Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that sometime in November of 2019 the Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch were sent to the Tenant, via registered mail. The Tenant acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

In March of 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on March 05, 2019. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Testimony and/or documentary evidence that is not relevant to the issues in dispute is not summarized in this decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on April 15, 2013;
- the tenancy ended on October 31, 2019;
- on September 30, 2019 the Tenant provided the Landlord with written notice of his intent to end the tenancy on October 31, 2019.
- the Tenant paid a security deposit of $1,100.00;
- ~~the Tenant paid a pet damage deposit of $550.00;~~
- a condition inspection report was not completed at the start of the tenancy;
- a forwarding address for the Tenant was provided on October 31, 2019, when it was written on the final condition inspection report;
- the Landlord returned ~~$1,000.00 of the security/ pet damage~~ $500.00 of the security deposit to the Tenant in November of 2019;
- the Landlord did not have written permission from the Tenant to keep any portion of the security deposit;
- the drywall in the unit was cracked;
- the Tenant was not responsible for damage to the drywall;
- on October 02, 2019 the Landlord sent the Tenant a text message, in which the Landlord advised the Tenant that her parents would enter the rental unit on October 05, 2019 for the purposes of completing drywall repairs;
- the Tenant advised the Landlord that the proposed time for the repairing the drywall were inconvenient; and
- the Tenant advised the Landlord that movers were coming to the rental unit on October 19, 2019 and that repairs could be made after that date, provided his security deposit was returned.

The Landlord stated that she did not schedule a meeting for the purposes of inspecting the rental unit at the start of the tenancy because she did not understand that was necessary.

The Landlord stated that on October 08, 2019 a notice was posted on the door of the rental unit, in which the Tenant was informed that the Landlord would be entering the rental unit on October 12th, 18th, 19th, and 20th. She stated that she suffers from a brain injury, so she is not certain these dates are correct.

The Tenant stated that on October 02, 2019 a notice was posted on the door of the rental unit, in which the Landlord advised the Tenant that her parents would enter the rental unit on October 05, 2019, and also on October 18, 2019, October 19, 2019, and October 20, 2019 for the purposes of completing drywall repairs.

A copy of the text message that was sent on October 02, 2019 was submitted in evidence. The email stated that her parents will be entering the unit between 9 a.m. and 10 a.m.; that they will remain for 1 or 2 hours; and that they will be removing ceiling tiles and repairing drywall.

A copy of the notice that was posted on the Tenant's door on October 02, 2019 was submitted in evidence. This notice declared that access to the unit was required on October 05th between 9 a.m. and 3 p.m., for the purposes of preparing for a furnace exchange and repairing drywall. The notice also declared that access will be required on October 18th, 19th, and 02th, between 10:00 a.m. and 19:00 p.m., for repairing drywall and painting.

The Tenant stated that the proposed dates for repairs were inconvenient because drywall repairs are a messy repair, which must be done over a period of several days; the drywall repair involved a large area, which would require him to move his furniture and remove his television, which was mounted on the wall; he was packing in preparation for moving; he was having company in October of 2019; and he was protecting his right to quiet enjoyment.

The Landlord stated that she wished to repair drywall in two corners in the living room; around the fireplace; and in the wall of one bedroom. She stated that she does not know if the Tenant would have had to move furniture to facilitate these repairs.

The Tenant stated that in addition to the areas mentioned by the Landlord, the drywall needed to be repaired in various areas of both bedrooms and on the ceiling of the living room. The Landlord stated that she was not aware those areas needed repairing when she served the Tenant with notice of her intent to enter.

The Landlord stated that she wanted to repair the drywall on the dates provided in her notice to enter, in part, because her parents would have been able to assist with the mudding and taping on October 05, 2019. She stated they were not able to assist after that date as they were leaving on an extended holiday.

The Landlord stated that she did not want to wait until after October 19, 2019 to repair the drywall as she was returning to her home in a different community after October 20, 2019. She stated she could not delay her return to the different community as she has medical appointments scheduled for after October 20, 2019.

The Landlord is seeking compensation, in the amount of $600.00, because she could not repair the drywall on the dates she proposed in early October of 2019.

The Landlord submitted an invoice for the drywall repairs, in the amount of $736.91. She stated that she is only seeking compensation for the cost of labor, which was $600.00, as she had to pay a third party to complete the repairs that she did not have time to complete. She stated that the person who made the repairs is the new occupant of the rental unit, who is a contractor that recently moved to the area.

The Tenant stated that the third party who completed the repairs is not a registered contractor in the area.

The Tenant argued that the Landlord lives in the community. The Landlord stated that she spends a lot of time in the community, but she lives in a different community.

Analysis

Section 29(1)(b) of the *Residential Tenancy Act (Act*) authorizes a Landlord to enter a rental unit if at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice of the purpose for entering, which must be reasonable, and the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

On the basis of the undisputed evidence, I find that the Tenant received the text message from the Landlord, dated October 02, 2019, which was submitted in evidence. As this text message clearly informed the Tenant that the rental unit would be accessed on October 05, 2019 between 9:00 a.m. and 10:00 a.m., and it declared that the reason for entering the unit is to remove ceiling tiles and repair drywall, which I find to be reasonable, I find that the Landlord had the right to enter the unit on October 05, 2019 between 9:00 a.m. and 10:00 a.m., in accordance with section 29(1)(b) of the *Act.*

On the basis of the undisputed evidence, I find that the Tenant received the notice that was posted on his door, dated October 02, 2019, which was also submitted in evidence. I favour the Tenant's testimony that this document was received on October 02, 2019 over the Landlord's testimony that it was posted on October 08, 2019, in large part because the document is dated October 02, 2019 and notifies of an entry on October 05, 2019. I therefore find it more likely that the notice would have been posted on October 02, 2019. In considering this issue, I was also influenced by the Landlord's

testimony that she is not certain of the dates the notice was posted or the proposed dates of entry.

As the notice that was posted on the door on October 02, 2019 clearly informed the Tenant that the rental unit would be accessed on October 05, 2019 between 9:00 a.m. and 3:00 p.m., and it declared that the reason for entering the unit is to prepare for a furnace exchange and repair drywall, which I find to be reasonable, I find that the Landlord had the right to enter the unit on October 05, 2019 between 9:00 a.m. and 3:00 p.m., in accordance with section 29(1)(b) of the *Act.*

As the notice that was posted on the door on October 02, 2019 clearly informed the Tenant that the rental unit would be accessed on October 18th, October 19th, and October 20th,between 10:00 a.m. and 7:00 p.m., and it declared that the reason for entering the unit is to paint and complete drywall repairs, which I find to be reasonable, I find that the Landlord had the right to enter the unit on October 18, 2019, October 19, 2019, and October 20, 2019 between 10:00 a.m. and 7:00 p.m., in accordance with section 29(1)(b) of the *Act.*

In adjudicating this matter, I have placed no weight on the Tenant's submission that to be valid, a notice to enter a rental unit must specify one singular date and time. I find that this is not the intent of the legislation. I find that a landlord has satisfied the spirit of the legislation if they provide notice of all dates and times of entry in one single notice, providing the need to enter is related to the same issue and is within the 30 day time period. I find that it would be non-sensical to provide four separate notices of entry in relation to the need to paint a rental unit, for example, if the Landlord knows they will need to access the unit on four consecutive dates to complete the painting.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

To adjudicate this claim, I must determine whether the Tenant breached the *Act* when he denied the Landlord access to the rental unit in October, in spite of being provided with written notice of the Landlord's intent to enter.

Section 28 of the *Act* stipulates that tenants are entitled to quiet enjoyment including, but not limited to, reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act;* and use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the Landlord's attempt to enter the rental unit between October 05, 2019 and October 19, 2019 would have constituted a breach of the Tenant's right to the quiet enjoyment of the rental unit. Although landlords have both a right and an obligation to repair rental units, those repairs cannot be made without any consideration for the inconvenience the repairs will cause for the tenant, particularly when there is no urgent need to make the repairs.

In these circumstances, I find that the repair schedule being proposed by the Landlord was highly inconvenient for the Tenant. I find that the schedule was inconvenient for the Tenant, in part, because he was having guests during the period the Landlord wanted to repair the drywall. Given the mess that is typically associated to drywall repairs, I find that it would be very inconvenient to work around drywall repairs while guests are visiting.

I find that the schedule was inconvenient for the Tenant, in part, because he was moving out of the rental unit and his movers were coming to the unit on October 19, 2019. I find that it would be very inconvenient to try to move out of a rental unit while the unit was being repaired and painted.

I therefore find it was reasonable for the Tenant to attempt to protect his right to quiet enjoyment of the rental unit by denying the Landlord with access to the rental unit on the dates proposed by the Landlord. As I find it was reasonable for the Tenant to protect his right to quiet enjoyment of the renal unit, I cannot conclude that he breached the *Act* when he denied the Landlord access to the rental unit on the dates proposed by the Landlord.

On the basis of the invoice submitted in evidence, I accept that the Landlord paid a third party to repair the drywall in the rental unit. I accept that this is an expense she would not have incurred if she was able to enter the unit in October to complete the drywall repairs. I find, however, that the Landlord submitted insufficient evidence to establish that she incurred this loss as a result of the Tenant breaching the *Act.*

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. Even if accepted that the Landlord suffered a loss because the Tenant breached the *Act*, I would find that the Landlord did not take reasonable steps to minimize their damage or loss.

I find that the Landlord did not mitigate her loss, in part, because she did not simply serve the Tenant with written notice of her intent to repair the drywall after the Tenant moved out of the rental unit in later October of 2019. Had the Landlord given such notice, it is highly unlikely that I would have concluded that it was reasonable for the Tenant to deny access to the rental unit after his property had been moved out of the rental unit.

In the event it was not reasonable, or cost effective, for the Landlord to repair the unit later in October of 2019, I find that she should have mitigated her losses by delaying the repairs until her parents had returned from holidays and were able to assist with the repairs. While I accept that delaying the repairs would have inconvenienced the new occupant, the inconvenience would not surpass the inconvenience experienced by the Tenant.

In the event the Landlord was not able to repair the drywall later in October because she was leaving the community, I find that she should have mitigated her losses by delaying the repairs until she was returning to the community at a later date. This conclusion was based, in large part, on the Tenant's testimony that she periodically stays in this community, although she lives in another community. While I accept that delaying the repairs would have inconvenienced the new occupant, the inconvenience would not surpass the inconvenience experienced by the Tenant.

As the Landlord has failed to establish that she properly mitigated any loss she experienced, I dismiss her claim for compensation.

I find that the Landlord has failed to establish the merits of her Application for Dispute Resolution and I dismiss her claim to recover the fee for filing this Application for Dispute Resolution.

Section 23(1) of the *Act* stipulates that a landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental

unit or on another mutually agreed day. On the basis of the undisputed evidence, I find that this did not occur when the tenancy began.

Section 23(3) of the *Act* stipulates that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. On the basis of the undisputed evidence, I find that the Landlord did not attempt to schedule a time to jointly inspect the rental unit at the start of the tenancy. I therefore find that the Landlord failed to comply with section 23(2) of the *Act.*

Section 24(2)(a) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with section 23(2) of the *Act.* As I have concluded that the Landlord failed to comply with section 23(2) of the *Act*, I find that the Landlord's right to claim against the security deposit and pet damage deposit for damage is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 24(2)(a) of the *Act,* the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find that the Landlord did not comply with section 38(1) of the *Act*, as the Landlord has not returned the full ~~security/pet damage deposits~~ security deposit.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the ~~pet damage deposit and~~ security deposit to the Tenant that remained at the end of the tenancy. As the Landlord was still holding a security deposit ~~and pet damage deposit~~ of ~~$1,650.00~~ $1,100.00 when this tenancy ended, I find that she must pay the Tenant ~~$3,300.00~~ $2,200.00.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

The Landlord must pay the Tenant ~~$3,300.00~~ $2,200.00, which is double the security~~/pet damage~~ deposit. This amount must be offset by the portion of the security deposit ($500.00) ~~$1,000.00~~ that was returned to the Tenant after the tenancy ended. Based on these determinations I grant the Tenant a monetary Order for the balance ~~$2,300.00~~ $1,700.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord , filed with the Province of British Columbia 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 *Act*.

Dated: April 07, 2020
Date of Correction: April 22, 2020

Residential Tenancy Branch