection with before they left town. The landlord's response was that it would be conducted at the end of February 2019. The tenants left town without the landlord performing the move-out inspection with them and when she proposed later dates in February 2019 they could not do so financially as it would require them to travel back to the town where the rental unit was located.

According to the landlord the move-out date was not specific and the tenants asked for a move-out inspection on February 2, 2019 but the landlord was scheduled to have surgery in the U.S. in early February 2019. The landlord tried to schedule a move-out inspection with the tenants later in February 2019 but the tenants had already moved away and they would not return. The landlord waited to enter the rental unit until February 18, 2019 and commenced the move-out inspection at that time.

Below, I have summarized the landlord's claims against the tenants and the tenants' responses.

1. Unpaid rent for February 2019

It is undisputed the tenants did not pay rent for February 2019. The landlord is of the position the tenants owe the rent since they breached the tenancy agreement and gave short notice of their intention to end the tenancy. The landlord pointed out that based on the tenant's notice she could not consider a replacement tenant before February 9,

2019. According to the landlord she initially notified her friends on Facebook that she had a vacancy coming up and made a list of potential tenants but that she did not advertise the unit publically until after the tenants vacated and she cleaned the unit as her past experience is that advertising a unit while tenants are in the unit is usually unsuccessful in finding a new tenant. The landlord testified that she was able to secure a replacement tenant as of March 1, 2019.

The tenant was of the position that she required lifesaving surgery and based on her doctor's recommendation she moved to the city for treatment and that is a basis for ending the tenancy early.

The tenant pointed out that during the remainder of their tenancy there were no showings to prospective tenants and that the rental unit was available for February 2019 and that even if their notice prevented the landlord from finding a replacement tenant until February 9, 2019 the tenant would accept responsibility to pay rent until February 9, 2019. The tenant was of the position the landlord may have found a replacement tenant for February 9, 2019 or say February 15, 2019 if she tried but she did not. According to the tenant the landlord told her that she did not have time to look for a replacement tenant and the landlord did not even try until late February 2019.

2. Liquidated damages

The landlord seeks to claim liquidated damages due to the tenants ending the tenancy early. The tenancy agreement provides the following term with respect to liquidated damages:

IF YOU CHOOSE, BOTH THE LANDLORD AND THE TENANT MUST INITIAL HERE

| | LANDLORD'S INITIALS | TENANT'S INITIALS |
|---|---------------------|-------------------|
| 5. LIQUIDATED DAMAGES. If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$200.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated. | | |
| 6. DISPUTE RESOLUTION. Disputes must be resolved by the landlord or tenant before the end of the term of the Agreement. | | |

The tenant was of the position liquidated damages are not applicable since the tenants had a sufficient reason for ending the tenancy.

3. Late fee

The landlord seeks to claim a late fee with respect to the non-payment of rent for February 2019 in the amount of \$25.00. the tenancy agreement provides the following term with respect to late fees:

0. **ARREARS.** Late payment, returned or non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of not more than \$25.00 each, plus the amount of any service fees charged by a financial institution to the landlord. Although these fees are payable by the tenant to the landlord, failure to pay the rent on the due date is a breach of a material term of this Agreement. The obligation of the tenant under this Agreement and by law requires the rent to be paid on the date that it is due. For example, an excuse that the tenant does not have the rent money or will not have the rent money until a later date is not an acceptable excuse in law.

The tenant was of the position a late fee is not payable for February 2019 since the tenants gave notice to end the tenancy.

4. Cleaning

The landlord submitted that the addendum to the tenancy agreement requires that the tenants professionally clean the rental unit at the end of the tenancy and leave it in a rentable condition. The landlord claims the tenants left the rental unit in appalling condition at the end of the tenancy. The landlord described finding dog hair on the floor, dirty walls and cupboards among other things. The landlord pointed to a letter from the cleaner, the cleaner's invoice and photographs to demonstrate the lack of cleanliness.

The tenant submitted that they cleaned the rental unit to a reasonably clean condition but they did not have it professionally cleaned. The tenant testified that she washed the fridge, cupboards, floors, and bathroom and vacuumed. The tenant was of the position the photographs do not depict the condition in which they left the unit and suggested the landlord caused the unit to look dirty. The tenant claimed to have also taken photographs of the unit but they did not provide them as evidence.

5. Wall and moulding repairs

The landlord submitted that there were holes in the walls, the moulding was gouged and chewed by the tenants' dog and there were scratches, chips and scuffs on the walls. The landlord purchased materials and paint to make the repairs and paid a contractor to make the repairs. The landlord seeks to recover the cost to purchase the materials and the amount paid to the contractor to make the repairs to the walls and moulding.

The tenant acknowledged there were larger holes in the wall where the TV was mounted and took responsibility for repairing these holes. The tenant denied the allegation that their pet chewed the moulding. The tenant stated most artwork and other things were hung on the walls using Velcro attachments and did not cause any damage. The tenant suggested that the landlord's photographs do not depict the actual condition of the unit at the end of the tenancy.

The tenant was also of the position the landlord is trying to claim for things that amount to wear and tear. The landlord was of the position that the wear and tear should have been minimal since the rental unit was freshly renovated right before the tenancy started.

6. Replacement drip trays for stove

The landlord submitted that the drip trays under the stove elements were so dirty and encrusted with burned on food that it was more economical to purchase new drip trays than try to clean them. The landlord seeks to recover the cost of replacement drip trays from the tenants.

The tenant stated she tried cleaning the drip trays by soaking and scrubbing them but that the stains are difficult to remove. The tenant considered this to be wear and tear.

7. Damaged living room blind

The landlord submitted that the plastic slats on the living room blinds were bent at the end of the tenancy and the blinds were new at the start of the tenancy. The landlord seeks to recover the cost of a new blind from the tenants.

The tenant submitted that two slats were bent but stated this was caused by heat and sun, not damage caused by the tenants.

8. Garbage removal

The landlord submitted that the tenants left garbage and abandoned property at the rental unit including a planter, chairs, fire pit, chandelier as well as items in the closet and shed. The landlord seeks to recover the dump fee \$8.00 and \$25.00 in labour to take these items to the dump.

The tenant acknowledged that she forgot to take the chandelier when they moved out but denied that the other items belonged to the tenants. The tenant stated that there were items in the shed and exterior of the building that belonged to other tenants.

9. Utilities

The landlord submitted that under the tenancy agreement the tenants were responsible to pay for utilities. The landlord seeks to recover the water, sewer and garbage bill for the period of October – December 2018 in the amount of \$276.71 and the landlord pro-rated the bill in seeking \$89.22 for the months of January 2019 and February 2019.

The tenant was of the position that her co-tenant paid the bill for October 2018 – December 2018 when the rent was paid for January 2019 in early January 2019. The tenant acknowledged responsibility to pay for the utilities for the month of January 2019.

The landlord responded by stating the utility bill for October – December 2018 was issued on January 21, 2019 and was not received when the tenants paid rent for January 2019.

10. Mailing costs

The landlord requested recovery of costs to mail documents to the tenants. A party may not recover costs associated to serving documents upon the other party that are required to be served upon the Act and I dismissed these claims summarily during the hearing.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Unpaid rent for February 2019

The tenants were in a fixed term tenancy agreement that obligated them to continue the tenancy until the end of their fixed term. It is undisputed that the tenants ended the fixed term tenancy early in this case. While a tenant is at liberty to vacate a rental unit, in ending a fixed term tenancy early, the landlord may pursue the tenant for loss of rent for the remainder of the fixed term unless the tenancy was ended early in one of the ways permitted by the Act.

I heard the tenants vacated the rental unit and returned possession of the unit on January 27, 2019; however, I see the tenants notified the landlord of this by way of an email on January 31, 2019 and advised the landlord where the keys were left. As such, I accept that the tenancy ended on January 31, 2019. I heard the landlord found replacement tenants starting March 1, 2019. Accordingly, the issue to determine is whether the tenants are responsible for compensating the landlord for loss of revenue for the month of February 2019.

The tenant argued that her medical condition entitled her to end the tenancy early. The Act provides very limited and specific circumstances where a tenant may end a fixed term tenancy early. Section 45(3) permits a tenant to end a tenancy early if the landlord has breached a material term of the tenancy agreement and has not corrected the breach despite the tenant's written notice to do so. Section 45.1 of the Act permits a tenant to end a fixed term tenancy by giving one full month of notice where the tenant is fleeing domestic violence or being admitted to long term care in a long term care facility upon obtaining the appropriate certification. Having a medical condition and having to move to the city to be closer to treatment is not one of the reasons provided in the Act for ending a fixed term tenancy early. Therefore, I do not consider the tenant's medical condition as a basis for ending the fixed term tenancy early any further.

The tenant argued that the landlord unduly delayed in advertising the rental unit. I find this argument to be the most compelling as it calls into question the landlord's burden to take reasonable steps to mitigate losses. I proceed to consider whether the landlord did whatever was reasonable to minimize losses.

The landlord claims to have made some efforts to advertise the rental unit while the tenants were still in possession of the rental unit; however, the effort appears to be minimal if anything until after February 18, 2019. I note the landlord did not provide any

documentary evidence to demonstrate how and when advertising took place. The landlord also made a statement that she typically does not show a unit while it is tenanted. Further, the landlord acknowledged that she waited until February 18, 2019 to enter the unit and commence cleaning despite the tenant's message that they had vacated the unit and informed the landlord where the keys were left on January 31, 2019.

Where a landlord delays in advertising a rental unit until late in the month it is almost certain that a loss of rent will be incurred for that month. Therefore, I find the landlord's delays or decision to not fully advertise and show the unit until after February 18, 2019 likely contributed to the loss of rent suffered for the month of February 2019.

I also find the tenant's short notice and notice that had an effective date of February 9, 2019 also contributed to the loss of rent for February 2019.

In keeping with the above, I find it appropriate to apportion the loss of rent between the parties. I hold the tenants responsible for one half of the loss of rent for February 2019 and the landlord responsible for the other half. Therefore, I award the landlord \$750.00 for loss of revenue for the month of February 2019.

Liquidated damages

As provided in Residential Tenancy Branch Policy Guideline 4: Liquidated Damages, liquidated damages is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

The policy guideline further states: If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

I find the liquidated damages clause to be a valid and enforceable term. I am satisfied the amount is reasonable and represents an estimate of costs associated with re-renting the unit earlier than anticipated. Therefore, I grant the landlord's request to recover liquidated damages of \$200.00 from the tenants.

Late fee

The tenancy agreement provides for a late fee and I am satisfied that the wording of the term complies with section 7 of the Regulations. However, the payment of late fees applies so long as the tenancy agreement is in effect. In this case, I have found the tenancy came to an end on January 31, 2019 when the tenants vacated and returned possession of the rental unit. Accordingly, the tenants were not late in paying rent for February 2019 and the landlord's claim for February 2019 was actually a claim for loss of revenue. Therefore, I make no award for a late fee with respect to the month of February 2019.

Cleaning

Section 37 of the Act requires a tenant to leave a rental unit "reasonably clean" at the end of the tenancy. Where a landlord seeks to clean the rental unit to a standard that is higher than "reasonably clean" the cost is born by the landlord. Further, section 6 of the Act provides that any term in a tenancy agreement that conflicts with the Act is not enforceable. The addendum indicates that the tenants were to "professionally clean" the rental unit and leave it in "rentable" condition. These standards are beyond what is required of a tenant under the Act and those terms are not enforceable. Therefore, I have reviewed the landlord's evidence to determine whether additional cleaning was required to bring the unit up to a "reasonably clean" condition.

As for the evidence I have considered, I have relied heavily upon the landlord's photographs. The tenant claims to have taken photographs as well but they were not submitted as evidence by the tenants.

As for the move-out inspection report, I have not given it any evidentiary weight because I am not satisfied it was not completed in accordance with the Residential Tenancy Regulations. The Regulations provide that the landlord is to make the first proposal for a move-out inspection and, in accordance with section 6(1) of the Regulations:

"The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection."

In this case, the landlord provided changing testimony as when the move-out inspection was set to take place and attempts to schedule one. In text message conversations on January 8, 2019 the tenant offered to do the move-out inspection on February 2, 2019

but the landlord informed the tenants the move-out inspection would take place at the end of February 2019. The landlord testified the tenants asked to do the inspection February 2, 2019 but the landlord explained she was having surgery in early February 2019. Yet, I note that the landlord engaged in numerous email communications with the tenant and filed her Application for Dispute Resolution at a Service BC office on February 4, 2019 which suggests to me that the landlord was still available up until February 4, 2019. In emails/text messages the landlord wrote on February 4, 2019 the landlord writes that the tenants left without doing the move-out inspection yet the landlord's own testimony was that a move-out inspection was not scheduled until much later in February. The landlord then changed her testimony to indicate it was unclear when the tenants were vacating the unit but then stated she received an email of January 31, 2019 indicating the tenants had left. Further, the landlord also took the position that she tried to set up the move-out inspection for February 18, 2019 by sending the tenants a notice of the inspection, but that was well after they had already vacated and left town. I find the landlord's various and changing positions lead me to conclude the landlord was being intentionally difficult and was not acting in good faith to find a mutually agreeable date to perform the move-out inspection together. Since she lacked good faith to set up a move-out inspection with the tenants while they were still in town and waited until well after the tenants had already left town I am unsatisfied the move-out inspection report would be a fair and unbiased representation of the condition of the unit.

Upon review of the landlord's photographs, I accept that some additional cleaning was necessary to bring the rental unit up to a reasonably clean standard. I see dog hair and debris on the floor behind the fridge and the dryer and on the baseboards. The oven, fridge and drawers are also in need of cleaning. The landlord's cleaner also wrote a letter describing the walls and floors as being very dirty as well as the stove, oven and fridge.

The cleaner charged the landlord \$312.50 for professional cleaning and I find it likely that left the unit perfectly clean which is beyond the tenant's responsibility. Therefore, I limit the landlord's award to \$250.00.

Wall and moulding repair

Sections 32 and 37 of the Act provide that a tenant is responsible for repairing damage they cause by their actions or neglect and must leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 also provide that reasonable wear

and tear is not damage. Accordingly, a landlord may not pursue a tenant for damage that was pre-existing or the result of reasonable wear and tear.

It is important to note that awards for compensation are intended to be restorative. Building components have limited useful lives and where a building component is so damaged that it requires replacement, it is usually appropriate to reduce the replacement cost by the depreciation of the original item. Residential Tenancy Branch Policy Guideline 40: Useful Life of Building Elements provides the estimated useful life of many building elements and I have referred to the policy guideline in making my findings below.

The tenant acknowledged that large holes from the mounting of a TV were the tenants' responsibility and denied responsibility for the remainder of the landlord's claims of damage.

The landlord claimed there were other holes and damage and scuffs besides the TV mount holes. Upon review of the landlord's photographs, I do see large gouges in the door frame and a number of sizable dark rubs and scuffs on the walls. The tenant suggested that the landlord's photographs do not depict the condition of the unit when the tenant's left the unit; however, I find that suggestion that the landlord may have created the damage is unlikely. I strongly doubt the landlord would create damage so that she may purchase materials and pay for labour to have them repaired, especially when the unit appears to be have been recently renovated just prior to the start of the tenancy. As such, I find it likely that the wall damage put forth by the landlord was caused by the tenants and I find that it exceeds reasonable wear and tear, especially considering this tenancy was only seven months in duration.

In keeping with the above, I find the landlord is entitled to recover the cost of labour and materials to make repairs to the walls and trim. I award the landlord \$196.88 for the labour cost plus the cost of materials of: \$18.02 + \$28.79 for paint; and \$5.95 plus tax (\$6.66) for the magic eraser. The landlord also indicated on her Monetary Order worksheet that she incurred a cost of \$73.75 for wall filler, sand paper and floor repair; however, when I look at the receipt provided for that amount it does not appear consistent with purchase of such items and I deny the claim for \$73.75. In total, the landlord is awarded \$249.64 [$\$196.88 + \$18.02 + \$28.79 + \6.66] for wall and moulding damage.

Replacement drip trays

Upon review of the photographs and the receipt for replacement drip trays, I accept that the drip trays were left with baked on liquid and/or food and it is more economical to replace the trays with new ones. However, drip trays have a limited useful life which I estimate to be 5 years. Since the tenancy was 7 months in duration, I award the landlord 4.5/5 of the cost of the replacement drip trays. The receipt demonstrates new trays cost \$40.50 and I award the landlord \$36.45 [$\$40.50 \times 4.5/5$].

Living room blind

It was undisputed that there were bent slats in the blind living room blind at the end of the tenancy. I find the tenant's explanation that two slats bent due to heat and sun to be rather far-fetched considering the blinds were relatively new and the other blinds in the living room were not affected in that way. Considering the blinds are only plastic I find they have a limited useful life of say 5 years. This tenancy was 7 months in duration; therefore, I award recovery of 4.5/5 of the cost of the new blind.

The receipt for the new blind shows the blind cost \$59.55 plus tax, or \$66.70, and I calculate the landlord's loss to be \$60.00.

Garbage removal

The tenant acknowledged leaving a chandelier in the rental unit but denied the other items the landlord disposed of belonged to them. The landlord included photographs that appear to show items in the closet and the exterior spaces on the property. I accept the chandelier and the items in the closet belong to the tenants but I am less certain as to the items on the exterior of the house since this is a multiple unit building. The landlord's receipt appears to show that 80 kilograms were taken to the dump and I do not consider the chandelier and the items in the closet to weigh that much. As such, I limit the landlord's award to \$20.00 of the \$32.00 claimed.

Utilities

The tenants are required to pay for utilities under their tenancy agreement. The landlord submitted the tenants did not pay the bill for the quarter of October – December 2018. The tenant claims that it was paid but did not produce any proof of payment. Also, the invoice is dated January 21, 2019 and given the parties conflict by that time I

find it unlikely the tenants paid for that utility bill. Therefore, I find I am satisfied the landlord is entitled to recover the unpaid utility bill for October – December 2018 in the sum of \$267.75 from the tenants.

The landlord pro-rated the utility bill in seeking \$89.22 for utilities for January and February 2019. Undeniably, the tenants are responsible for the utilities in January 2019; however, I limit the award for February 2019 to one-half for the reasons provided earlier in this analysis. Therefore, I further award the landlord \$66.92 [$\$89.22 \times \frac{3}{4}$] for January 2019 and February 2019.

Filing fee, security deposit/pet damage deposit and Monetary Order

The landlord was partially successful in her claims against the tenants and I award a partial award for recovery of the filing fee in the amount of \$70.00.

I authorize the landlord to retain the tenants' security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In keeping with all of my findings and awards, I provide a Monetary Order to the landlord to serve and enforce upon the tenants as calculated below:

| | |
|--|-------------------|
| Loss of rent for February 2019 (partial award) | \$ 750.00 |
| Liquidated damages | 200.00 |
| Cleaning (partial award) | 250.00 |
| Wall and moulding repair (partial award) | 249.64 |
| Stove drip trays (partial award) | 36.45 |
| Living room blind (partial award) | 60.00 |
| Garbage removal (partial award) | 20.00 |
| Utilities (\$267.55 + \$66.92 partial award) | 334.47 |
| Filing fee (partial award) | <u>70.00</u> |
| Total award to landlord | \$1,970.56 |
| Less: security deposit and pet damage deposit | <u>(1,500.00)</u> |
| Monetary Order for landlord | \$ 470.56 |

Conclusion

The landlord has been authorized to retain the tenants' security deposit and pet damage deposit and has been provided a Monetary Order for the balance owing of \$470.56 to serve and enforce upon the tenants.

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: July 25, 2019

Residential Tenancy Branch