Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S
FFT, MNDCT, MNSD

Introduction

This hearing convened as a result of cross applications in which each party sought monetary compensation from the other, orders with respect to the Tenants' security deposit and recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on October 15, 2019. The hearing did not complete and was adjourned to November 19, 2019. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?

2. Are the Tenants entitled to monetary compensation from the Landlords?

3. What should happen with the Tenants' security deposit?

4. Should either party recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed that this fixed term tenancy began October 1, 2018. Monthly rent was $2,200.00 payable on the last day of the month preceding the month for which rent was payable. The Tenants also paid a security deposit of $1,100.00.

The Tenants moved out of the rental unit on June 30, 2019. The parties disagreed as to whether the tenancy was to end August 31, 2019 or September 30, 2019.

The Landlords sought monetary compensation in the amount of $6,600.00 representing unpaid rent for July, August and September 2019. This was opposed by the Tenants.

The Landlord stated that she was not able to re-rent the rental unit, as on May 1, 2019 the Tenants complained to the City in which the rental unit was located alleging the unit was not up to the Building Code.

The Landlord further stated that the Bylaw Inspector attended on May 25, 2019. In late June the Landlord received a letter from the City indicating that the unit would need to be brought to code and legalized. The Landlord stated that they have not received a final approval on the drawings for the suite such that they still cannot rent it out.

The Landlord stated that in April 2019 the Tenants indicated that they wished to move out in May due to a change in work location. The Landlords attempted to advertise the unit at that time to minimize any losses, however they were then informed that the Tenants reported the suite to the City as an illegal suite and therefore ceased any efforts to advertise the unit.

The Landlord stated at that same time, on April 24, 2019 the Tenants informed the Landlord that the heat needed to be fixed. The Landlord had a repairperson attend that

day, or early the next morning. The Landlord stated that the heat was going on and off for a few days, but they never complained about this until April 24th.

In response to the Landlord's submissions and in support of their claim, the Tenant, J.J., testified as follows. She stated that the lease term was for 11 months ending on August 31, 2019, not 12 months as provided for on the tenancy agreement. She stated that the Landlord wanted the tenancy to end before September 1, 2019 as that was a very busy time for students and would ensure they were able to re-rent. She further noted that by text message the Landlord communicated that she wanted cheques from March to August 2019, confirming the agreement to an 11-month term (this text message was provided in evidence before me). The Tenant also noted that they were not provided a copy of the tenancy agreement until they moved out such that they would not have known about the error.

The Tenant denied calling the city and testified that it was her boyfriend who reported the rental unit as an illegal suite in the first few weeks of May 2019. She stated that he is a licensed carpenter and he was frustrated with the condition of the rental unit and the Landlord's unwillingness to tend to repairs.

The Tenants also submitted that they ended the tenancy early due to a material breach on the Landlord's part and therefore should not be responsible for paying for rent for the balance of the fixed term.

In this respect the Tenant stated that they were without heat in the rental unit for 19 days in April 2019. She noted that on April 8, 2019 the Landlord informed them that the heat was not working, and they wanted to look at the heater and access the electrical box. In support the Tenants provided copies of text communication in which they attempt to arrange a time for the heat to be repaired. Notably, the first text message about the heat was April 8, 2019.

In that text communication, the Tenant also informed the Landlord that her work would be moving to a new location and she may like to live in a different community. In a text message sent nine hours later the Tenant informed the Landlord that the heat needed to be fixed and it was "too long for this issue to not be resolved yet".

The Tenant noted that the Landlord came to the rental unit on April 14, 2019 to look at the heat issue and told the Tenant, S.L. that they could not fix it at that time as they needed to reach out to someone else to fix it. The Tenant stated that to her knowledge the Landlord did not hire anyone else to deal with this issue.

The Tenant stated that from April 14, 2019 to April 24, 2019 the Landlord had not made any repairs to the heating system. The Tenant testified that the heat was fixed on April 26, 2019 such that they were without heat for 19 days. The Tenant confirmed that during this time they continued residing in the rental unit and did not live anywhere else; she further confirmed that they used a space heater. The Tenants claimed a full refund for the days when they claim there was no heat in the rental unit on a prorated basis for the 19 days in the amount of $1,393.33.

The Tenant stated that they were seeking double the return of the deposit due to the fact that the Landlord led them to believe it was okay for them to move out, and then did not return the deposit. The Tenant stated that they gave their notice and the Landlords did not object to them moving out as evidenced by their telephone conversations and text communications. The Tenant stated that had they known that the Landlord expected that they would stay for the duration of the fixed term, they would have stayed. She noted however, that they knew they were likely going to be evicted because of the complaint to the city.

In reply to the Tenant's submissions the Landlord, R.J., testified as follows. The Landlord stated that the she did inform the Tenants that she wanted the term to be 11 months, although "on second thought she changed her mind", and drafted the agreement to be 12 months, which she says was agreed to by the Tenants as they signed the tenancy agreement.

The Landlord further stated that she provided the Tenants with a hard copy of the residential tenancy agreement within the first two weeks that they moved in. The Landlord also noted that the Tenant also uploaded a copy of the residential tenancy agreement to the Residential Tenancy Branch such that their claim that they didn't have a copy of the agreement was false.

In terms of the Tenants' claim that they were without heat for 19 days, the Landlord stated that they were not *without* heat, as they had a space heater. The Landlord further stated that the Tenants did not complain that they were cold and only made an issue of the heat when they wanted to end their tenancy.

The Landlord stated that on April 14, 2019 they went to the rental unit to look at the heat and decided that they should hire a professional. Unfortunately, they had trouble finding someone as they were all busy but the central heat was fixed on April 26, 2019.

The Landlord denied that she ever said she was okay with them breaking their lease. She stated that the very first time the Tenant indicated they wished to end their tenancy early was because they wanted to find a place closer to her work. The Landlord testified that in response she informed the Tenant that they would try to find someone to take over the lease but they expected the Tenants to be bound by their contract. She claimed this conversation occurred on April 24, 2019, after which the Tenants then started making issues with the heat. The Landlord also noted that on May 1, 2019 the Tenants' boyfriend made a complaint to the City.

The Landlord noted that she also called the Residential Tenancy Branch to determine her rights as she did not agree to the Tenants breaking their lease.

The Landlord also stated that the tenancy could have continued even in spite of the complaint as the City informed the Landlord that "the tenancy agreement took precedence". The Landlord claimed that it only took two weeks to do the repairs necessary to bring the unit to Code as they simply needed to increase the height of the doors. When I brought it to her attention that at the first hearing she said the unit was still not rented, she responded that it took three months for approval of the floor plan from the City. She stated that she received a letter on September 2019 and would have been able to fix the floor plan.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at**:**

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The Landlords seek monetary compensation for unpaid rent pursuant to a fixed term tenancy agreement. The parties disagree as to the end date of the fixed term. The Landlords submit it was the end of September 2019, the Tenants argue it was the end of August 2019.

The Landlord, R.J., testified that originally, she agreed to the end of August but then changed her mind and wrote the end of September on the tenancy agreement. Each party provided a copy of the residential tenancy agreement in evidence; the end date was noted as September 30, 2019. The Tenants testified that they never agreed to September 30, 2019, and that they did not receive a copy of the tenancy agreement until the end of the tenancy and as such did not notice the error.

The Tenants also provided a copy of text communication wherein the Landlord asks for the "remaining post dated cheques from March to August 2019".

The Landlords bear the burden of proving their claim that the tenancy was for a fixed term ending on September 30, 2019. I find, on balance, that the Landlords have failed to meet this burden. I am unable to reconcile the parties' testimony, the residential tenancy agreement and the text communication between the parties and therefore find the Landlords have failed to provide sufficient evidence to prove the tenancy was to end September 30, 2019. I find the fixed term was to end August 31, 2019.

A tenant is potentially liable for all rent due during the fixed term, even if they vacate early. As such, the Tenants are potentially liable for the unpaid rent for July and August 2019.

The Tenants allege the Landlords breached a material term of the tenancy thereby permitting them to end the tenancy prior to the fixed term. Such authority is provided in section 45(3) of the *Act.*

Residential Tenancy Policy Guideline 8—Unconscionable and Material Terms provides as follows:

> **Material Terms**
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> 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.
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> 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.

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:

- 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.

The evidence confirms that the Tenants had the use of a space heater when the central heating system was malfunctioning/inoperable in April of 2019. Although heat was included with the rental unit, I am not satisfied that an operable *central* heating system in the Spring months was a *material term* of the tenancy as defined above. I therefore find the Tenants were not able to end the tenancy pursuant to section 45(3) of the *Act.*

Additionally, I note that the evidence confirms the Tenants first asked to end the fixed term tenancy early in April of 2019; at this time the Tenants informed the Landlord they wanted to move somewhere closer to their employment. It appears as though at the same time, or shortly thereafter the Tenants began raising issues with the central heating system, following which the Tenant's boyfriend reported the rental unit as an illegal suite. While I have already decided the malfunctioning heating system was not a breach of a material term of the tenancy warranting an early end to the tenancy, I note that the sequence of events suggests the Tenants were looking for any way to end the tenancy.

As noted, the evidence confirms the Tenant, or her boyfriend, called the municipality in which the rental unit was located to report the unit as illegal. The evidence further confirms that the rental unit was inspected in the summer of 2019. Although this impacted the Landlords' ability to market the rental unit to *others*, I find it likely the subject tenancy could have continued until August 31, 2019 as the Landlord would have been given some time to comply with any requests from the bylaw enforcement officer. I accept the Landlords' evidence that it is likely the tenancy could have continued until at least the end of August 2019.

I therefore find the Landlord is entitled to the sum of **$4,400.00** representing unpaid rent for July and August of 2019.

I will now turn to the Tenants' claim.

The Tenants request monetary compensation in the amount of $1,393.33 representing return of all rent paid for the 19 days they claim the central heating system was inoperable.

The evidence confirms that although the rental unit did not have central heating for a period of time, the Tenants continued to reside in the rental unit and had the use of space heaters. It is notable as well that the time period in question was April, which is a time of milder temperatures in the community in which the rental unit is located. It is possible the tenancy would have been devalued somewhat in colder months such as December through February, however, I am not persuaded the tenancy was devalued at the material time, and certainly not to the extent the Tenants have suggested (which is to say the rental had not value as they seek return of all the rent paid). In any event, I find it unnecessary to determine whether the system was inoperable for one day, or 19, as I find the tenancy was not devalued. I therefore dismiss the Tenants' claim for related compensation.

The Tenants also seek the sum of $1,100.00 for "the delay in the Landlord returning their security deposit". Section 38(1) of the *Residential Tenancy Act* provides that a Landlord has 15 days from the date the tenancy ends or receipt of the Tenants' forwarding address in which to *either* return the security deposit *or* make an application for dispute resolution. The evidence confirms the Landlord made her application for Dispute Resolution on July 10, 2019; this is within the 15 days required by section 38(1) and I therefore find the Tenants are not entitled to compensation pursuant to section 38(6).

On their online application the Tenants indicated they also sought the sum of $1,100.00 for “aggravation”. During the hearing the Tenant testified that the basis for this claim was that the Landlords told them they could move out and then opposed their request to end the tenancy early. As noted, the Tenants must prove the Landlords breached the *Act,* and in this regard there is no basis for such a monetary claim.

As the Landlords have been substantially successful and the Tenants application has been dismissed in its entirety, I award the Landlords recover of the $100.00 filing fee. The Tenants’ request for recovery of this fee is dismissed.

Conclusion

The Landlords’ claim for unpaid rent is granted in part, as they are entitled to recover the sum of $4,400.00 for unpaid rent for July and August 2019. The Landlords are also entitled to recover the filing fee for a total award of $4,500.00. The Landlords are authorized to retain the Tenants’ $1,100.00 security deposit towards the amounts awarded and are granted a Monetary Order for the balance due in the amount of **$3,400.00.** This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims’ Division).

The Tenants’ request for monetary compensation from the Landlords is dismissed.

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: December 4, 2019

Residential Tenancy Branch