



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, MT, MNSD, FFL, MNDL, MNRL-S

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlords Use of Property (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

At the outset of the hearing both parties advised and confirmed that the tenant moved out of the unit and that the landlord has taken possession of the unit, accordingly; I dismiss the tenants application save and except for his request for the return of the security deposit and monetary compensation. The hearing proceeded and completed on that basis.

Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent, losses and damages arising out of this tenancy?

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award as compensation for loss or damage under the Act, regulation, or tenancy agreement?

Is the tenant entitled to the return of the security deposit?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on November 1, 2015 and ended on October 15, 2019. The tenant was obligated to pay \$1300.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$500.00 security deposit. The tenant testified that he was given rent increases that did not comply with the Residential Tenancy Regulations and he seeks the recovery of those overpayments in the amount of \$3200.00. The tenant testified that he also made overpayments in terms of B.C. Hydro of \$434.00. The tenant testified that written condition inspection reports were not conducted at move in or move out. The tenant testified that he left the unit in better condition than when he got it. The tenant testified that he also seeks the recovery of the filing fee.

The landlord gave the following testimony. The landlord testified that the tenant negotiated a lower rent of \$1150.00 to start the tenancy on the agreement that he would, when able, raise the amount of rent up to the original \$1300.00 being asked on the advertisement. The landlord testified that the tenant gave self imposed rent increases when his finances allowed as shown by the unusual timing and amounts of increases. The landlord testified that the tenant left without paying his share of the gas

bills as required and as part of the tenancy agreement. The landlord testified that the tenant damaged the unit that required extensive repairs. The landlord testified that the tenant did not pay the rent for September 2019 and October 2019. The landlord testified that they believe that despite issuing a Two Month Notice to End Tenancy for Landlords Use of Property on August 26, 2019, the tenant was still responsible for paying the rent. The landlord seeks \$2600.00 in unpaid rent, \$676.50 in unpaid Fortis B.C. gas bills, \$3677.50 for damages and painting the suite, and \$100.00 for the filing fee for this application.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

It is worth noting that both parties were disorganized when presenting their claim. Both parties referred to evidence and supporting documentation that was not before me. At times, each party's claim lacked clarity or logic. The landlord would add and subtract items from her claim during the hearing and would alter the amount she was seeking. The landlords' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to her monetary calculations. As well for the tenant, who submitted his documentation and calculations for his monetary order in a disorganized and unclear manner without clear and detailed information. I have considered the following: Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

In addition, I have turned my mind to the following when considering the parties claims:

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the tenants claim and my findings as follows.

B.C. Hydro \$434.00

The tenant provided some documentation for this claim however that documentation was vague and nonspecific. In addition, the tenant did not provide all of the actual receipts to reflect the breakdown of amounts and total that he was seeking. Based on the insufficient evidence before me, I dismiss this portion of the tenants claim.

Rent Rebate - \$3200.00

The tenant did not provide sufficient documentation during the tenancy advising the landlord of his concerns in regard to the rent increases. The tenant only raised the issue of rent increases after the tenancy ended. The landlord provided clear and compelling testimony in that the parties agreed to the increases as a result of early negotiations and the tenant's willingness to agree to amounts above the regulated amount under the

Act. Based on the above, I find that the tenant has not provided sufficient evidence to support this claim and I therefore dismiss this portion of his application.

The tenant has not been successful in their application. The tenant's application is dismissed in its entirety without leave to reapply.

I address the landlords claim and my findings as follows.

Fortis BC - \$676.50

The landlord provided documentation to support this portion of their claim, specifically copies of the bills, a breakdown of the costs and the tenancy agreement to reflect the amount. Based on the above, I find that the landlord is entitled to the amount as claimed of \$676.50.

Damages to Suite – \$3677.50

It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation, I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

Loss of Rent – September & October 2019 \$2600.00

The landlord was of the opinion that despite issuing a Two Month Notice to End Tenancy for Landlords Use of Property, the tenant would only be entitled to compensation for the month of October. The tenant provided sufficient evidence to support his position that he gave the landlord ten days' written notice on September 30, 2019 which the landlord confirmed. The landlord testified that the tenant moved out on October 15, 2019. The tenant did not dispute the day that he moved out as he was unsure when that occurred. I find that the tenant gave proper and sufficient notice and was entitled to one month's compensation as per section 51 of the Act and that amount was applied to his September Rent. However, the tenant is obligated to pay for the 15

days he occupied the suite in October, accordingly; I find that the landlord is entitled to \$650.00.

As the landlord has been successful in part of their application, I find that they are entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

The landlord has established a claim for \$1426.50. I order that the landlord retain the \$500.00 security deposit in partial satisfaction of the claim. I grant the landlord an order under section 67 for the balance due of \$926.50. This order may be filed in the 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 *Residential Tenancy Act*.

Dated: November 22, 2019

Residential Tenancy Branch