



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCL-S, MNRL-S, FFL

Introduction

In this dispute, the landlord seeks compensation for various matters, against his former tenant, under sections 67 and 72 of the *Residential Tenancy Act* (the “Act”).

The landlord applied for dispute resolution on October 22, 2019 and a dispute resolution hearing was held on March 5, 2020. The landlord, his representative (an articling student), the tenant, and a witness for the tenant, attended the hearing, and they were given a full opportunity to be heard, to present testimony, and to make submissions.

While there were service issues after the application was filed, including late service by the landlord of the Notice of Dispute Resolution and late submission of evidence by the tenant, both parties confirmed that they had received the evidence of the opposing party and had sufficient time to review and consider the evidence. As such, I make no adverse findings in relation to service under the Act or the *Rules of Procedure*.

At the outset, it should be noted that while I reviewed evidence submitted that met the *Rules of Procedure*, under the Act, and to which I was referred, I have only considered evidence relevant to the issues of this application.

Issues to be Decided

1. Is the landlord entitled to \$718.43 in compensation for unpaid hydro?
2. Is the landlord entitled to \$5,400.00 in compensation for unpaid rent?
3. Is the landlord entitled to \$1,260.00 in compensation for cleaning services?
4. Is the landlord entitled to \$223.42 in compensation for a window replacement?
5. Is the landlord entitled to \$520.00 in compensation for “excavator standby” costs?
6. Is the landlord entitled to \$3,549.00 in compensation for legal costs?
7. Is the landlord entitled to recovery of the filing fee of \$100.00?

Background and Evidence

The tenancy began on May 16, 2018 and ended on or about October 26, 2019, after the landlord obtained an order of possession in an earlier arbitration hearing. Monthly rent was \$1,350.00 and the tenant paid a security deposit of either \$300.00 or \$600.00. There was no pet damage deposit. A copy of a written tenancy agreement was submitted into evidence by both parties.

The landlord testified that the tenant did not pay rent for July, August, September and October 2019. Nor did the tenant pay hydro, as required under the tenancy agreement. Copies of a hydro invoice along with a calculation document was submitted. Also claimed by the landlord was an estimate for cleaning costs, as the tenant left the rental unit "in a disastrous state." In addition, the landlord claimed costs related to a broken window, which he said the tenant broke out of maliciousness. A copy of a receipt from Slegg Lumber was submitted into evidence to support the amount claimed.

While the tenant later referred to, and submitted into evidence, a partially completed condition inspection report, the landlord testified that he did not complete any such report at the start of or at the end of the tenancy. Both parties provided various photographs of the rental unit on various dates.

An additional claim by the landlord was related to cost of having an excavator on standby. According to the landlord, he was trying to do some work on the farm but could not get the excavator to where it needed to go because the tenant had her vehicle parked where it should not have been. He issued a notice to the tenant to move the vehicle, but she disputed the notice by filing an application with the Residential Tenancy Branch. Eventually, the landlord and the excavator operator were able to move the tenant's vehicle, and work proceeded as planned. Having the excavator on standby, but not used, cost the landlord \$520.00. It should be noted that while the landlord submitted an invoice for the excavator use, the amount was for the entire cost, and there was no breakdown for the \$520.00.

Finally, in addition to seeking recovery of the filing fee, the landlord sought to recover legal costs in the amount of \$3,549.00.

The tenant testified that the rental unit had a rodent problem, and she testified that she "couldn't use most of the [rental unit] because of the rodent problem." Further, she said that the rental unit was not properly cleaned up when she moved in, and that much of the rental unit was variously under construction or being renovated and repaired

throughout the tenancy. It was because of the landlord's failure to repair and renovate the rental unit that provided justification for not paying the rent, submitted the tenant.

The tenant disputed the hydro being claimed and said that there were tenants downstairs who also used the hydro, and that while she owed the landlord something, she disputed the amount claimed.

Next, the tenant testified that the security deposit was not \$300.00 as claimed by the landlord, but instead was \$600.00. She referred to a receipt submitted into evidence which referenced the \$600.00.

As for the cleaning costs claimed, while the tenant admitted to leaving the place "in a mess," she explained that, due to the order of possession, she only had 2 days to clean the rental unit. Moreover, she disputed the rather large amount, and called into question that only one quote for cleaning was obtained and submitted into evidence. She testified that she moved out on October 21, 2019.

While both parties testified about further matters, such as whether the tenancy was intended to be short-term, these matters were unrelated to the central issues in this dispute, and thus I shall not refer to or reproduce them further.

Finally, while the tenant brought a witness to the proceeding, based on the oral and documentary evidence submitted, I chose not to hear from him. The tenant explained that his testimony would have been limited to the state of the rental unit at the start and end of the tenancy, matters which are dealt with in other testimony and 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.

Section 7 of the Act states that if a party does not comply with this Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for any damage or loss that results. In this case, the landlord claims that the tenant did not comply with various sections of the Act, and that they should be compensated for this non-compliance.

I shall now go through each of the landlord's claims as addressed during the hearing.

Is the landlord entitled to \$718.43 in compensation for unpaid hydro?

The landlord claims that the tenant did pay the above-noted amount for hydro, as was required by the tenancy agreement. While the tenant agrees that she owes something for unpaid hydro, she disputed the amount 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 proven, based on his oral evidence, the hydro invoices, and the tenancy agreement, that the tenant owed the amount claimed. Indeed, without any evidence, beyond the tenancy agreement which establishes a monthly rate of \$150.00, that proves another amount, the landlord is entitled to the amount claimed. He adjusted the monthly amount to less than what is required under the tenancy agreement, and the tenant has provided no solid explanation or reasonable, alternative amount that she believes is instead owed.

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 this claim.

Is the landlord entitled to \$5,400.00 in compensation for unpaid rent?

The tenant did not dispute that she failed to pay rent in the amount claimed by the landlord. However, her “justification for not paying the full rent” was, in a nutshell, because the rental unit was not fully useable, renovations and repairs that should have been completed by a certain time were not, and, that there was a rodent problem.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct the rent.

Under the Act there are only four instances where a tenant has a right to deduct some or all of the rent. These sections essentially act as legal defenses for a tenant facing eviction, or a monetary claim, for unpaid rent.

First, section 19 of the Act permits a tenant to deduct an overpayment from rent or otherwise recover the overpayment when a landlord requires, or collects, a security or pet damage deposit in excess of the Act.

Second, section 33(7) of the Act permits a tenant to deduct an amount from rent that the tenant expended on emergency repairs and where the landlord has failed to reimburse the tenant for those expenses. In order to determine whether a tenant has a right to deduct from rent under this section, it is necessary to apply section 33 to the facts.

Third, section 43(5) of the Act states that, where a landlord collects a rent increase that does not comply with the Act (section 43(1)), the tenant may deduct the increase from rent, or otherwise recover the increase.

Fourth, under sections 65(1)(b) and (c), and section 72(2)(a) of the Act, a tenant may deduct an amount from rent when ordered by an arbitrator.

The tenant presented no evidence and advanced no argument, even indirectly, that any of these four exceptions under the Act existed during the tenancy to give rise to a legal right to withhold rent. What is more, the tenant apparently had no problem paying rent for the first half of the tenancy, and then, for various reasons advanced by both parties, simply stopped paying. While the landlord may very well have neglected to perform certain repairs and renovations, and while there may very well have been multiple issues with the rental unit, none of these gave the tenant the right to not pay rent.

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 his claim for unpaid rent of \$5,400.00.

Is the landlord entitled to \$1,260.00 in compensation for cleaning services?

The landlord testified that the tenant left the rental unit in a “disastrous state,” and the tenant admitted that “I know I left it in a mess, but I only had two days to clean it.”

Section 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. Based on the tenant’s admission, the landlord has proven that the tenant breached section 37(2) of the Act.

What the landlord has not proven, however, is the extent to which the cleaning would have resulted in costs exceeding a thousand dollars. I must turn to section 21 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003, which 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.

In this dispute, the landlord testified that no condition inspection report was completed either at the start or at the end of the tenancy. While the tenant testified rather confusingly about a report eventually being completed, the landlord did not submit any report that would have provided me with an accurate before and after picture of the true condition and state of the rental unit. Indeed, based on the photographs submitted by the tenant, the rental unit did not appear to be in particularly good shape at the start of the tenancy. Without a better picture of the true state of the rental unit was at the start of the tenancy, I simply cannot find that an estimated cleaning expense of \$1,260.00 is reasonable or justified in the circumstances.

As the landlord has not proven significant potential costs for cleaning the rental unit, and has only proven that there was an infraction of a legal obligation under section 62 of the Act (primarily based on the tenant's admission of leaving the rental unit in a state of disarray), I find that the landlord is entitled to nominal damages only. In this case, I find that the landlord is entitled to a nominal damages award of \$100.00.

Is the landlord entitled to \$223.42 in compensation for a window replacement?

The tenant conceded that she was liable for this amount claimed but wanted to clarify that the window was broken accidentally, not out of any sort of maliciousness. Based on the tenant's undisputed position regarding the broken window, the landlord is awarded the amount claimed of \$223.42.

Is the landlord entitled to \$520.00 in compensation for excavator standby costs?

While the tenant may have not moved her vehicle as requested by the landlord, which apparently lead to the landlord incurring costs of having an excavator on standby, the tenant's inaction does not, I find, give rise to any breach under the Act. Similarly, there is no term of the tenancy agreement that places specific restrictions on where the tenant could or could not park her vehicle (licensed or unlicensed). As such, while the tenant may have interfered with the landlord's farm operations, any such negligence or intentional act are not compensable under the Act. To summarize, I do not find that the landlord has established a breach of the Act, the regulations, or the tenancy agreement. As such, this aspect of the landlord's application is dismissed without leave to reapply.

Is the landlord entitled to \$3,549.00 in compensation for legal costs?

As partially explained to the parties during the hearing (but more fully explained here), section 7(1) 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.

Litigation costs flowing from the dispute resolution process are not found or considered to be damages or losses that result from a party's non-compliance with the Act, the regulations, or a tenancy agreement. While an arbitrator is permitted to award fees that may be paid, pursuant to section 72 of the Act, I am not in a position to award legal costs. As such, this aspect of the landlord's claim is dismissed without leave to reapply.

That having been said, the landlord may be at liberty to apply under the *Civil Resolution Tribunal Act*, SBC 2012, c. 25 for recovery of legal costs, though I make no finding in this regard as this is within the jurisdiction of the Civil Resolution Tribunal.

Is the landlord entitled to recovery of the filing fee of \$100.00?

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 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 applicant landlord was predominately successful, I grant his claim for reimbursement of the filing fee in the amount of \$100.00.

Amount of Security Deposit

Before concluding with a summary of the monetary award, I will cover the disputed issue of the security deposit currently held by the landlord. The landlord claims that he holds \$300.00 of the tenant's security deposit in trust, while the tenant claims that she paid a \$600.00 security deposit. Notably, neither the landlord nor his representative rebutted or referred to this aspect of the tenant's testimony.

As such, based on the ultimately undisputed evidence (which included a receipt for \$600.00), I conclude that the amount of the security deposit is \$600.00. It is this amount that will be applied in partial satisfaction of the monetary award, summarized below.

Summary of Monetary Award and Order

A total monetary award of \$6,541.85, and a corresponding monetary order in the amount of \$5,941.85 for the landlord is calculated as follows:

| CLAIM | AMOUNT |
|---------------------------------------|------------|
| Unpaid hydro | \$718.43 |
| Unpaid rent | 5,400.00 |
| Cleaning costs (nominal damage award) | 100.00 |
| Window replacement | 223.42 |
| Filing fee | 100.00 |
| <i>LESS</i> security deposit | (600.00) |
| Total: | \$5,941.85 |

Conclusion

I grant the landlord a monetary order in the amount of \$5,941.85, 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.

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: March 6, 2020

Residential Tenancy Branch