Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FF

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for alleged damage caused by the tenant;
- a monetary order for unpaid rent or loss of rent revenue;
- compensation for monetary loss or other money owed;
- authority to keep the tenant's security deposit and pet damage deposit; and
- recovery of the filing fee paid for this application.

The landlord's agent (landlord) and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence in advance of the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary, digital, and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the considerable amount of oral, photographic, and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

I note that the landlords' original monetary claim listed in their application was $11,394.43; however, the landlords submitted additional evidence, which included an updated monetary order worksheet. This worksheet showed an amount claimed greater than the original claim, though not a substantial amount.

I advised the landlord I would not allow an increased monetary claim as an application may not be amended through evidence. The landlord was offered the opportunity to withdraw their application in order to pursue a greater amount, or to proceed on the original amount.

The reason for not allowing the increased monetary claim is that the respondent is entitled to know the claim against them in order to appropriately respond to the application.

The landlord chose to proceed on the original amount.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenant and recovery of their filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

The evidence showed that this tenancy began on or about March 1, 2019, with monthly rent of $4,500 and the tenant paying a security deposit and pet damage deposit of $2,250 each.

The written tenancy agreement showed that the tenancy was a fixed term, set to expire on February 28, 2021. The evidence showed the tenancy ended on October 31, 2019

and the landlord confirmed in their written statement that they received the tenant's forwarding address on November 1, 2019.

The landlords' monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. November 2019 rent	$4,500
2. Prorated rent, December 2019	$2,032.24
3. Liquidated damages	$2,250
4. Final cleaning	$630
5. Landscaping/lawn repair due to dog	$31.50
6. Repairs	$815.44
7. Bi-fold door replacement	$341.25
8. City utilities	$363
9. City utilities	$121
10. Counter top repairs	$210
TOTAL	**$11,294.43**

The participants provided the following evidence in support of, and in response to the landlord's application.

November rent; pro-rated loss of rent revenue for December 1-14, 2019; liquidated damages –

The landlord submitted that the tenant ended the tenancy earlier than the end of the fixed term, causing the landlord to suffer a loss of rent for November and December 1-14, 2019, as they had to secure a new tenant.

The landlord submitted they received the tenant's written notice on August 12, 2019 of her intention to vacate the rental unit by October 31, 2019.

The landlord submitted that they began advertising the rental unit on August 19 and conducted over 20 showings, but at the beginning of that time, the rental unit was not in a condition to show a prospective tenant.

The landlord submitted that on October 26, 2019, a new tenant was approved, but for a start date of December 15, 2019.

The landlord submitted that they did not increase or decrease the amount of monthly rent requested, and the new tenancy has a monthly rent of $4,500.

The landlord's agent referred to the written tenancy agreement to demonstrate that the landlords are entitled to liquidated damages of $2,250, as the tenant ended the fixed term agreement earlier than the end of the fixed term.

In response, the tenant submitted that several applications had been accepted, but rejected, which showed that the condition of the rental unit was good. Additionally, the tenant said that she received an email thanking her for the clean condition of the rental unit. The tenant submitted that one issue was the house is on a busy street.

Another issue the tenant mentioned with this tenancy was that the landlords' gardener often attended the rental unit unannounced and not on the scheduled times. Although she addressed this issue with the landlord, they never looked for a solution to the problem, according to the tenant.

In rebuttal, the landlord said the gardener's complaint concerned dog feces left on the lawn.

In sur-rebuttal, the tenant said she can and did pick up after her dog, though she might not have picked it up as soon as the dog defecated; however, the problem was the gardener came to the property unannounced.

Final cleaning-

The landlord submitted that the rental unit was fully clean at the beginning of the tenancy; however, it was not properly or reasonably cleaned at the end of the tenancy. As a result, the landlord was compelled to hire a cleaning service.

The landlord said his work colleague conducted the move-in inspection.

The landlord referred to the photographs submitted into evidence.

In response, the tenant said the bathroom was spotless and she cleaned the rental unit seven days prior to moving out. There were numerous areas in the rental unit which remained empty, as it was a big house.

The tenant said she does not clean windows because she will not get on a ladder, but was told by the landlord it would not matter, as they hire a cleaner anyway.

The tenant said there were a couple of water spots and another photo just showed a wipe mark, from when she cleaned.

Repairs; Bi-fold door -

The landlord submitted that the walls had to be patched and repainted after the tenancy ended due to the damage by the tenant. The tenant was told to use small picture hooks, but she used larger nails and hooks.

The landlord submitted the area around the mirror had to be repainted and light bulbs had to be replaced.

The landlord submitted that the blinds required repairing, due to the damage during the tenancy.

The landlord referred to their invoice evidence.

In response, the tenant submitted that the lightbulbs went out early in the tenancy and did not know that she was responsible for replacing them.

The tenant agreed that the blind was damaged, due to her daughter hanging a medal there.

The tenant said that she did mount two televisions, as it was her home in which she intended to live for at least two years.

As to these and other claims, the tenant pointed out that there was no move-out inspection, as the landlord failed to meet for the appointment. She said the landlord forgot they had an appointment at 9:00 a.m. on October 31, 2019, for the move-out inspection.

In rebuttal, the landlord said that an office assistant handles the schedules and the appointment with the tenant was not on his schedule. He said he told the tenant he would be there as soon as possible after the current inspection he was handling, and did arrive at 11:45 a.m.

The landlord confirmed in their written statement that an administrative error caused the appointment with the tenant for the move-out inspection to be deleted from his calendar. As a result, he arrived late and conducted the move-out inspection later that morning, without the tenant present as she could not wait the nearly three hours.

In response to my inquiry, the landlord confirmed that the tenant was not offered another time.

City utilities-

The tenant agreed she owed the utilities.

Counter top repair-

The landlord submitted that no one lived in the rental unit before the tenant and there was a chip left in the countertop, for which the tenant is responsible.

In response, the tenant said she would not argue over a minute chip.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results.

Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

November rent; pro-rated loss of rent revenue for December 1-14, 2019-

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month that is not earlier than the end of the fixed term.

In the case before me, I accept that the tenant provided insufficient notice that she was ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenant was responsible to pay monthly rent to the landlord until the end of the fixed term, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

In this case, I find the tenant provided the landlord over two and a half months' notice of the date she was vacating. I have reviewed the landlord's proof of marketing and do find a listing of showings, with notes from the potential tenants.

In some cases, the potential tenants were interested in a lower rent than the one for this tenancy. The landlord confirmed he never lowered the monthly rent requested and was ultimately successful in finding a new tenant 4 months later.

Based on the extended time frame of four months it took to find another tenant, I find that the landlord has failed to prove that they did everything that was reasonable to secure a new tenant the month following the end of this tenancy. At the very least, I would have expected the landlord to submit evidence of ongoing rental ads, internet postings and posting renewals and other efforts to secure a new tenant.

As the time to secure a new tenant extended beyond one or two months, I find it reasonable that the landlord would lower the monthly rent in order to attract more and acceptable tenants. The landlord's evidence showed that some potential tenants inquired if the monthly rent could be reduced.

In this case, the landlord's evidence shows that they never reduced the monthly rent through the balance of the fixed term, and I therefore find this shows they did not take reasonable measures to minimize their loss.

Even if the landlord had secured a new tenant with a lower monthly rent, they could have claimed the difference between what they would have received from the defaulting tenant and what they were able to re-rent the premises for the balance of the un-expired term of the tenancy.

Due to the above, I find the landlord failed to do whatever is reasonable to minimize their loss, their obligation under section 7(2) of the Act, and I dismiss their claim for loss of rent revenue for November and December 1-14, 2019.

Liquidated damages-

Residential Tenancy Branch (RTB) Policy Guideline #4 (Liquidated Damages) states a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. If the liquidated damage clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible.

The landlord claims the liquidated damages were intended to compensate them for their time and expense in advertising the rental unit as a result of the early end to tenancy by the tenant and in communication with the tenant here.

In the case before me, I find the landlord submitted sufficient evidence to prove that the liquidated damages were a genuine estimate of costs to re-rent the rental unit, that the tenant agreed to pay this amount in the written tenancy agreement, and I approve their claim for $2,250.

Final cleaning –

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Under sections 23(3) and 35(3) of the Act, a landlord must complete a condition inspection report in accordance with the Residential Tenancy Regulations and both parties must sign the report.

I have reviewed the landlord's and tenant's considerable photographic evidence while the rental unit may not have been move-in ready for the next tenant, I find that the tenant left the rental unit reasonably clean.

While there are too many photographs on which to provide a specific comment, one photo was labled "crums_in_kitchen_cabinets", and from my viewing, it was hard to see the crumbs. Another photo showed the oven interior, which I found to be at least reasonably clean. The hardware inside the cupboards was clean.

I note that the landlord failed to provide the up-close photos of the same locations at the beginning of the tenancy as at the end, and I therefore could not assess whether the tenant was responsible for any cleaning.

I also consider that the landlord failed to comply with section 35(1) of the Act, which requires that the landlord and tenant must inspect the rental unit together, and in this case, the landlord failed to attend at the appointed time. Additionally, the landlord confirmed that he did not offer the tenant another opportunity to inspect the rental unit.

On the basis of the lack of a joint inspection of the rental unit, with the tenant not having the opportunity to comment on the condition, I was not able to rely on the move-out condition inspection report (CIR).

I therefore find the landlord submitted insufficient evidence to support their claim for additional cleaning and it is dismissed.

Landscaping/lawn repair-

I have reviewed the photograph submitted by the landlord. The undated photo showed green grass with a very small spot of dead grass. I was unsure what damage to which the landlord referred. I do not find a small spot of discolored or dead grass surrounded by green grass to be damage, and at most, it is a cosmetic issue.

I find the landlord submitted insufficient evidence to support this claim and it is dismissed.

Repairs; light bulbs-

As to the landlord's claim for costs associated with repairs to the walls from nail and mounting holes, a touch-up of the mirror frame, and remounting three louvres on shutter

blinds, I find the landlord submitted sufficient evidence through the photographs that the tenant caused damage which exceeded reasonable wear and tear.

The landlord also provided a detailed invoice reflecting the work done.

I therefore approve their claim of $550 for wall and mirror frame repair, $20.50 for paint, $120 for remounting three louvres, and $5 for the dowels for the shutters.

As to the landlord's claim for costs associated with light bulb replacement, Policy Guideline 1 states that a landlord is responsible for, among other things, replacing light bulbs in hallways and other common areas; the tenant is responsible for replacing light bulbs during their tenancy.

I interpret this Guideline to provide that a landlord is not responsible to replace lights bulbs during the tenancy if a tenant asks, so long as they were working at the time of move-in. I find it is the tenant's choice to replace to light bulbs during the tenancy, but I find no authority to hold a tenant responsible to replace the light bulbs after the tenancy ends.

Further, I find it reasonable to determine that light bulbs that are burnt out at the end of the tenancy to be reasonable wear and tear.

I dismiss the landlord's claim for $55 for labour to replace the light bulbs and $26.11 for light bulb costs.

Bi-fold door replacement-

In reviewing the landlord's photographic evidence, which showed a large crack in the mirrored door, I find it more likely than not that the door was damaged during the tenancy and that the damage was beyond reasonable wear and tear.

I therefore approve their claim for $341.25 shown by their invoice.

City utilities-

As the tenant agreed she owed the utilities, I approve the landlord's claim of $363 and $121.

Counter top chip repair-

The tenant did not “argue” over this amount and I find the photo showed a chip large enough to require a repair.

I therefore approve the landlord’s claim for $210 as shown by their invoice and cheque.

As the landlord has had some success with their application, I grant them recovery of their filing fee of $100.

Due to the above, I find the landlord is entitled to a total monetary award of $4,080.75, comprised of liquidated damages of $2,250, $550 for wall and mirror frame repair, $20.50 for paint, $120 for remounting three louvres, $5 for the dowels for the shutters, $341.25 for a bi-fold door replacement, $363 and $121 for city utilities, $210 for a counter-top chip repair and the filing fee paid for this application in the amount of $100.

As to the tenant’s security deposit and pet damage deposit, I consider sections 35, 36, and 38 of the Act.

Section 35 requires that the landlord and tenant inspect the condition of the rental unit together. A landlord is also required to offer the tenant at least 2 opportunities, if necessary, and those notices must be in the approved form, according to 17(2)(b) of the Residential Tenancy Regulations.

In this case, the landlord agreed he missed the appointment time with the tenant, arriving nearly three hours later, and the landlord confirmed not offering the tenant a further opportunity. The landlord’s right to claim against a security deposit or a pet damage deposit, or both, for damage to the residential property is extinguished if the landlord does not comply with offering two opportunities to inspect the rental unit.

Section 38(1) of the Act requires that the landlord must repay the tenant’s security deposit or make an application claiming against the security deposit within 15 days of the later of the day the tenancy ends and the date the landlord receives the tenant’s written forwarding address. In this case, the later date is November 1, 2019, the date the landlord confirmed receiving the tenant’s forwarding address.

While the landlord retained the tenant’s security deposit and pet damage deposit and filed their application within 15 days of receiving the tenant’s forwarding address, they

had extinguished their right to retain the security deposit and pet damage deposit, as noted above under section 36(2).

I, however, further find that the landlord is able to still seek compensation against the tenant pursuant to section 7(1) of the Act for claims for damage arising out of the tenancy. Additionally, Residential Tenancy Branch (RTB) Policy Guideline 17 (B)(9) shows that a landlord who has lost the right to claim against the security deposit for damage may still file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

Although the landlord extinguished their right to claim against the tenant's security deposit and pet damage deposit, the landlord has retained them.

In these circumstances, I find it appropriate to set-off the amount of the landlord's monetary award of $4,080.75 from the tenant's security deposit and pet damage deposit of $2,250 each, or $4,500 in total, and order the landlord to return the balance, in the amount of $419.25. To give effect to this order, I grant the tenant a monetary order in the amount of $419.25.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served on the landlord for enforcement purposes and may be filed in the Provincial Court of British Columbia (Small Claims). The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application has been partially successful, they have been granted a monetary award of $4,080.75, which is off-set against the tenant's security deposit and pet damage deposit of $4,500, in total.

The landlord is ordered to return the balance of the tenant's security deposit and pet damage deposit, immediately, and the tenant is granted a monetary order in the amount of $419.25 in the event the landlord does not comply with this order.

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: April 15, 2020

Residential Tenancy Branch