Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

In this dispute, the landlord seeks compensation against their former tenants for various matters pursuant to section 67 of the *Residential Tenancy Act* (the "Act"), and for recovery of the filing fee pursuant to section 72 of the Act. The landlord applied for dispute resolution on February 25, 2020 and a dispute resolution hearing was first held, by way of telephone conference, on May 8, 2020. The matter was then adjourned to June 22, 2020.

The landlord, two of the tenants, and an interpreter/advocate for the tenant, attended the hearing on June 22, 2020. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Issues of the service of evidence arose in this hearing, which I shall address below.

Preliminary Issue: Evidence

The tenant's advocate remarked that he had not received copies of the photographs to which the landlord had referred; every other piece of evidence submitted by the landlord was, however, received by the tenants. There are, I note, a total of 31 photographs of the rental unit submitted into evidence by the landlord. The landlord testified that he sent copies of this evidence by both regular mail and by email. The tenants denied ever having received this.

In such disputes, the onus falls on the party claiming that they served the other side with evidence proving such service. As the landlord was unable to provide documentary evidence that he did, in fact serve the tenants, I cannot accept and will not consider the 31 photographs submitted into evidence. However, I will accept and consider the remaining documentary evidence, along with his oral evidence.

Regarding the tenants' evidence, the landlord remarked that he had received some of this evidence but was unable to open some of the files. I note that the tenants did not submit any documentary evidence until June 17 and 19, 2020.

In my Interim Decision of May 8, 2020, I clearly stated on page 2 that "the tenants must submit copies of any relevant evidence to both the Residential Tenancy Branch (online) and to the landlord no later than 10 days before the next hearing."

Rule 3.15 of the *Rules of Procedure* also state that "the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

In this dispute, the tenants did not provide or submit any of their evidence until 5 or even 3 days before the hearing. The tenants had sufficient opportunity from the date of the Interim Decision of May 8, 2020 to prepare and properly submit their evidence, including properly serving the landlord in compliance with my order. Given that the tenants did not provide a reason or justification why they submitted evidence in violation of either my order or the *Rules of Procedure,* I exercise my discretion pursuant to Rule 3.17 of the *Rules of Procedure* and do not accept the tenants' documentary evidence.

Further, I find that there has been, by the tenants, a wilful failure to comply with the *Rules of Procedure* and my order, and thus I refuse to accept the tenants' documentary evidence pursuant to Rule 3.12 of the *Rules of Procedure.* As such, I shall only consider the tenants' advocate's submissions and testimony in this Decision.

Issues

1. Is the landlord entitled to compensation as claimed?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on November 1, 2019 and ended on February 1, 2020. A copy of the written tenancy agreement was submitted into evidence, and the landlord confirmed that the tenancy was intended to be a fixed-term tenancy ending October 31, 2020. Monthly rent was $1,600.00 and the tenants paid a security deposit of $800.00, which the landlord currently holds in trust.

In this dispute the landlord claims the following amounts in compensation, for a total of $1,936.45:

1. $27.30 for “paint for doors, baseboards”;
2. $12.30 for “cleaning paper”;
3. $83.24 for “egshel [sic] and semigloss paint cleaner floors”
4. $180.61 for BC Hydro;
5. $33.00 for Fortis BC; and,
6. $1,600.00 for unpaid rent for February 2020.

In addition, the landlord also seeks $100.00 for the application filing fee. Shortly into the hearing the landlord stated that he had, on May 11, 2020, amended his application to include a claim for $550.00 for labour. A second Monetary Order Worksheet which itemized these amounts was submitted and received by the Branch on May 12, 2020.

The landlord testified that he completed a Condition Inspection Report both at the start and at the end of the tenancy. The tenants were present at the initial report but were not present at the move out report. He asked the tenants to show up for the move-out inspection but “they never showed up for it.”

The Condition Inspection Report (the “Report”), a copy of which was submitted into evidence, indicated that all items in the rental were in “good” condition at the start of the tenancy. At the end of the tenancy, however, multiple items were marked variously as dirty, stained, dusty, damaged, and poor, along with numerous references to stickers on things (presumably put there by the tenants’ children). All of the monetary claims for items 1 through 3 related to the tenants’ damage to the rental unit. As for the claimed labour costs for 22 hours, he stated that this was a “conservative” amount claimed. Finally, he said that, while the damages were minor, they are permanent. Copies of receipts were submitted into evidence.

It should be noted that the tenants do not dispute the amounts claimed for BC Hydro and Fortis BC.

As for the unpaid rent, the landlord gave evidence that the tenants texted him at the start of January 2020 that they would be moving out on February 1, 2020. Because of the tenants’ lack of proficiency in English, the landlord asked for a more formal, clear written notice. On January 13, one of the tenants provided the landlord with a written notice (a copy of which was submitted into evidence) in which they indicated they would be vacating on February 1, 2020. This gave the landlord two weeks remaining to find a

new tenant for February 1; he had 3 showings in those two weeks. He took out ads (several samples of which were in evidence) immediately after he received formal notice from the tenants. Fortunately, he remarked, he was able to find a new tenant for March 1, 2020. A copy of the tenancy agreement for that new tenant was tendered into evidence.

The tenant's interpreter (who I have noted as an advocate, given that he provided 100% of the testimony and submissions, after occasionally speaking with the tenants in their language) testified that the landlord is "a professional landlord and who knows how to cover his butt." Moreover, the interpreter submitted that the landlord took advantage of the tenants and their unfamiliarly with the law, being newcomers to Canada.

According to the tenants, the rental unit "was really dirty." However, when the tenants moved out the landlord allegedly said that "you made this place better than when you moved in," and he was quite happy about the condition of the house.

Further, the tenants (through the interpreter) testified that "the place was unliveable." There were issues with the laundry, and more important, noise issues with other tenants coming and going at all hours of the day and night. One of the tenants was working two jobs and was unable to get any rest or sleep because of this noise. In the end, the tenants felt that they were "pushed to move out." Finally, it was noted that there was dirt on the windows which they were unable to open, thus they were unable to get any fresh air into the rental unit.

In rebuttal, the landlord stated that the "place was in absolute liveable condition" and that he "didn't force them" to move.

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?

3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 7 (1) 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.
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> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
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> . . .
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> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Claim for Rent

Section 45(2) of the Act deals with the method by which a tenant can end a fixed term tenancy. This section of the Act reads as follows:

> A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice,
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> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
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> (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 this case, the tenants gave notice to end the tenancy on a date that was earlier than the date specified in the tenancy agreement as the tend of the tenancy (October 31, 2020). As such, I find that the tenants breached section 45(2) of the Act. But for the tenants' breach of the Act, the landlord would not have suffered the loss of rent for February 2020, in the amount of $1,600.00.

Did the landlord do what was reasonable to minimize his loss? I find that he did. He took out advertisements immediately upon receiving the tenants' notice, and he kept the rent at the same price.

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 their claim for $1,600.00 for the loss of rent for February 2020.

Claim for Painting and Cleaning

Subsection 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.

The Condition Inspection Report indicates that everything in the rental unit was clean and in good condition at the start of the tenancy. The Report indicates that many things were not clean and in good condition at the start of the tenancy. While both parties provided photographic evidence to either substantiate or refute the findings of the Report, having excluded this evidence I need not consider it further.

Section 21 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003, 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.

As there was not a preponderance of evidence to the contrary, I find that the Report is evidence of the state of repair and condition of the rental unit. As such, it follows that the tenants breached section 37(2) of the Act, and but for this breach the landlord would not have incurred expenses in the amount of $122.84. The amounts claimed are

reasonable, and I do not find that the landlord did anything to counter an effort to minimize such costs.

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 $122.84 for the above-noted items.

Claim for Labour

Based on my previous finding that the tenants did not comply with section 37(2) of the Act, it is reasonable to conclude – based on the extensive nature of the poor state of the rental unit as evidenced by the Condition Inspection Report – that the landlord incurred labour costs of 22 hours at a rate of $25.00 per hour in order to paint, fix walls, clean, and paint the baseboards and doors. $25.00 per hour is, I find, at the lower end of the cost for cleaning services or general contracting.

The Monetary Order Worksheet broke down the hours into two categories, and but for the tenants' breach of the Act the landlord would not have had to expend 22 hours on repairing and painting the rental unit. That the landlord did not hire professional cleaners or a general contractor, and instead chose to take on these activities themselves, goes to a reasonable mitigation effort on his part.

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 labour in the amount of $550.00.

Claim for Utilities

As the tenants did not contest these claims, and accepted responsibility, I grant the landlord a monetary award of $213.61.

Claim for Filing Fee

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 landlord was successful, I grant his claim for reimbursement of the filing fee of $100.00.

Summary of Award

The landlord is awarded total compensation in the amount of $2,586.45.

The monetary award, and a monetary order of $1,786.45 are calculated as follows:

Claim	Amount
Loss of rent	$1,600.00
Painting, Etc.	122.84
Utilities	213.61
Labour costs	550.00
Filing fee	100.00
LESS security deposit	(800.00)
Total:	$1,786.45

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlords may retain the tenants’ security deposit of $800.00 in partial satisfaction of the above-noted award.

Conclusion

I grant the landlord a monetary order in the amount of $1,786.45, which may be served on the tenants. Should the tenants fail to pay the landlord the amount owed, the landlord must serve a copy of the order on the tenant and may file the order in the Provincial Court of British Columbia (Small Claims Court) for enforcement and collection.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 23, 2020

Residential Tenancy Branch