Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on January 01, 2020 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in December of 2019 were sent to the Landlord, via registered mail, at the service address noted on the Application. The Landlord acknowledged receipt of these documents, although she stated that were located at her front door. As the Landlord acknowledged receiving the documents, the evidence was accepted as evidence for these proceedings.

On May 15, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was served to the Tenant, via email, on May 15, 2017. Service of evidence by email was permitted in May of 2020 due to the COVID-19 pandemic. The Tenant 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 present at the hearing (with the exception of legal counsel) affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Preliminary Matter #1

At the start of these proceedings, Legal Counsel for the Landlord requested that these proceedings be joined with an Application for Dispute Resolution that was filed by the Landlord, the file number of which appears on the first page of this decision.

Legal Counsel stated that the Landlord's Application for Dispute Resolution was filed on May 11, 2020. In anticipation that the Landlord's Application for Dispute Resolution would be joined with these proceedings, the Landlord served the Tenant with the Landlord's Dispute Resolution Package on May 15, 2020 and with evidence in support of that Application for Dispute Resolution on May 11, 2020, via email. I note that the Landlord's Dispute Resolution Package was not served to the Tenant within fourteen days of these proceedings.

Legal Counsel submits that evidence that the issues and evidence in the Landlord's Application for Dispute Resolution overlap with some of the issues and evidence in these proceedings.

The Residential Tenancy Branch will cross applications and schedule the cross-application hearing with the same arbitrator for the same date and time as the hearing for primary Application for Dispute Resolution when the requirements of Rules 2.11, 2.12 and 2.13 of the Residential Tenancy Branch Rules of Procedure have been met, and it is possible to satisfy Rule 3.3 of the Residential Tenancy Branch Rules of Procedure. In these circumstances, the Residential Tenancy Branch did not schedule the hearings for the same time.

I find that the Notice of Hearing that was served to the Tenant in the Landlord's Dispute Resolution Package declared that the Landlord's Application for Dispute Resolution would be heard on September 14, 2020. On the basis of that information I find that it would not be reasonable for the Tenant to anticipate the Landlord's Application for Dispute Resolution would be considered at the hearing on May 28, 2020.

I find it would be prejudicial to the Tenant to consider the Landlord's Application for Dispute Resolution at these proceedings, as the Tenant could not have reasonably anticipated this would occur.

Preliminary Matter #2

As explained in the analysis portion of this decision, I have concluded that the water damage that was reported to the Landlord on March 31, 2020 was more likely the result

of the kitchen sink overflowing, as the Landlord contends, than the result of a slow leak from a kitchen faucet, as the Tenant contends.

Either party is at liberty to present this finding at the hearing on September 14, 2020, as it may result in the Arbitrator concluding that the issue of liability for the damage has been decided and cannot, therefore, be considered on September 14, 2020. This would not, of course, prevent the Arbitrator from determining whether the Landlord is entitled to compensation for the water damage.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?
Is the Tenant entitled to compensation for loss of quiet enjoyment due to repairs made to the unit?
Is the Tenant entitled to a rent refund due to an unlawful rent increase?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began on August 31, 2017;
- they signed a fixed term tenancy agreement, the fixed term of which ended on August 31, 2018;
- a security deposit of $1,800.00 was paid;
- when the tenancy began the rent was $1,750.00;
- on August 06, 2018 the Tenant signed a new tenancy agreement, in which he agreed to pay $1,820.00;
- rent of $1,820.00 was paid from September 01, 2018 until the end of the tenancy;
- the Landlord did not provide the Tenant with 3 months notice that the rent would increase;
- this tenancy ended on November 29, 2019**;**
- the Tenant provided a forwarding address, in writing, on November 29, 2019;
- the Tenant did not give the Landlord written authority to retain any portion of the security deposit;
- on December 14, 2019 the Landlord returned $1,381.05 of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit within fifteen days of the tenancy ending and fifteen days of the Landlord receiving the forwarding address.

The Landlord submits that she withheld $418.95 of the security deposit for cleaning and that she did not understand she required the written consent of the Tenant to do so.

The Tenant is seeking to recover the first three months of a “rent increase”. He submits that he is entitled to recover the first three months because he was not served with three month’s notice of the increase.

Legal Counsel for the Landlord submits that the parties signed a new tenancy agreement and, as such, the new rent amount does not constitute a “rent increase”.

The Tenant stated that he signed the second tenancy agreement because he believed he would have to move out of the rental unit on August 31, 2018 unless he signed the new tenancy agreement.

The first tenancy agreement declares that at the end of the fixed term of the tenancy agreement, which is August 31, 2018, the landlord and the tenancy may enter into a new tenancy agreement. It further declares that if the landlord and the tenant do not enter into a new tenancy agreement, the tenancy continues on a month-to-month basis on the same terms unless the tenant gives legal written notice to end the tenancy.

The second tenancy agreement declares that at the end of the fixed term of the tenancy agreement, which is August 31, 2019, the landlord and the tenancy may enter into a new tenancy agreement. It further declares that if the landlord and the tenant do not enter into a new tenancy agreement, the tenancy continues on a month-to-month basis on the same terms unless the tenant gives legal written notice to end the tenancy.

The Tenant is seeking compensation for loss of quiet enjoyment, in the amount of $5,256.00. The Tenant contends the rental unit was uninhabitable between July 29, 2019 and August 28, 2019.

In support of the claim for loss of quiet enjoyment, the Tenant stated that:

- the flooring in the kitchen and living room were damaged by water and needed to be replaced;
- the kitchen faucet had been leaking for an extended period of time;
- the continual leaking of the faucet caused the damage to the floor;
- he reported the leaking faucet to the Landlord several times, by text message;
- he first reported the problem with the faucet to the Landlord on February 03, 2019;
- he did not submit copies of the text messages he allegedly sent regarding the need to repair the faucet;
- on March 31, 2019 he saw water on the living room floor;

- he did not leave dishes in the sink and the water he observed on the floor on March 31, 2019 was not the result of the sink “overflowing”;
- even if he had dishes in the sink, they would not have caused the sink to overflow;
- he reported the water damage to the Landlord on March 31, 2019;
- the repairs began on July 29, 2019;
- on August 06, 2019 the sink was removed, which prevented him from cooking in the unit;
- the fridge and stove were not disabled;
- on August 17, 2019 he left the country for a holiday that was planned prior to the date of the water damage;
- he thinks the unit was fully repaired on August 28, 2019; and
- he paid full rent for July and August of 2019.

In response to the claim for loss of quiet enjoyment, the Landlord contends that:

- the Tenant never informed the Landlord that the kitchen faucet was leaking;
- the flooring in the kitchen and living room were damaged by water and needed to be replaced;
- the floor was damaged when the kitchen sink overflowed because the Tenant left dishes in the sink;
- the damage was reported to the Landlord late in the evening of March 31, 2019;
- she viewed the water damage on April 01, 2019;
- on, or about April 01, 2019, the Tenant informed the Landlord that the sink overflowed because he left too many dishes in the sink and food was “pushed into” the sink drain;
- when she viewed the damage, the floor appeared to have “bubbled”;
- the Tenant was advised that he could stay in a hotel while the repairs were being completed, at the expense of the Landlord’s insurer;
- the Tenant declined the offer to stay in a hotel;
- repairs were delayed at the request of the Tenant, as he wanted the repairs to be completed while he was out of the country;
- the Tenant initially advised the Landlord he would be leaving the country on August 01, 2019;
- the Tenant postponed his trip until August 17, 2019;
- on July 29, 2019 the flooring was removed from the living room/kitchen;
- on August 06, 2019 some of the sink and the kitchen cabinets were removed;
- the fridge and stove remained functional during the repairs;
- on August 17, 2019 the remaining kitchen cabinets were removed;

- the repairs were completed between the August 17, and August 28, 2019, while the Tenant was out of the country;
- and
- the Tenant paid full rent for July and August of 2019.

The Landlord submitted a copy of a report from a restoration company, dated August 09, 2019, in which the author of the report declared that the damages were the result of "a kitchen sink overflow".

The Landlord submitted a letter from the owner of the construction company that repaired the damage in the rental unit. In the letter the owner declared that:

- he was hired to repair the damage was caused by a "kitchen sink flood";
- when he was replacing the kitchen sink, he noted that the sink pipes were filled with "what appeared to be mold caused by food, along with remnants of eating utensils including wood from a chopstick and plastic debris"; and
- these remnants created an obstruction for water flow and caused the flood.

The Tenant submitted an email from an insurance adjustor, dated October 10, 2019, in which the adjustor declared that:

- "it sounds like the water damage leak was from the kitchen faucet";
- "my insured has sent me screenshots of text messages hat he sent to your insured (his landlord) November 2018 and February 2019"
- "these messages show that our insured advised your insured that the kitchen tap was malfunctioning and leaking months before the leak caused this damage"; and
- the Tenant asked the Landlord to repair the tap.

The Tenant submitted photographs of the rental unit after the flooring and some cabinets had been removed on August 06, 2019. Neither party submitted photographs of the unit prior to repairs being initiated.

Analysis:

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 or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord did not repay the full security deposit or file an

Application for Dispute Resolution within 15 days of receiving the Tenant's forwarding address and the tenancy ending.

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 the Tenant double the security deposit that was still being held at the end of the tenancy, which is $3,600.00 ($1,800.00 X 2).

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a fixed term tenancy agreement, the fixed term of which ended on August 31, 2018. I find that this tenancy agreement clearly declared that at the end of the fixed term, the tenancy will continue on a month-to-month basis unless the parties enter into a new tenancy agreement.

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a second fixed term tenancy agreement, the fixed term of which ended on August 31, 2019. I find that this tenancy agreement was mutually beneficial, as it assured both parties that the tenancy would continue for another year. As the first tenancy agreement clearly declared that a second tenancy agreement was not necessary and the parties agreed to sign this mutually beneficial second tenancy agreement, I find that both parties were obligated to comply with the terms of the second tenancy agreement.

As the parties signed a second tenancy agreement, I find that they entered into a new tenancy in which the Tenant agreed to pay monthly rent of $1,820.00. As they entered into a new tenancy, I find that the agreed upon rent of $1,820.00 does not constitute a rent increase and, as such, is not subject to the requirements of sections 41, 42, or 43 of the *Act.* I find that the Tenant has failed to establish that there has been an unlawful rent increase and I dismiss his application to recover a "rent increase".

On the basis of the undisputed evidence, I find that on March 31, 2019 the Tenant informed the Landlord of water damage in the rental unit.

After considering all of the evidence, I find that the water damage was more likely the result of the kitchen sink overflowing, as the Landlord contends, than the result of a slow leak from a kitchen faucet, as the Tenant contends.

In adjudicating this matter, I was influenced, in part, by the restoration company report, dated August 09, 2019, in which the author of the report declared that the damages were the result of “a kitchen sink overflow”. I find that this report supports the Landlords’ submission that the damage was caused by an overflowing sink.

In adjudicating this matter, I was influenced, in part, by letter from the owner of the construction company that repaired the rental unit, in which he declared that when he was replacing the kitchen sink he noted that the sink pipes were filled with “what appeared to be mold caused by food, along with remnants of eating utensils including wood from a chopstick and plastic debris”; and that these remnants created an obstruction for water flow and caused the flood. I find that this report supports the Landlords’ submission that the damage was caused by an overflowing sink.

In adjudicating this matter, I have placed less weight on the email from an insurance adjustor, dated October 10, 2019, in which the adjustor declared that “it sounds like the water damage leak was from the kitchen faucet”; “my insured has sent me screenshots of text messages hat he sent to your insured (his landlord) November 2018 and February 2019”; and “these messages show that our insured advised your insured that the kitchen tap was malfunctioning and leaking months before the leak caused this damage.

Even if I accepted that the Tenant reported a leaking kitchen faucet, which the Landlord denies, I find that there is no evidence that the leaking faucet caused the damage that the Tenant reported on March 31, 2019. I find it highly unlikely that a kitchen faucet that has been leaking over an extended period of time would be the result of a sudden influx of water into the rental unit. Rather, a sudden influx of water on the living room floor is more consistent with a kitchen sink overflowing, I find that water damage from a leaking faucet would likely spread slowly from the area of the sink and would be noticed long before it pooled in the living room.

As the water damage was caused by the actions of the Tenant, I find that the Tenant is not entitled to compensation for any inconveniences or costs associated to living in the rental unit during the repair. I therefore dismiss the Tenants’ claim for compensation for $5,256.00.

Although I recognize that there was a significant delay in repairing the rental unit, I find that the Tenant asked that the repairs be delayed until he left for holidays in August of 2019. I therefore find that he is not entitled to any compensation for the delay in making the repairs.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $3,700.00, which includes double the security deposit and $100.00 as compensation for the cost of filing this Application for Dispute Resolution. I find that this amount must be reduced by the $1,381.05 that was returned to the Tenant on December 14, 2019.

Based on these determinations, I grant the Tenant a monetary Order for $2,318.95. In the event the Landlord does not voluntarily comply with this Order, it may be 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 *Residential Tenancy Act*.

Dated: May 31, 2020

Residential Tenancy Branch