



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1143758 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was reconvened in response to an application made October 24, 2019 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damage to the unit - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

At both hearings the Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions. At the original hearing the Landlord's Witness gave evidence under oath. In an interim decision dated March 10, 2020 the matter was adjourned to this date to receive the Tenants' video evidence that the Tenant states contains the Landlord's agreement to waive rent for September 2019.

Preliminary Matters

At the original hearing the Landlord stated that although it did not receive the Tenant's evidence until February 28, 2020 it was still prepared to proceed.

The Tenant states that the video recording containing the Landlord's waiver of September 2019 rent was given to the Landlord on a usb stick prior to this reconvened hearing. The Landlord states that it was not able to access the usb contents. The

Tenatn confirms that it did not seek the Landlord's confirmation that the Landlord was able to read the contents on the usb stick.

Rule 3.10.5 of the Residential Tenancy Branch (the "RTB") Rules of Procedure provides that before a hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. If a party is unable to access the digital evidence the arbitrator may determine that the digital evidence will not be considered. Given the undisputed evidence that the Landlord could not access the contents on the usb stick and the Tenants' undisputed evidence that the Tenant did not confirm with the Landlord that the Landlord was able to access the contents I find that any digital evidence that is on the usb stick may not be considered. The Parties were given opportunity to provide oral evidence of communications between the Parties in relation to whether or not the Landlord waived September 2019 rent.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: The tenancy was of a basement suite in a house with the upper unit of the house occupied by other tenants. The tenancy started under written agreement started on May 1, 2019. At the outset of the tenancy the Landlord collected \$650.00 as a security deposit. Rent of \$1,300.00 was payable on the first day of each month. The Tenants moved out of the unit on or about September 28, 2019. The Landlord did not make any offer for a move-out inspection and no move-out inspection and report was completed. The Landlord received the Tenants' forwarding address on October 20, 2019.

The Landlord states that the Parties mutually conducted a move-in inspection on May 5, 2019. The Landlord states that a condition inspection report was completed and copied

to the Tenants. The Landlord states that the Tenants did not sign the report but “has no idea” why they did not sign the report. The Landlord states that this inspection was done after the start date as the Tenants wanted to paint the unit. The Landlord states that it is unknown if the Tenants were living in the unit at the time. The Tenant states that no move-in inspection was offered or carried out and that no copy of any report was provided to the Tenants. The Landlord states that the Tenants were given a copy of the move-in report in person when they signed the tenancy agreement on May 6, 2019.

The Landlord states that the Tenants failed to pay rent for September 2019 and claims \$1,300.00. The Tenant states that the Landlord told them that no rent would be payable for September 2019 due to the mold appearing on the Tenants bed. The Tenant states that it has a recording of the conversation between the Parties where the Landlord waives the September 2019 rent and that it has witnesses to this fact. The Tenant states that the Landlord also informed the Tenant that it would be keeping the security deposit for the costs of a mold inspection. The Tenant states that the Landlord did a moisture inspection of the unit before the Tenants moved out but did not test the air. The Tenant states that they were informed that this inspection indicated that no moisture was coming from the floor. The Tenant states that a second inspection of the air in the unit was also carried out however the Landlord refused to provide a copy of that report to the Tenants. The Tenant states that they then communicated with the inspector who informed them that elevated mold spores that were toxic were found in the unit. The Tenant states that they were told by the inspector that it was best to vacate the unit and to use caution while inside the unit. The Tenant provides a copy of this email from the inspector dated September 26, 2019. The Tenant submits that no rent is payable for September 2019 due to the unliveable condition of the unit. The Tenant also submits that no rent is payable as the Landlord refused to provide the Tenants with a copy of the second mold inspection.

The Landlord denies that the Tenants were ever told that no rent would be payable for September 2019. The Landlord states that the unit had experienced a previous leak

from the upper unit. The Landlord states that the first inspection did not find any moisture in the bedroom and that air testing was subsequently undertaken shortly before the Tenants moved out of the unit. The Landlord states that the air inspector informed the Landlord that the second inspection of the unit found many mold spores and that the Landlord would have to let the place open up. The Landlord states that the inspector informed the Landlord that the Tenants living practices caused the mold in the air. The Landlord confirms that the air inspector provided a written report but that no causation was noted in that report. The Landlord states that it did not provide a copy of this second report to the Tenants as it did not think it would be needed to support its claims.

The Landlord states that the Tenants left furniture and kitchen items in the unit and garbage in the yard. The Landlord states that this was removed on October 2, 2019, provides the invoice and claims the removal costs of \$1,100.00. The Landlord states that the unit had been rented for October 1, 2019 however this was delayed to October 15, 2019 because of the need to clean and make repairs.

The Tenant states that they left no property or garbage inside the unit. The Tenant states that the tenants living in the upper unit left garbage on the deck, in the yard and in the garage. The Tenant provides a letter from the upper tenants. The Tenant states the person who did the removal is the new tenant for the upper unit. The Tenant states that this person said there was only a little bit of garbage in the unit and that the invoice was for the costs of garbage removal for the entire property.

The Landlord states that the Tenants left the unit with drywall damage to the living room, dining room and bedroom walls. The Landlord states that the damage was in the form of large holes and post-its. The Landlord has not provided photos of this claimed damage. The Landlord states that prior to the start of the tenancy the unit had been painted in mid 2018. The Landlord states that the Tenants did not damage the flooring but that the Landlord had to remove the flooring to inspect for moisture as the Tenants

had reported mold in the unit. The Landlord states that no issues were present with the flooring. The Landlord claims a lump sum of \$2,520.00 for the repairs to the wall and the flooring. There are no further details on the invoice provided as evidence to support this claim. The Landlord states that his company did some of the repairs and sub contracted a 3rd party to do other of the repairs.

The Tenant states that the walls had pre-existing damage and that the Tenants patched and painted the entire unit themselves prior to moving into the unit. The Tenant states that no damages were left to the walls by the Tenants and that the walls looked completely new at move-out. The Tenant states that the Landlord should know what repairs were done as they were done by its own company according to the Landlord's invoice for repairs. The Tenant states that at the time of the Landlord's repairs as indicated by the invoice the Landlord had a stop work order issued from the city as there were no permits on record for any drywall work at the unit. The Landlord states that the stop work order was not in relation to drywall patching but in relation to any renovations to the house. The Landlord states that the stop work order had nothing to do with the unit.

The Landlord's Witness rents the upper part of the house containing the unit. The Witness states that it viewed the unit in the middle of September 2019 while the Tenants were still in the unit and again on September 29 or October 1, 2019. The Witness states that it originally intended to rent the lower unit but when the upper unit became available the Witness rented that part for the middle of October 2019. The Witness states that on October 1, 2019 the unit was in bad shape with furniture and garbage left inside the unit. The Witness states that the amount left in the unit would fill a 10 x 10 x 5 box in a truck. The Witness states that a move-in inspection was done for the upper unit after it had been cleaned. The Witness states that the garbage removal invoice included items and garbage from the upper part of the house, the garage and the yard. The Witness states that the Landlord said nothing to the Witness about holding any personal property for 30 days.

The Tenant states that they did not have use of the garage and shared the yard with the upper tenants. The Tenant argues that had they left personal property at the unit the Landlord would have had to consider storing them. The Tenant argues that this lack of evidence supports that the Tenants did not leave any of their belongings at the unit.

Analysis

Section 37 of the Act provides 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. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary.

Given the lack of a move-out inspection report and the Landlord's Witness evidence that the invoice for the removal of items included items not in the Tenants' unit, I find on a balance of probabilities that the Landlord has not substantiated that the costs claimed against the Tenants were incurred from the Tenants' failure to remove items from the unit. I therefore dismiss this claim.

Given the lack of a move-out inspection report, the lack of photos of damaged walls, the Landlord's evidence that the Tenants did not damage the flooring and the Tenants' evidence that no damage was left to the walls, I find on a balance of probabilities that the Landlord has not substantiated that the costs claimed to repair walls and flooring arose from any breach by the Tenants. I dismiss this claim.

Section 44(1)(d) of the Act provides that a tenancy ends if the tenant vacates or abandons the rental unit. Rent is payable until a tenancy ends. Section 26(1) of the Act provides that a tenant must 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. The Tenant's Witness statements provided to support that the Landlord waived rent for September 2019 do not include any details of this agreement or statements about directly witnessing the Landlord's agreement. The Witness statements only state that this occurred. Given the Landlord's evidence that rent was not waived I find on a balance of probabilities that the Tenants have not sufficiently substantiated a waiver of September 2019 rent.

There is no evidence that the tenancy agreement requires the Landlord to provide the Tenant with any copies of inspection reports done during the tenancy and there is nothing in the Act that has this requirement. The only supporting evidence of unlivable conditions come from the Tenant being informed at the end of September 2019 by the air inspector of the results of the air test. However, the Tenants informed the Landlord in early September 2019 that the tenancy would end, and I accept that this notice was provided due to the Tenants' concerns about the presence of mold and not because the unit was unlivable. As the Tenants occupied the unit until September 28, 2019, I find that rent was payable for September 2019 despite any failure of the Landlord to comply with the tenancy agreement or Act.

The Landlord is therefore entitled to September 2019 rent of **\$1,300.00**. As the Landlord's application has met with some success, I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,400.00**. Deducting the security deposit plus zero interest of **\$650.00** from this amount leaves **\$750.00** owed to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$650.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act

for the remaining **\$750.00**. If necessary, 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 RTB under Section 9.1(1) of the Act.

Dated: April 29, 2020

Residential Tenancy Branch