Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL, MNRL, MNDCL -S, FF

Introduction

This hearing was convened in response to an application by the landlord made May 22, 2019 for a Monetary Order under the *Residential Tenancy Act* (the Act) for damage and loss, unpaid rent, and to recover the filing fee.

Both parties participated in the hearing, with the tenant being represented by their claimed legal counsel (the tenant). The tenant acknowledged receiving all the document and photo evidence of the landlord which was submitted in accordance with the Rules of Procedure. I accepted the landlord's acknowledgement they received all the tenant's evidence as submitted to me. Each party provided testimony during the hearing. The parties were provided opportunity to mutually resolve or settle the dispute to no avail. Prior to concluding the hearing both parties acknowledged presenting all the *relevant* evidence that they wished to present.

Preliminary matters

At the outset of the hearing the landlord orally amended their original stated claim to complement their Monetary Order Worksheet totalling $7444.89. The landlord acknowledged they had not amended their application to accommodate a latter claim submission for $625.00. As a result, this portion of the landlord's claim was preliminarily dismissed without leave to reapply.

The hearing proceeded on the merits of the landlord's original application. I have reviewed all oral, written and document evidence before me that met the requirements of the Rules of Procedure. However, only the evidence *relevant* to the landlord's application and the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed by the parties. The tenancy began October 01, 2018 as a fixed term tenancy agreement ending June 30, 2019 and which ended May 24, 2019. I have benefit of the tenancy agreement which states that the rent in the amount of $4540.00 was payable in advance each month for the furnished house. At the outset of the tenancy, the landlord collected a security deposit and a pet damage deposit from the tenant in the sum of $4540.00. The parties agreed the deposits would be retained in its entirety by the landlord pursuant to **Section 38(4)(a)** of the Act to offset the unpaid rent for the month of May 2019.

The parties agreed they conducted a mutual inspection of the unit at the start of the tenancy. The landlord provided into evidence the Condition Inspection Report (CIR) indicating the parties agreed the report fairly represented the condition of the unit at the start of the tenancy. The landlord also provided some photo images of the residential property as well a list of items left by the landlord as part of the tenancy agreement. The landlord testified that the tenants were not present during the entire move out inspection by the landlord; however, the evidence is that the tenant signed the move out CIR stating certain damage and agreeing to the landlord retaining the deposits of the tenancy for unpaid rent.

The landlord filed their claim in part for loss other than damage to the unit. The landlord makes the following monetary claims as per their "Monetary Order Worksheet" document.

Landlord's application

The relevant evidence in this matter is as follows. The landlord provided evidence that on May 07, 2019 the landlord served the tenant with a 10 Day Notice for Unpaid Rent for May 2019. The tenant did not pay the unpaid rent nor disputed the Notice within the 5 days permitted to do so. The tenant vacated May 24, 2019 and the rent for the last month of occupancy was effectively subsequently satisfied. The landlord seeks the rent for June 2019. The landlord submitted an advertisement dated May 29, 2019, 4:26 p.m. with a view to attracting a tenant for June 01, 2019, without success. They testified the advertisement was taken down June 02, 2019 in favour of the landlord moving back into the rental unit. The tenant testified the landlord has not met their burden to reasonably mitigate their claim of $4540.00 by withdrawing efforts to re-rent the unit.

The landlord claims $45.00 as a service fee charged by their financial institution for the return of the tenant's May 2019 rent payment instrument. The landlord testified they submitted the tenant's rent ledger as proof of the 'NSF' charge to the landlord. In absence of proof the landlord was charged $45.00 the tenant disputed the amount.

Associated with the landlord's claim for June 2019 rent, the landlord seeks a $200.00 "administration fee" and a "lease breaking fee" of $2270.00, which the landlord acknowledged as a representation of *liquidated damages* for ending the tenancy earlier than contracted. The tenant argued that the "administration fee" of $200.00 may be reasonable given an

inconvenience for the landlord, however $2270.00 in addition to the “administration fee” without adequate mitigation is excessive and unconscionable and therefore amounts to be a penalty.

The landlord claims a devaluation of the refrigerator because of a noticeable dent to the unit’s freezer door cap (top). The landlord provided a photo image of the indentation depicting it as approximately the size of a dollar (Loonie) coin, for which the landlord seeks $100.00. The tenant did not effectively dispute the claimed damage however argued the landlord’s lack of additional definitive evidence that $100.00 was the appropriate devaluation in this matter.

The landlord claims a devaluation of night table in the sum of $160.00 due to noticeable lubricant or oil stains in the night table’s drawer bottoms and the stand itself. The landlord provided photo images of the inner drawer bottoms depicting oil markings claimed by the landlord to be permanent. The tenant disputed the claimed damage as being acceptable wear and tear for an 8-month tenancy and further argued the landlord’s lack of additional definitive evidence that $160.00 as the appropriate devaluation in this matter.

The landlord claims a sum of $15.00 for 3 burned out bulbs. The tenant argued the landlord’s lack of receipts in support of the claimed amount.

The landlord claims $134.00 for a missing area rug. The tenant did not dispute the absence of the rug in this matter, however argued the lack of a receipt to support the landlord’s claimed amount.

The landlord claims $100.00 for a broken, *“custom” wooden floor vent cover*. The tenant did not dispute the cover was damaged and testified that they were not disputing the landlord’s estimate for its replacement.

The landlord claims $100.00 for remediation of the backyard grassed area left with random bare patches, purportedly from the tenant’s pet urine. The landlord provided photo images of the affected grassed area depicting a series of bare spots of the grass. The tenant argued that the payable monthly rent included $200.00 each month for landscaping service which ought to cover the landlord’s $100.00 claim. The landlord testified that the required reseeding of the grass damage was above and beyond what the landscaping service provided.

Analysis

The full text of the Act, Regulation, and other resources can be accessed via the RTB website: ***www.gov.bc.ca/landlordtenant***

The landlord, as applicant, bears the burden of proving their monetary claims. I have reviewed all relevant submissions of the parties. On the preponderance of the relevant document and photograph submissions, and the relevant testimony of the parties, I find as follows on a balance of probabilities.

It must be known that pursuant to **Section 37** of the Act a tenant is not responsible for reasonable or normal wear and tear of a rental unit. The landlord is claiming the tenant is responsible for *damage*: that is, destruction, breakage, collapse, or conditions exceeding reasonable wear and tear under normal circumstances.

Section 7 of the Act provides as follows in respect to the landlord's claims for loss and damage made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find the test established by **Section 7** of the Act is as follows,

1. *Proof the loss exists,*
2. *Proof the loss was the result, solely, of the actions of the other party in violation of the Act or Tenancy Agreement*
3. *Verification of the actual amount required to compensate for the claimed loss.*
4. *Proof the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss.*

Effectively, the landlord bears the burden of establishing their claims pursuant to the entire test established by Section 7 proving *the existence of a loss* and that it *stemmed directly from a violation of the agreement or a contravention of the Act on the part of the tenant.* Once that has been established, the landlord must then *provide evidence that can reasonably verify the monetary value or amount of the loss.* Finally, the landlord must show that *reasonable steps were taken to address the situation, and to mitigate or minimize a loss claimed.*

Landlord's claim

I am satisfied that the parties administered the deposits of the tenancy, in the sum of $4540.00, pursuant to **Section 38(4)(a)** of the Act.

I find that a tenant who signs a fixed term tenancy agreement is responsible for the rent to the end of the term. The landlord's claim in this matter is subject to their statutory duty pursuant to **Section 7(2)** of the Act above to do whatever is reasonable to minimize the damage or loss.

While I may accept that the tenant contravened the fixed term agreement I find the landlord withdrew their course to attract a new tenancy immediately following June 01, 2019. I find that the landlord did not take enough reasonable steps to minimize the loss in this situation. As a result, **I dismiss** the landlord's claim for June 2019 rent, without leave to reapply.

Residential Tenancy Regulation 7(1)(c) states that a landlord may charge a tenant a service fee charged by a financial institution to the landlord for the return of a tenant's cheque. In this matter I have not been provided sufficient evidence to verify the amount charged by a financial institution to the landlord in support of their claim for an "NSF" fee of $45.00. As a result, I must **dismiss** this portion of the landlord's claim, without leave to reapply.

The landlord's "Lease break fee" and/or "administration fee" amount to a claim for *liquidated damages* by the landlord. A *liquidated damages* clause, to not be a penalty, must solely represent or state that amount which the parties agreed, at the outset of the tenancy, as a genuine pre-estimate of charges or costs incurred by the landlord to re-rent the unit in the event the tenant breaches the fixed term nature of the tenancy agreement. If the amount for liquidated damages is extravagant in comparison to the greatest loss or cost that would be incurred by the landlord to re-rent the unit, the liquidated damages clause may be interpreted as a penalty or unconscionable, and therefore unenforceable in legal proceedings. Further, if the clause is unclear, ambiguous, or contradicting, the landlord may not rely on its intended operation pursuant to the legal doctrine of *Contra Proferentem. Contra Proferentem* refers to a standard in contract law stating that if a clause in a contract appears to be ambiguous or is unclear, it should be interpreted against the interests of the person who insisted that the clause be included, in this case against the landlord. As a primary result of all the above I find that the landlord's claim for liquidated damages of $200.00 and $2270.00, totaling $2470.00 is not a genuine pre-estimate of charges or costs incurred by the landlord to re-rent the unit and therefore are extravagant; and in the landlord's own references within their application are "penalties". I therefore must **dismiss** this portion of the landlord's claim, without leave to reapply.

I accept that the landlord has provided sufficient evidence showing that the refrigerator door encountered a small dent on the top of the refrigerator freezer door during the tenancy. I do not accept that the dent affected the useful life of the refrigerator unit; therefore, as proposed by the landlord it is appropriate that I grant the landlord an amount representing a devaluation of the refrigerator. I find the landlord's claim in this matter of **$100.00**, on a balance of probabilities, is not unreasonable; therefore, I award them this amount.

Contrary to the tenant's arguments respecting the oil markings left in and on the night table stands, I find they are not a representation of reasonable wear and tear for an 8 month tenancy, as they proposed. Rather, I find the oil markings or staining have damaged the night table units. I find the landlord's claim in this matter of **$160.00**, on a balance of probabilities is not an unreasonable amount representing devaluation of the night tables; therefore, I award them this amount.

I find the landlord did not provide receipts in support of their claim of $15.00 for 3 light bulbs. As such I find the landlord has not met the test established by Section 7 of the Act. As a result, I must **dismiss** this portion of the landlord's claim.

I find the landlord did not provide a receipt or an estimate in support of their claim of $134.00 for a missing area rug. I find the landlord has not met the test established by Section 7 of the Act. As a result, I must **dismiss** this portion of the landlord's claim.

I accept the undisputed evidence that the landlord is owed a quantum for a broken *"custom" wooden floor vent cover.* On a balance of probabilities, I accept the landlord's claim in this matter and award them **$100.00.**

I find that the tenant did not effectively dispute the landlord's claim the tenant's pet(s) caused bare spots to the backyard grass. I find the tenant limited their evidence to arguing the damage should have been covered by the payable rent as part of the landscaping service included in the rent; and, the landlord testified that reparation of damage to the backyard lawn was not part of the landscaping service. Based on the available evidence for this matter, I find it reasonable that a landscaping service would include a modicum of lawn repair. However, in this matter I find the needed lawn repair extensive. Therefore, I accept the landlord is owed a reasonable amount for repairing the lawn damage. On a balance of probabilities, I find the landlord's claim of $**100.00** for labour and materials to repair the lawn damage is not extravagant therefore I grant them this amount.

As the landlord was partially successful in their application they are entitled to recover their filing fee from the tenant.

Calculation for Monetary Order is as follows:

Refrigerator door dent	$100.00
Oil markings, or staining, of night table units	$160.00
broken *custom* wooden floor vent cover	$100.00
Backyard grass damage	$100.00
landlord's filing fee	$100.00
total of landlord's awards / Monetary Order to landlord	**$560.00**

I grant the landlord a **Monetary Order** under Section 67 of the Act in the amount **$560.00.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application in part has been granted, and the balance dismissed.

This Decision is final and binding.

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: September 04, 2019

Residential Tenancy Branch