



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S

Introduction

This hearing convened as a Landlord's Application for Dispute Resolution, filed on March 20, 2019, wherein the Landlords requested monetary compensation from the Tenants for unpaid rent and damage to the rental unit, authority to retain their security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on July 5, 2019. 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.

The parties agreed that all evidence that each party provided had been exchanged. No 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.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants for unpaid rent and damage to the rental unit?

2. What should happen with the Tenants' security deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement. The Landlords submitted that the tenancy agreement provided that this tenancy was for a one year fixed term beginning on July 1, 2018 and ending on June 30, 2019. Monthly rent was \$2,400.00 and the Tenants paid a \$1,000.00 security deposit.

The Landlord, R.G., testified that the Tenants vacated the rental unit on February 28, 2019. As this was before the end of the alleged fixed term, the Landlords sought monetary compensation for unpaid rent. R.G. further stated that they re-rented the unit as of April 1, 2019 for \$2,050.00 per month. In the within action the Landlords sought the sum of \$2,400.00 for loss of rent for the month of March. The Landlords also sought the difference between what they were able to rent the unit out for as opposed to the amount payable under the subject tenancy agreement, or \$350.00 per month for April, May and June 2019.

R.G. stated that they tried to rent the rental unit out for \$2,400.00. He further stated that through "word of mouth" and "mutual relations", they found a couple that were willing to take it for \$2,050.00 for a period of two years. He stated that they believed that by renting it sooner they would minimize their losses.

In terms of the damages claim, R.G. testified as follows. He stated that the bathtub in the en-suite bathroom overflowed in August of 2018; he was informed of this by the property manager who called him to inform that there was a leak. R.G. confirmed that he did not attend the rental unit as the property manager had already attended to it as it was urgent as there was water coming through the unit to the unit below. R.G. further stated that he was informed that the water came from an overflowing bathtub. R.G. confirmed that he does not know if the Tenants were home at the time. He also stated that he could not recall if he spoke to them about this incident prior to making their Application for Dispute Resolution.

R.G. stated that the property manager investigated, made the repairs and sent the Landlord the bill. The Landlords submitted two invoices in evidence: one for \$64.45 and another for \$2,201.35. The invoices indicate the repairs related to the overflow and the

seal on the bathtub. Handwriting added to one of the invoices indicates it was for an overflowing bathtub.

In terms of whether this was a result of the Tenant's actions or inaction, or a faulty tub, the Landlord stated that he didn't know what happened, only that they paid the Property Managers this amount.

In terms of whether this was the Tenants' responsibility, the Landlord stated that due to the presence of water the Landlord assumed the Tenants were using the tub at the time. The Landlord also stated that they did not have any problems with the tub prior to this incident, nor have they had any problems since.

The Landlord, W.G., also testified. She stated that they found new renters through a co-worker. She confirmed that she asked them to pay \$2,400.00 and they stated that they could not pay this amount as they are 80 years old and on a fixed income. She also stated that although they advertised and had a lot of people call on it, nobody wanted to rent it for \$2,400.00.

In response to the Landlords' claims the Tenant, P.B., testified as follows.

In terms of the Landlords' monetary claim for loss of rental income P.B. stated that it was the Tenants' position that the tenancy was a periodic tenancy, not a fixed term. He also stated that they reached out to an Information Officer at the Residential Tenancy Branch who confirmed that they only needed to give one month's notice to end a periodic tenancy.

In terms of the Landlords' claim for monetary compensation for the difference between what they were paying and what they rented it out, the Tenant stated that they immediately started advertising the rental unit on popular buy and sell websites. He stated that they had difficulty assisting in re-renting it because prospective tenants were scared off because they could not understand why they were advertising it and not the Landlords.

In terms of the Landlords' claim for monetary compensation for the water damage the Tenant testified as follows. He stated that the Landlord's property manager came into the rental unit and said that the unit below was complaining of water leaking. He testified that at no time was there any water on the floor in the bathroom.

He further stated that the water was caused by a faulty gasket, not by misuse. The Tenant also stated that the property manager informed him that the plumber fixed the gasket.

The Tenant stated that at no stage did the Landlord inform them of any excessive damage and in fact the first they heard of it was with this application. The Tenant further stated that they reached out to the Landlord and the property manager for a more detailed report and the property manager informed the Tenants that they were not able to release this information and directed the Tenants to go through the Landlord. The Tenants then sent a request to the Landlord and the Landlords have also not provided the requested information.

The Tenant also stated that they sent an email to the Landlords with their forwarding address on March 7, 2019, after which they sent it by registered mail on March 8, 2019. The Tenant testified that in response the Landlords filed for Dispute Resolution.

In reply the Landlord stated that they received the registered mail from the Tenants on March 13, 2019.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *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 Landlord has the burden of proof to prove their claim.

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.

After review of the residential tenancy agreement filed in evidence I find that this was a periodic, not a fixed term tenancy. For greater clarity, I reproduce the relevant portion of the agreement as follows. (I have not included the parties' initials in the section marked D or E as that could possibly identify the parties and Decisions of the Residential Tenancy Branch are anonymous; that said, I confirm the boxes were initialled by both parties.)

2. BEGINNING AND TERM OF THE AGREEMENT (please fill in the dates and times in the spaces provided)

This tenancy created by this agreement starts on: 01 July 2018
day month year

Check ☐ A) and continues on a month-to-month basis until ended in accordance with the Act.
 A, B or C ☒ B) and continues on another periodic basis, as specified below, until ended in accordance with the Act
☐ weekly ☐ bi-weekly ☒ other: 1 YEAR

☐ C) and is for a fixed term ending on 30 JUNE 2019
day month year

IF YOU CHOOSE C, CHECK AND COMPLETE D OR E

Check ☒ D) At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term
 D or E ☐ E) At the end of this time, the tenancy is ended and the tenant must vacate the rental unit.
 This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act.

Reason tenant must vacate (required): _____

Residential Tenancy Regulation section number (if applicable): _____

Landlord's Initials Tenant's Initials

Although the parties indicated a start and end date, which suggests a fixed term, they did not check box C, which would have clearly provided that this was a fixed term tenancy. Rather, box B was checked and indicated that the tenancy “*would continue* on another periodic basis...” [emphasis added] suggesting that the original agreement was a periodic tenancy. Neither of these are determinative, as I find the agreement is not clear as to whether it is a periodic or fixed term.

Contra proferentem is the legal principle which provides that where there is ambiguity in a contract the contract should be interpreted in favour of the party who did not draft the contract. In this case, the Landlord drafted the residential tenancy agreement (contract) and as such an ambiguity should be interpreted in favour of the Tenant. Accordingly, I find that the tenancy was a periodic, not fixed term tenancy.

A tenant may end a periodic tenancy by giving one months' notice pursuant to section 45 of the *Act*. As the Tenants gave written notice to end their tenancy on January 31, 2019 for a move out date of February 28, 2019, I find they complied with section 45.

Accordingly, I find the Landlords are not entitled to monetary compensation from the Tenants for loss of rent and I dismiss this portion of their claim.

I will now address the Landlords' claim for compensation for losses incurred as a result of water damage to the rental unit and the lower unit.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The Landlords allege the Tenants overflowed the bathtub resulting in damage to the rental unit and the lower unit.

The Tenants testified that they did not overflow the bathtub, and at no time was there water on the floor of the bathroom. The Tenants further allege that the issue was with the malfunctioning tub overflow seal. The Tenants also argue that the invoices provided by the Landlord indicate the issue was with the overflow and seal, not anything they did, or didn't do. They also testified that despite requests for further information from the Landlord and the property managers regarding this issue, such information was not provided.

Section 32(3) of the *Act* provides that a Tenant must repair damage to the rental unit *that is caused by the actions or neglect of the tenant or a person permitted on the residential property*. Section 32(4) further provides that a Tenant is not responsible for making repairs for reasonable wear and tear.

The Landlord did not attend the rental unit at the time of the incident and relied on the information provided by the building manager. The Landlord was therefore not present at the time and was unable to provide first hand testimony as to the condition of the bathroom, or the extent of the water egress. As noted previously in my Decision, the invoices provided by the Landlord indicate the repairs related to the overflow and seal. Aside from a handwritten note on one of the invoices, there is no mention of "bathtub overflow". More problematically, there is no indication that the water resulted from the Tenants' actions or inaction.

Consequently, I find the Landlords have failed to submit sufficient evidence to support a finding that the water issues resulted from the Tenants actions or neglect and I **therefore dismiss the Landlords claim for related compensation.**

As the Landlords have been unsuccessful in their claim, their request to retain the Tenants security deposit and recover the filing fee is also dismissed.

The Landlords must return the Tenants security deposit to them. In furtherance of this I provide the Tenants with a Monetary Order in the amount of **\$1,000.00**. This Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlords claim for monetary compensation for unpaid rent and damage to the rental unit is dismissed. The Landlords request to retain the Tenants' security deposit and recover the filing fee is also dismissed.

The Tenants are entitled to a Monetary Order in the amount of \$1,000.00 representing return of their security deposit.

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 17, 2019

Residential Tenancy Branch