



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for loss under the tenancy agreement pursuant to section 67; and,
- retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary Matter: Jurisdiction

The landlord has submitted an application seeking monetary compensation in the amount of \$60,000.00. However, the jurisdiction of the Residential Tenancy Branch is limited by section 58 of the *Act* to the monetary limit of the *Small Claims Act*, which is currently \$35,000.00.

In this matter, the landlord's claim exceeds the \$35,000.00 limit. I informed the parties that if we proceeded with the hearing, any compensation awarded in the hearing would be limited to \$35,000.00. I advised the parties that, if they wished to obtain compensation in excess of \$35,000.00, they would need to pursue this claim in the Supreme Court of British Columbia. The landlord agreed to reduce his claim to the \$35,000.00 monetary limit and the hearing proceeded on that basis.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for loss under the tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the tenant entitled to the return of all or a portion of the tenant's security deposit pursuant to section 38?

Background and Evidence

The tenancy agreement started on July 1, 2018. The tenancy was a fixed term tenancy with an end date of June 30, 2020. The rental unit was the top floor of a multi-unit building. The monthly rent was \$5,000.00. The tenant has been living in the building continuously for the 19 years under different tenancy agreements. The parties both agreed that a security deposit of \$3,500.00 from a previous tenancy was transferred to this tenancy.

The tenant testified that the rental unit had persistent water leaks. The tenant testified that he complained numerous times about water leaks in 2018 and 2019. The building completed multiple repairs but the tenant testified that the leaking continued.

The tenant testified that he verbally notified the landlord on May 6, 2019 that he was ending the tenancy because of the water leaks. The tenant sent a letter to the landlord on May 13, 2019 providing written notice that he was ending the tenancy as of June 30, 2019 because of "incessant and continuing water leak". The letter stated that there were "two leaks in the living room ceiling, one leak in the hall closet and one leak in the bathroom ceiling."

The tenant also complained that the rental unit had mold. The tenant presented a mold report as evidence.

The landlord testified that the building spent large amounts of money and effort to repair the roof above the rental unit. The building representatives testified that the building strata association spent over \$40,000.00 repairing the roof this year and over

\$35,000.00 last year. The building representatives that they made multiple repairs to the roof. However, the roof consisted of an EPDM membrane roof which needed to be completely replaced. The building strata association underwent a complete roof replacement from May 6, 2019 to June 24, 2019. They testified that the roof replacement could not be started earlier because they needed to wait for satisfactory weather conditions.

The building representatives testified that the rental unit did not have any significant level of mold. They testified that the tenant's mold report did not disclose mold in the air and the levels of spores was low or undetectable.

The landlord argued that the leaking water was just an excuse used by the tenant to end the tenancy early. The landlord testified that another rental unit in the building became available on July 1, 2019 and the tenant ended this tenancy so he could move into the other rental unit. The tenant denied this allegation. However, the tenant did move into this other rental unit after he vacated the rental unit in dispute. The tenant's new rental unit has rent of \$4,500.00 and it is larger than the rental unit in this dispute.

The landlord testified that he advertised the rental unit on an online classified service after the tenant gave notice that he was ending the tenancy. The landlord provided a copy an online advertisement dated May 16, 2019.

The landlord testified that he has been doing renovation in the rental unit since approximately the third week of July. The landlord did not claim that the renovations were needed to repair damage caused by the tenant. The landlord acknowledged that the classified advertisements were not currently being displayed while the rental unit was being renovated. However, he testified that he planned to immediately resume the advertisements.

Analysis

The landlord is seeking compensation for the loss of rent resulting from the tenant's early termination of the tenancy agreement. Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. 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.

I find that the tenant notified the landlord on May 13, 2019 that he was ending the tenancy on June 30, 2019 even though the parties had a fixed term tenancy with a stated end date of June 30, 2020. Section 45(2) of the *Act* states that a tenant cannot end a fixed tenancy before the stated end date of the tenancy agreement.

The tenant has argued that the termination of the tenancy agreement was justified because the landlord did not timely repair the water leaks.

Section 45(3) of the act states:

If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

However, I find that section 45(3) does not justify the tenant's notice to end tenancy in this matter. I find that the landlord did attempt to make the repairs within a reasonable time. I find that there were numerous repairs undertaken at substantial expense throughout 2018 and 2019. I find that it is not unreasonable to undertake temporary repairs during the winter and then perform a complete repair in May when the weather improved. Further, I find that the tenant issued his written notice to end tenancy on May 13, 2019 after the landlord commenced the complete roof replacement repair on May 6, 2019. I find that that the tenant did not provide the landlord a reasonable time to repair the leaks before issuing his notice to end tenancy.

Accordingly, I find that the tenant breached the tenancy agreement by ending the tenancy early. Furthermore, I am satisfied that landlord has suffered a loss of rent from the tenant's breach of the tenancy agreement by having the rental unit vacant since June 30, 2019.

However, I am not satisfied that the landlord has provided sufficient evidence to establish that he has taken reasonable measures to mitigate his loss the entire time since the tenant vacated the rental unit. I find that the online advertisement has not even been posted while the property was being renovated from the third week of July 2019 to the date of the hearing. The tenant cannot be held responsible for the landlord's loss of rent when the landlord is not even trying to market the rental unit. In order to receive compensation from the tenant, the landlord must exert reasonable effort to market the property and minimize his losses. I find that the landlord cannot expect compensation from the tenant for loss of rent while the landlord has voluntarily taken the rental unit to make improvements which were not necessitated by tenant's conduct. The landlord is of course at liberty to make whatever renovations he wishes to his property. However, he cannot hold the tenant responsible for the loss of rent while he does so.

Accordingly, I find that, since the tenant vacated the rental unit, the landlord has only exerted reasonable measures to mitigate his losses from July 1, 2019 to the third week of July when the landlord started the renovation. Accordingly, I find that the landlord is entitled to loss of rent of \$3,750 for loss of rent since the date the date vacated the rental unit, being three-quarters of the monthly rent of \$5,000.00.

I find that the landlord's claim future losses of rent from the date of the hearing to June 30, 2020, the ending date stated in the tenancy agreement, are too speculative to be awarded compensation. The landlord has not proven, on a balance of probability, both that he will resume marketing the rental unit after the hearing and that he will be unable to rent the rental unit to another tenant before June 30, 2020. The landlord did not provide any evidence as to how likely it would be to find a new tenant before June 30, 2020. I find this claim too speculative and I find that the landlord has not provided sufficient evidence to prove this loss.

Accordingly, I grant the landlord monetary compensation in the amount of \$3,750.00. I find that the landlord holds a security deposit of \$3,500.00 which may be deducted from the damages owed by the tenant pursuant to section 72(2)(b) of the Act leaving a balance of \$250.00 owed by the tenant. Accordingly, I grant the landlord a monetary order in the amount of \$250.00.

Conclusion

The landlord is authorized to retain the entire security deposit.

I grant the landlord a monetary order in the amount of **\$250.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to 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 24, 2019

Residential Tenancy Branch