Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S MNDL MNRL-S

Introduction

In this dispute, the landlord seeks compensation in the amount of $19,158.72 pursuant to s. 67 of the *Residential Tenancy Act* (the "Act"), and, recovery of the $100.00 filing fee under s. 72 of the Act.

The landlord applied for dispute resolution on September 26, 2019 and a dispute resolution hearing was held on January 27, 2020. The landlord and tenant attended the hearing, and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

While there appeared to be some issues of service shortly after the landlord applied for dispute resolution, the tenant acknowledged having received the landlord's evidence. No further issues were raised in this respect.

While I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred, I have only considered evidence relevant to the issues of this application. Thus, the parties will not see their entire testimonies reproduced in this decision.

Issues

1. Is the landlord entitled to compensation as claimed in her application?

2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started October 1, 2018 and ended August 22, 2019. Monthly rent was $4,500.00 and the tenant paid a security deposit of $2,250.00. A copy of the written tenancy agreement and an addendum were submitted into evidence. The security deposit was dealt with prior to this dispute, and the amount is not considered as part of the present claim.

Also included into evidence by the landlord were copies of estimates, invoices, photographs, and a revised Monetary Order Worksheet. I note that there was no Condition Inspection Report for either a move-in or move-out inspection. The parties both explained that they were former business partners, and that the relationship was "not the typical" landlord-tenant relationship; hence, the less-than-formal agreements between them.

The tenancy came to an end after the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. Part of the landlord's claim is for unpaid rent in the amount of $13,592.50 and unpaid utilities in the amount of $346.00, neither of which the tenant disputes.

In addition, the landlord claims various damages for repairing the exterior of the property (due to pet damage), carport restoration, carport power-washing, and for the storage of various items left behind by the tenant. Finally, the landlord claimed lost rent in the amount of $2,800.00 for September 2019, due to the landlord not being able to rent out the rental unit (or a portion thereof) after the tenant vacated the property.

The tenant disputed all aspects of the landlord's claim except regarding the unpaid rent and utilities. "I don't have too many discrepancies [and] I agree [with] the majority that the landlord is asking for here," he remarked.

Regarding the carport, he explained that he tried to repair or restore it, but for whatever reason was unsuccessful. He briefly spoke about shelving and other matters, including some ladders that he had removed. Other issues such as dirt and the dishwasher were not issues, and he testified that "I left it [the rental unit] a lot more cleaner than when I came in there." And he noted that there was no Condition Inspection Report.

As for some of the items left on the property, he mentioned that it was not affected parking and that there was "dead space" in part of the carport (to paraphrase the

tenant). He added that, about the trailer, he “definitely will get it removed.” During rebuttal, the landlord commented that it was “well into September when he came and grabbed his stuff.” The trailer is still there.

Regarding the $2,800.00 in rent claimed for September 2019, the tenant argued that the landlord had started renovations earlier than September, and that there was “no way it could be rented out” in any event. Thus, he disputed this aspect of the landlord’s claim.

In rebuttal, the landlord acknowledged that the ladders were eventually removed, but that they were on the property on August 23, 2019, a day after the tenant was to have removed his belongings. And she had to show the property to prospective tenants with all of the tenant’s “junk” still there. There was a certain curb appeal that was difficult to meet.

As to the renovations, the landlord made several attempts to rent the property as it was, but to no avail. The landlord testified that she may have had the opportunity to rent the property out earlier for a lower rent, but that it would have been for under market rent and that she would inevitably be snuck in perpetuity with the lower-than-market rent about. She added, however, that with the renovations underway the “September rent was lost anyway.”

In rebuttal, the tenant questioned the integrity of the photographs submitted, and started to bring up a line of argument alleging manipulation of the evidence.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. I will break down the various portions (or, subject matters) of the landlord’s claim for clarity, below.

Section 7 of the Act states that 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. Further, s. 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

Claim for Unpaid Rent and Utilities

As the tenant did not dispute this aspect of the landlord's claim, and acknowledged that this was owed, no further analysis is necessary. I grant the landlord an award for unpaid rent, in the amount of $13,592.50, and unpaid utilities in the amount of $346.00, for a total award of $13,938.50.

Claim for Rent for September 2019

Is the tenant liable for the landlord's partial loss of rent in September 2019?

Given that the tenant failed to pay rent and was evicted based on a 10 Day Notice to End Tenancy for Unpaid Rent, the landlord would not have suffered a loss in rent if the tenant had either (A) vacated the rental unit before August 2019 (which affords a one month notice period otherwise permitted under the Act), or (B) paid the rent into September 2019 as would have otherwise occurred.

However, the landlord acknowledged that, with the renovations at that point underway (and despite the 3 appointments and 2 showings), the rent for September 2019 "was lost anyway." What I find by this oral submission is that the landlord does, or did not, fully expect to recoup losses for September rent. That is, the renovations were a determining factor in the landlord not receiving full rent for September. In addition, I was not presented with evidence demonstrating that the prospective tenants chose not to live in the rental unit for any of the reasons that are part of this dispute (e.g., the tenant's "junk" being left on the property or the state of the carport). While the landlord submitted that "Prospective tenants were not interested" due to the tenant "effectively us[ing] the Landlord's property as a storage site for his roofing business," there was no evidence

from prospective tenants that this was the case. Nor was there any evidence that the prospective tenants were deterred from renting because of the police being present.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for a loss of rent for September 2019. This portion of the landlord's claim is thus dismissed without leave to reapply.

Claim for Various Repairs

The landlord claimed for additional compensation due to the tenant's actions which resulted in, as submitted, the following:

> [. . .] the property went from being a desirable, family-oriented, spacious and bright dwelling on a double, flat lot in a quiet cul-de-sac of North Vancouver to resembling a property more likely to be found in a much lower market rent area.

Damages included alleged modifications to the carport, oil stains on the concrete, damaged walls, dirty light switches, and so forth. Photographs were submitted purportedly showing this damage and dirt.

The tenant disputed much of the landlord's case, though he did refer to doing some (or attempting to do some) work on the carport.

Subsection 37(2) of the Act states 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. In order to be successful, a claimant must prove that the tenant did not leave the rental unit reasonably and undamaged except for reasonable wear and tear. In this dispute, the parties are at odds with the extent of that damage and uncleanliness.

The absence of a completed Condition Inspection Report is definitive. Section 21 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003 states that

> In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

While the landlord submitted photographs of the property after the tenancy, there is no evidence of the state of repair and condition of the rental unit as it was on October 1, 2018. While the tenant did not outright dispute that work needed to be done to the carport, this position does not automatically tip the onus in the landlord's favour. The onus is still on the landlord to establish that the carport needed to be fixed as claimed.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide any evidence—specifically a completed Condition Inspection Report—that the tenant breached s. 37(2) of the Act. As such, I do not find that the landlord has proven damages claimed in relation to this aspect of her application, and this portion of her claim is dismissed without leave to reapply.

Claim for Dump Receipt

Regarding the costs of removing and dumping some of the tenant's abandoned property, the tenant did not dispute that this was something that the landlord had to do. After all, he acknowledged leaving things. However, he disputed that cost of $315.00 (for labour) and the $198.22 cost to dump and questioned why it was as high as it was; he also asked why the items were taken as far away as they were, versus being taken to a closer dump.

In response, the landlord stated that the person who she hired to remove the stuff had an account with the dump, and, that the dumping fees were in fact lower than the dump closer to the rental property.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for dumping costs in the amount of $513.22. The amounts, while not at the low end of what it might cost, are not unreasonable. I award the landlord $513.22 for these costs. Similarly, I award the landlord cleanup costs of $150.00 paid to a one "K.K." for her having "collected garbage and recycling off the property and disposed/recycle them using her van." This is, I find, a reasonable amount claimed for such work.

In total, the landlord is awarded $663.22 for costs related to removing the tenant's various property (including garbage and recycling) from the rental unit property.

Claim for Storage Costs

The landlord claims storage costs in the amount of $87.00 per month for storing the tenant's roofing/tar trailer and a Cap-It. In total, the landlord claims $437.50, which represents five months' storage, minus a few days after the date of this hearing.

While the tenant did not explicitly dispute this aspect of the landlord's claim, neither were his submissions in response to be particularly helpful. That having been said, the landlord did not provide any supporting evidence as to how she arrived at a monthly rate of $87.00.

But, section 37(2) of the Act assumes that a tenant will remove his or her property at the end of the tenancy, and the tenant admitted that he did not. Rent is paid for the purposes of having exclusive possession of a property. When rent is not paid, a tenant loses that right of being able to use the property, including the storing of things on it.

Thus, while I am not satisfied that the landlord has established that $87.00 a month is a reasonable rate, I am satisfied that the tenant breached the Act. Where damages cannot be proven or established, I may award nominal damages, which represent a *prima facie* breach of the law.

In this case, the tenant continues (or, continued, depending on when he removes the remainder of his personal property) to breach the Act. I award the landlord nominal damages in the amount of $100.00 for the tenant's breach of the Act.

Claim for Recovery of Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under s. 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee.

As the landlord was largely successful, I grant her claim for reimbursement of the filing fee in the amount of $100.00.

Summary of Monetary Award

In summary, I grant the landlord a monetary award (and corresponding monetary order) in the amount of $14,801.72. This amount is comprised of $13,938.50 for unpaid rent and utilities, $663.22 for property removal and disposal costs, $100.00 for storage costs (by way of a nominal damage award), and, $100.00 for the application filing fee.

Conclusion

I grant the landlord a monetary order in the amount of $14,801.72, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia, Small Claims Division.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

Dated: January 28, 2020

Residential Tenancy Branch