



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

A hearing was convened on October 15, 2019 in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit; to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of her security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that on July 12, 2019 the Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch in July of 2019 were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Tenant stated that on July 24, 2019 the Dispute Resolution Package and the evidence the Tenant submitted to the Residential Tenancy Branch in July of 2019 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

In September of 2019 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on September 03, 2019. The Tenant stated that she received this evidence on October 08, 2019 or October 09, 2019. As this evidence was served to the Tenant in accordance with the Residential Tenancy Branch Rules of Procedure, it was accepted as evidence for these

proceedings. The Tenant declined the opportunity for an adjournment for the purpose of having more time to consider the Landlord's evidence.

The hearing on October 15, 2019 was adjourned for reasons outlined in my interim decision.

The hearing was reconvened on November 19, 2019 and was concluded on that date. At the reconvened hearing the Landlord and the Tenant each acknowledged that they are now in possession of colour photographs the other party submitted as evidence.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All documentary evidence accepted as evidence for these proceedings has been reviewed, although it is only referenced in this decision if it is directly relevant to my decision.

Preliminary Matter #1

In her Application for Dispute Resolution the Landlord applied for a total of \$3,000.00. At the hearing she clarified that her claim was for only \$2,200.00, which included lost revenue for July of 2019, \$100.00 for cleaning, and \$100.00 for the filing fee.

Preliminary Matter #2

At the hearing on November 19, 2019 the Tenant stated that she submitted copies of the colour photographs to the Residential Tenancy Branch, which she had previously submitted as evidence to the Residential Tenancy Branch. The Tenant was directed to submit these photographs in my interim decision.

At that hearing the Tenant stated that she submitted those photographs to the Residential Tenancy Branch in Burnaby, BC, in person, on October 30, 2019. This testimony is corroborated by Residential Tenancy Branch audit notes.

At the hearing the parties were advised that I could not located copies of the colour photographs re-submitted by the Tenant on October 30, 2019 and that I would obtain copies of the colour photographs prior to rendering this decision.

After the hearing ended, I was able to locate the photographs that had been re-submitted and I realized they were available to me at the time of the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for cleaning the unit and to compensation for unpaid rent/lost revenue?

Is the Tenant entitled to a rent refund because the rental unit was not clean and/or for compensation for moving?

Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

At the hearing on October 15, 2019 the Landlord and the Tenant agreed that:

- the tenancy began on June 01, 2019;
- the parties signed a tenancy agreement for a fixed term, the fixed term of which ended on May 31, 2020;
- the Tenant agreed to pay monthly rent of \$2,000.00 by the first day of each month;
- the Tenant paid rent for June of 2019;
- the Tenant paid a security deposit of \$1,000.00;
- a condition inspection report was not completed at the beginning of the tenancy;
- the parties discussed the possibility of ending the tenancy prior to May 30, 2020, by email;
- on June 12, 2019 the Tenant informed the Landlord she would be vacating the rental unit on June 30, 2019;
- the rental unit was vacated on July 01, 2019.
- the parties did not sign a mutual agreement to end the tenancy;
- the Tenant provided the Landlord with a forwarding address, in writing, on July 01, 2019; and
- a condition inspection report was not completed at the end of the tenancy.

At the hearing on November 19, 2019 the Landlord and the Tenant agreed that the Tenant was provided keys to the rental unit on May 31, 2019.

The Landlord is seeking compensation, in the amount of \$2,000.00, for lost revenue from July of 2019. The Landlord is seeking this compensation because the Tenant left without providing proper notice.

The Tenant submitted a copy of an email the Landlord sent to the Tenant on June 08, 2019. It is very clear from this email that the Landlord is offering to allow the Tenant to end the tenancy before the end of the fixed term of the tenancy. There is no mention that this offer is conditional on the Landlord finding a new tenant who was willing to pay the same monthly rent.

The Tenant submitted a copy of a second email the Landlord sent to the Tenant later in the day on June 08, 2019. It is very clear from this email that the Landlord is offering to allow the Tenant to end the tenancy before the end of the fixed term of the tenancy, provided the Landlord is able to find a new tenant who was willing to pay the same monthly rent.

The Tenant stated that on June 10, 2019 she received an email from the Landlord in which she gave the Tenant permission to leave early, with no mention of the need to first find a replacement tenant. The Landlord acknowledged that there was no mention of the need to find a replacement tenant in the June 10, 2019 email. She stated that the terms of her offer had not changed on June 10, 2019 and she sent that email simply to determine if the Tenant intended to move.

The Tenant submitted a copy of an email the Landlord sent to the Tenant on June 10, 2019. In this email the Landlord refers to her offer to release the Tenant from her lease, although she does not mention the terms of her offer.

The Tenant submitted a copy of an email the Landlord sent to the Tenant on June 12, 2019. In this email the Landlord reiterates her offer to allow the Tenant to end the tenancy if the Landlord is able to find a new tenant.

At the hearing on October 15, 2019 the Landlord stated that:

- she advertised the rental unit for rent, on a popular website, on June 26, 2019;
- she showed the unit to three prospective tenants;
- in June of 2019 she began the process of selling the rental unit;
- on July 07, 2019 she advertised the rental unit for sale; and
- the rental unit was sold on July 26, 2019.

At the hearing in October 15, 2019 the Tenant stated that a for sale sign was posted on the property in June of 2019. The Landlord disputes this submission.

At the hearing on November 19, 2019 the Tenant stated that her evidence shows the rental unit was placed on the market on June 19, 2019. At the second hearing the Landlord agreed that the rental unit was placed on the market on June 19, 2019.

The Tenant is seeking a rent refund of \$2,000.00. She contends that the rental unit was not properly cleaned at the start of the tenancy and that she could not, therefore, properly move into the unit.

In her written submission the Tenant outlined the deficiencies with the rental unit, which included:

- the fridge was dirty;
- the blinds were dirty;
- the shower in the master bathroom was dirty;
- there was cat feces on the wall;
- there was cat litter in the carpet;
- there were food particles on the kitchen island; and

- the washing machine was dirty.

At the hearing on October 15, 2019 the Landlord stated that the rental unit was clean when it was provided to the Tenant at the start of the tenancy. She stated that there is a construction site near the window and that she had to dust the blinds on a weekly basis. She acknowledged that some minor cleaning may have been required at the start of the tenancy; but she maintains it was relatively clean.

The Landlord did not submit photographs of the rental unit that were taken at the start of the tenancy.

At the hearing on November 19, 2019 the Landlord stated that any dirt that can be seen in the Tenants' photographs accumulated after the start of the tenancy.

The Tenant submitted photographs of the rental unit that she said were taken on June 04, 2019 and June 08, 2019. At the hearing on October 15, 2019 the Tenant stated that several areas of the rental unit, such as the fridge and the shower, had been cleaned prior to June 04, 2019. At the hearing on November 19, 2019 the Tenant stated that all of the dirt shown in her photographs was present at the start of the tenancy.

The parties agree that the Landlord offered the Tenant \$100.00 in compensation for cleaning the rental unit, which the Tenant declined. The Landlord stated that she offered this compensation merely as a show of "good will".

The Tenant submitted an email from a personal friend who viewed the rental unit at the start of the tenancy. In the email the friend describes various areas of the unit that needed cleaning.

The Tenant is seeking \$1,400.00 in compensation for emotional stress, moving costs, and loss of income. The Tenant stated that she paid \$450.00 for movers and she had to take two days off of work because of the need to move. The Tenant contends that the Landlord should have had the rental unit professionally cleaned, which she estimates would have cost between \$300.00 and \$500.00.

The Landlord stated that she did not agree to have the rental unit professionally cleaned because she did not believe additional cleaning was required.

The Landlord is seeking compensation of \$100.00 for cleaning the rental unit. She stated that she and a third party spent approximately 5 hours cleaning the rental unit after the Tenant vacated. The Landlord submitted photographs of the rental unit that she stated were taken on July 01, 2019.

The Tenant stated that the rental unit was cleaner at the end of the tenancy than it was at the start of the tenancy. She agreed that the photographs submitted by the Landlord fairly represent the condition of the rental unit at the end of the tenancy.

Analysis

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with sections 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*.

There is no evidence to suggest that the Landlord gave notice to end the tenancy pursuant to sections 46, 47, 48, 49, 49.1, and 50 of the *Act*. I therefore find that the Landlord did not end this tenancy pursuant to section 44(1)(a) of the *Act*.

Section 45(1) of the *Act* specifies how a tenant can end a periodic tenancy. As this tenancy was not a periodic tenancy, I find that the Tenant did not have the right to end this tenancy pursuant to section 45(1) of the *Act*.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and 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.

As this was a fixed term tenancy, the fixed term of which ended on May 30, 2020, I find that the Tenant did not have the right to end this tenancy pursuant to section 45(2) of the *Act* until May 30, 2020.

Section 45(3) of the *Act* stipulates that 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.

A material term of a tenancy 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. 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 in another. I find it entirely possible that providing a filthy rental unit to a tenant at the beginning of a tenancy could be considered a breach of a material term of a tenancy agreement.

I find that the Tenant has submitted insufficient evidence to establish that the condition of the rental unit at the start of the tenancy was sufficiently dirty to be considered a breach of a

material term of the tenancy agreement. I therefore find that the Tenant did not have the right to end this tenancy pursuant to section 45(3) of the *Act*.

As the Tenant did not have the right to end this tenancy pursuant to section 45 of the *Act*, I find that the Tenant did not end this tenancy pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As the fixed term of this tenancy ended on May 30, 2020, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. On the basis of the emails submitted in evidence, I find that the parties did not mutually agree to end this tenancy. I find that the Landlord very clearly informed the Tenant on June 08, 2019 and on June 12, 2019 that the Landlord would agree to end the tenancy before the end of the fixed term of the tenancy only if the Landlord was able to find a new tenant. On the basis of these emails I find that the Tenant knew, or should have known, that ending the tenancy was contingent on the Landlord finding a new tenant.

Although the Landlord sent emails to the Tenant on June 08, 2018 and June 10, 2018 in which the Landlord does not specifically refer to the need to find a new tenant, there is nothing in those emails that would cause me to conclude that the Landlord was changing the terms of the offer to end the fixed term of the tenancy. In the absence of evidence that the Landlord agreed to allow the Tenant to end the tenancy before the end of the fixed term, without any notice or specific terms, I cannot conclude that the Landlord agreed to end the fixed term tenancy unless a new tenant was located. I therefore find that this tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. On the basis of the undisputed evidence that the Tenant vacated the rental unit on July 01, 2019, I find that this tenancy ended on July 01, 2019 pursuant to section 44(1)(d) of the *Act*.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. I find that the evidence does not establish that this tenancy agreement was frustrated, and I therefore find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

Section 26(1) of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *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.

On the basis of the undisputed evidence that rent was due by the first day of the month and that the Tenant occupied the rental unit for a portion of the first day of July of 2019, I find that the Tenant was required to pay rent of \$2,000.00 on July 01, 2019. I find that the Tenant was obligated to pay rent on July 01, 2019 even if she opted to vacate the rental unit prior to the end of July. As the Tenant did not pay the rent that was due on July 01, 2019, I find that the Landlord is entitled to compensation for unpaid rent that was due on July 01, 2019.

As the Landlord was entitled to collect the rent on July 01, 2019, I find it is not necessary for me to determine if the Landlord is entitled to compensation for lost revenue for July of 2019.

As the Tenant was entitled to collect the rent on July 01, 2019, I find it is not necessary for me to determine if the Landlord properly mitigated her losses by advertising the rental unit for rent in a timely manner. As the Tenant was entitled to collect the rent on July 01, 2019, I find it is not necessary for me to determine if the decision to sell the property interfered with the Landlord's ability to find a new tenant.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. It is typically accepted that this section requires landlords to provide tenants with rental units that are reasonably clean at the start of a tenancy.

As outlined in Residential Tenancy Branch Policy Guideline #1, I have the authority to determine whether or not the condition of the rental unit meets reasonable health, cleanliness, and sanitary standards, which are not necessarily my personal standards nor the standards of the Landlord or the Tenant.

On the basis of the photographs submitted in evidence, I find that the rental unit was not provided to the Tenant in reasonably clean condition. I find that the photographs submitted in evidence establish that there were several areas in the rental unit that required a small amount of cleaning, due to food spills and marks on light switches. I find that the photographs show other areas needed a substantial amount of cleaning. For example, the toilet needed cleaning

and there was a significant amount of dust on a cupboard and on blinds which, in my view, is indicative of those areas not being cleaned at all prior to the start of the tenancy.

I note that the quality of photographs submitted in evidence by the Tenant is poor and that many of them are of no evidentiary value due to that poor quality. Many of the photographs simply do not support the Tenant's claim that cleaning was required.

In adjudicating the cleanliness of this rental unit, I have placed no weight on the Tenant's testimony that she cleaned the rental unit prior to photographing it. While I accept that the Tenant cleaned areas of the unit, in absence of photographs prevents me from making an independent, subjective determination of whether cleaning was required.

In adjudicating this matter, I have placed little weight on the email from the Tenant's friend who described the condition of the rental unit. Standards of cleanliness are highly subjective, and I do not find that a biased party's opinion of cleanliness to be very helpful when considering such matters. When a person is claiming compensation for cleaning, I find that the party has a duty to provide objective evidence, such as photographs, to support the claim.

As the rental unit was not provided in reasonably clean condition and the Tenant had to clean the rental unit prior to moving her items into the rental unit, I find that she is entitled to a rent reduction of \$300.00. I find that the need to clean prior to moving into a unit is a significant inconvenience during a move, which in itself is a stressful event.

While I accept a small amount of cleaning was required at the start of the tenancy, I find that the Tenant has submitted insufficient evidence to establish that a large amount of cleaning was required. I certainly do not find that the amount of cleaning required supported the Tenant's decision to move out of the rental unit or that it had a significant impact on the Tenant's right to quiet enjoyment of the rental unit. I therefore dismiss the Tenant's application for a full rent refund and her claim for compensation for emotional stress or any costs associated to moving.

Section 37(2) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

As the evidence shows that the rental unit was not provided to the Tenant in reasonably clean condition, there can be no expectation that the Tenant would leave the unit in reasonably clean condition, given that she only lived in the rental unit for approximately one month. While I accept that the Landlord's evidence establishes that the rental unit was not left in reasonably clean condition, I find that there is insufficient evidence to establish that the areas in need of cleaning were clean at the start of the tenancy. I therefore dismiss the Landlord's claim of \$100.00 for cleaning.

I find that the Landlord's Application for Dispute Resolution has some merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of \$400.00, which includes \$300.00 for cleaning and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

The Landlord has established a monetary claim, in the amount of \$2,100.00, which includes \$2,000.00 in rent for July of 2019 and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

After offsetting the two claims, I find that the Tenant owes the Landlord \$1,700.00. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$1,000.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$700.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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 *Act*.

Dated: November 25, 2019

Residential Tenancy Branch