Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1194763 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary Order for $1,050.00 in rent, claiming against the Tenant's security deposit, and to recover the cost of their filing fee.

The Tenant and two agents for the Landlord, A.P. and B.C. (the "Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. The Tenant had a witness, G.K., available to be called on, if necessary.

During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders

sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy was scheduled to begin on June 1, 2019, with a monthly rent of $1,050.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $525.00, and no pet damage deposit.

The Parties agreed that the Tenant did not move in to the rental unit, as intended. The Tenant said in the hearing that she intended to move in, but on the day that she arrived with her possessions, she discovered that the rental unit had not been fully cleaned, the refrigerator was missing, and there was a water leak in the bathroom that had not been there before.

The Tenant said that she panicked, because she had no where to go. She said:

> I had a 16-foot cube truck ready to move in. I paced around inside – I thought I can't move in here, I have to work the next eight days. I'm not going to leave my personal belongings when I'm away at work and random people coming in to clean and fix the place. I couldn't afford to miss work, so I decided to not unload my stuff.

The Landlord said:

> What I hear is that there were three issue – the water leak, it was not clean, and a missing fridge. The water leak was not there when viewed on the first [of June]; she noticed it on the second. Something happened overnight. This is common. If it happens, we will address it. We also didn't know until that morning. When we know it, we don't let it stand like that. We need to be given an opportunity to fix it. As far as it not being clean, we all have our own definition of clean. I rent several places. When we are moving in and out with a place, there's a bit of an issue with

> cleanliness. It's not a reason to cancel a lease, because a unit is not clean enough.
>
> Re the missing fridge – we were actively taking care of it. The cleaners realized that the fridge was not clean enough. They were in the process of getting another fridge. I rent out almost 70 units in that area. We keep appliances on hand. We realized the fridge was not working. Our care takers were going to replace it. We were taking proactive measures. We decided to do it on our own. That's what my comments are on the fridge.

There is no evidence before me that the Tenant contacted anyone when she arrived to enquire about the apparent deficiencies in the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

As set out in section 16 of the Act, "The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit." [emphasis added] In this case, the tenancy agreement was signed by the Parties on May 16, 2019.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

A Tenant's right and procedure to end a tenancy is set out in section 45(3) 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
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> > (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.
>
> **. . .**

(3) 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.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

RTB Policy Guideline #8 ("PG #8") interprets "material term":

Material Terms

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

<u>To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing</u>:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute

> arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.
>
> [emphasis added]

The Tenant did not point to a term of the tenancy agreement that she suggested was "material" that the Landlord had breached. The Tenant did not give the Landlord written notice of her concerns and give the Landlord a reasonable opportunity to fix the problem. I find that the Tenant's complaint did not involve the Landlord having failed to comply with a material term of the tenancy agreement.

In the circumstances before me, as set out in the evidence, I find that the Tenant was obligated to pay rent. There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord. Pursuant to section 26 of the Act, I, therefore, award the Landlord **$1,050.00** in recovery of the unpaid rent.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of $525.00 in partial satisfaction of the Landlord's monetary claim. I award the Landlord with the balance remaining in this award against the Tenant in the amount of $525.00.

As the Landlord is successful in his Application, I also award the Landlord recovery of the $100.00 Application filing. I grant the Landlord a total monetary order of **$625.00**.

Conclusion

The Landlord's claim for recovery of rent owing is successful in the amount of $1,050.00. The Landlord is also awarded recovery of the $100.00 filing fee for this Application from the Tenant. The Landlord is authorized to retain the Tenant's $525.00 security deposit in partial satisfaction of this claim.

I grant the Landlord a Monetary Order under section 67 of the Act from the Tenant for the remainder of the award owing in the amount of **$625.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 28, 2019

Residential Tenancy Branch