



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC MNSD FF
Tenant: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on August 19, 2019. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord attended the hearing. One of the Tenants also attended the hearing (referred to as the “Tenant”). Both parties confirmed receipt of each other’s application and evidence and neither party took issue with service of these documents.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenant

- Are the Tenants entitled to the return of the security deposit held by the Landlord?
- Are the Tenants entitled to compensation for damage or loss under the Act?

Landlord

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenants?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

As per the tenancy agreement provided into evidence, monthly rent was \$2,000.00, and was due on the first of the month. A copy of the agreement was provided into evidence, which shows that the Tenants were in a fixed term lease ending on April 30, 2019. The agreement does not indicate that the Tenants were required to vacate at the end of the fixed term and it was selected that the tenancy would continue on a month-to-month basis. The Landlords hold a security deposit in the amount of \$1,000.00. The Tenancy Agreement also specifies that the Tenants are responsible for 1/3 of the utilities.

Both parties agree that the Tenants sent a text message on April 17, 2019, in response to the Landlord's text message, saying that they would be moving out at the end of April 2019. The Landlord confirmed receipt of this on April 17, 2019. The Tenant also confirmed that he did not provide his forwarding address in writing for the return of his security deposit to the Landlord, other than via his Notice of Hearing.

Landlord's application

The Landlord is seeking the following items:

- 1) \$2,600.00 – Rental losses

The Landlord is seeking \$2,000.00 for the month of May 2019, plus \$200.00 for the months of June, July and August of 2019 because they had to accept lower rent in order to keep the rental unit occupied. More specifically, the Landlord stated that he found a new tenant on May 4, 2019, and signed a tenancy agreement on that day. However, that tenancy was not to start until September 1, 2019, which left almost 4 months where

the Landlord had to fill the rental unit with short term rentals. In doing so, the Landlord stated that he only was able to get \$1,800.00 per month for June, July and August, and nothing for May. The Landlord is seeking to recover these amounts up until the time the new tenancy began in September 2019.

The Tenant confirmed that one of the other tenants sent the Landlord a text message on April 17, 2019, saying they would be moving out at the end of the month. The Tenant stated that he thought that he was allowed to end the tenancy in this manner given how the tenancy agreement was set up.

2) \$210.00 - Cleaning expense

The Landlord provided a receipt showing that they had to pay \$210.00 to a cleaning company to come in and clean up the suite at the end of the tenancy. The Landlord stated that the Tenants left garbage behind, as well as a dirty bathroom and kitchen appliances. The Landlord pointed to the photos they took at the end of the tenancy, which show debris and stains on the stove, microwave, inside the oven, and also debris strewn about on the patio and elsewhere. The Landlord stated that they hired a cleaner to come. The Landlord stated that the unit was professionally cleaned at the start of the tenancy, so the Tenants should be responsible for this.

The Tenant feels they left the unit in an acceptable state, and that it was cleaner than when they arrived. The Tenant does not feel he should have to pay for this charge. The Tenant provided some photos taken at move-out, showing some zoomed-out photos of the kitchen, and a couple photos of the washroom. These photos show some dirt and debris, but also indicate that some cleaning had been done.

3) \$95.00 – Floor mats

The Landlord stated that he paid for a few “floor covers” for the interior carpets and while the Tenants were living in the rental unit, they damaged them, and now they are no longer useable. The Landlord stated that these mats were installed to cover and protect the carpets in a few key areas. Receipts were provided.

The Tenant acknowledged that this damage may have occurred and stated he does not dispute this amount or that it is their responsibility.

4) \$208.56 – Utilities Bills

The Landlord provided a copy of the utility bill (BC Hydro) into evidence with a breakdown of the costs, the amounts, and the periods for which the Tenants are responsible. The Landlord stated that this bill covers up until the time the Tenants moved out. The Landlord is seeking to recover 1/3 of their bill, as per the tenancy agreement.

The Tenant stated he does not dispute that they owe this amount, and he acknowledged that they had to pay 1/3 of the bills.

Tenant's application

1) \$4,000.00 – Rent refund of 2 months (September and December 2019)

The Tenant stated that on his initial application, he listed that he was looking for \$4,200.00. However, he has now seen the tenancy agreement and changed his application so that he is only seeking \$4,000.00 for 2 months' worth of rent. The Tenant stated that he is seeking to recover September 2018 rent because when they went to move in, on September 1, 2018, the carpets were wet and they could not properly move all of their belongings into the unit. The Tenant stated that he and the other Tenants moved most of their belongings into the rental unit on September 1, 2018, but kept all these items in the living room. The Tenant stated that the other rooms were too wet to move furniture into and he stated that they were not able to move their belongings fully into the rental unit until September 7, 2018.

The Tenant stated that he is also seeking a full refund for December 2018 rent. The Tenant stated that in December, the Landlord had to replace a fire alarm, repair a small hole in the drywall near where the shoes are stored, and install a new washing machine. The Tenants stated that the place was under "complete" renovation to patch and fix the drywall.

The Landlord stated that he has always maintained the property, and feels the Tenant is grossly exaggerating. The Landlord stated that there were a couple things that he wanted to fix (small hole in the drywall, fire alarm, and install new washing machine) and so he found a time that would work for the Tenants. The Landlord stated that he arranged this time in December to do the small jobs because this is when the Tenants were away (went home for Christmas). The Landlord stated that these jobs were all very small in scope and none of this was brought forward to them as an issue at the time.

Analysis

For each of the applications before me, the applicant bears the burden of proof to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I first turn to the Landlord's application. It will be addressed in the same order as above:

1) \$2,600.00 – Rental losses

The Landlord is seeking \$2,000.00 for the month of May 2019 because the rental unit sat empty due to the Tenant's short notice and his inability to re-rent the unit with such short notice. The Landlord is also seeking \$200.00 for June, July and August of 2019 because he was only able to re-rent it on a short term basis, for a reduced rent of \$1,800.00, which cost him \$600.00 over those months.

I find it important to note that the Tenants were under a fixed term tenancy agreement until the end of April 2019 and after that the tenancy reverted to a month-to-month tenancy agreement at the start of May 2019. I note the following section of the *Act*:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, I note rent is due on the first of the month. Furthermore, in order to avoid any responsibility for rent for May 2019, the Tenants would have needed to provide their notice to end this tenancy by the end of March 2019.

I note the Tenants gave notice, and the Landlord received this Notice on April 17, 2019. Although text message is not typically a proper way, under the *Act*, to serve a notice, I

note the Landlord understood the nature of the notice, and I find the Landlord received and accepted the Tenants Notice as of April 17, 2019. That being said, the Tenant only gave around 12 days' notice, which is not sufficient under the Act. As such, I find the Tenants breached the Act, and contributed to the Landlord's loss of rent for the month of May 2019. I find the Tenants ought to be responsible for some of these rental losses. However, I also find there is insufficient evidence as to how the Landlord mitigated his losses for May (or June, July and August). He provided no direct testimony and no documentary evidence to show when he reposted the ad, how many times he showed it, how many inquiries he had and why he was unable to re-rent it sooner.

I note the Landlord signed a new tenancy agreement on May 4, 2019, and it appears the Landlord signed a new tenancy agreement fairly quickly. However, it is not clear, based on the evidence presented, why the Landlord chose to rent the unit to someone who did not want to move in until several months later, which left the Landlord in a position where he had to find short term occupants until the longer term tenants moved in in September 2019.

Ultimately, I find the Tenants breached the tenancy agreement and the Act by ending their tenancy in the manner they did, without proper notice. As such, they are responsible for some of the costs to the Landlord. However, I am not satisfied that the Landlord sufficiently mitigated his losses, so I find he is not entitled to the full amount of his claim.

I note the following relevant portions of the **Policy Guideline #5 – Duty to Minimize Loss:**

Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim... Efforts to minimize the loss must be "reasonable" in the circumstances.

[...]

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

Given the totality of the situation, I find a more reasonable amount is 50% of rent for the month of May 2019 (\$1,000.00). I award the Landlord this amount. With respect to the Landlord's request for compensation for June-August 2019 (\$200.00 x 3), I find it important to note that the Tenants were not under a fixed term tenancy agreement after April 2019, and I find they are not responsible for rental losses beyond the month of May, which was partially awarded above due to their short notice that they would be moving.

2) \$210.00 - Cleaning expense

After reviewing the documentary evidence and testimony on this matter, I turn to the following portion of the Act:

Leaving the rental unit at the end of a tenancy

- 37** (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

The Landlord provided a receipt showing that they had to pay \$210.00 to a cleaning company to come in and clean up the suite at the end of the tenancy. Although the Tenant feels the unit was left in a reasonable state, and that he should not have to pay for this item, I find the pictures taken at the end of the tenancy show a different story. I note there was some garbage left behind, and general debris. I also note the oven was very dirty, as was the top of the stove. I find the photos provided by the Landlord sufficiently show that there was cleaning required after the Tenants left and that some of the appliances were not "reasonably clean". I award the full amount of this item, as I find it is a reasonable amount to pay, given the condition.

3) \$95.00 – Floor mats

Both parties agreed the Landlord had a few floor mats in the rental unit which may have been damaged by the Tenants. In the hearing, the Tenant stated he did not dispute this item and was willing to pay for it. I award this item, in full.

4) \$208.56 – Utilities Bills

The Landlord provided a copy of the utility bill (BC Hydro) into evidence with a breakdown of the costs, the amounts, and the periods for which the Tenants are responsible.

The Tenant stated he does not dispute that they owe this amount, and he acknowledged that they had to pay 1/3 of the bills.

I award this amount in full.

Tenant's application

2) \$4,000.00 – Rent refund

The Tenant is seeking a full rent rebate for September 2018, and December 2018. I note monthly rent is \$2,000.00 as per the tenancy agreement. I also note the Tenants moved in on September 1, 2018. The Landlord did not dispute that they had just finished cleaning the carpets when the Tenants moved in. The Tenant stated that this prevented them from being able to fully move in until around a week later when he asserts the carpets finally dried out. I have considered that the Tenants may have been inconvenienced by the damp carpets, due to cleaning. However, I note they still had access and possession of the entire space. I further note they had access and use of the laundry, the kitchen, and the bathroom. I acknowledge there may have been some inconvenience from the wet carpets and that it may have delayed the Tenants from moving their furniture into their bedrooms for a few days. However, there is insufficient evidence to show that the Tenants use of the rental unit was impeded such that they would be entitled to a full month rent back.

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, for the month of September, I award a nominal amount of \$200.00 to reflect the brief loss of use at the start of the month, while the carpets dried out.

With respect to December 2018, I find the Landlord's testimony on this matter was more clear and compelling. I accept that the Landlord had to repair a minor hole in the drywall, a smoke alarm, and also had to replace the washing machine. Based on the Landlord's clear testimony, I also accept that the Landlord largely scheduled these fixes and repairs in a way that worked for the Tenants (over Christmas while they were away). I find the evidence suggests that these repairs were minor and the impact was likely minimal on the Tenant's use of the space. I don't accept the Tenant's characterization that the rental unit was in a "complete" renovation. I decline to award any compensation for the month of December.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. However, since both parties were partly successful, I decline to award either party with the recovery of the filing fee.

In summary, the Landlord is entitled to:

- 1) \$1,000.00 for Lost rent
- 2) \$210.00 for cleaning
- 3) \$208.56 for outstanding utility bills
- 4) \$95.00 for damaged floor mats
- 5) Total: \$1,513.56

The Tenant is entitled to:

- 1) \$200.00 for September 2018

After offsetting these amounts, I find the Landlord is owed \$1,313.56. Since the Landlord holds the security deposit in the amount of \$1,000.00, I find the Landlord is entitled to an additional \$313.56. In summary, I authorize the Landlord to retain the security deposit of \$1,000.00 in full and I find he is entitled to an additional monetary order in the amount of \$313.56.

Conclusion

The Landlord is granted a monetary order in the amount of **\$313.56**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order

the Landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: August 20, 2019

Residential Tenancy Branch