Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, MNDCL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlords under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Monetary compensation for damage caused by the Tenant, their pets, or their guests to the rental unit;
- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlords, all of whom provided affirmed testimony. The Tenant acknowledged receipt of the Notice of Dispute Resolution Proceeding Package from the Landlords, including a copy of the Application and notice of hearing, and both parties acknowledged receipt of each other's documentary evidence. Neither party raised concerns in the hearing about the service of these documents or my acceptance of them for consideration. As a result, I find that the Tenant was served with the Notice of Dispute Resolution Proceeding Package as required by the *Act* and the Rules of Procedure and I accept all the documentary evidence before me form both parties for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the Landlords copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application. At the request of the Tenant, a copy of the decision will be mailed to them at the mailing address shown in the Application.

Preliminary Matters

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

- Are the Landlords entitled to monetary compensation for damage caused by the Tenant, their pets, or their guests to the rental unit?
- Are the Landlords entitled to recovery of unpaid rent?
- Are the Landlords entitled to compensation for monetary loss or other money owed?
- Are the Landlords entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy began on April 1, 2018, and that the tenancy will become month to month after the end of the fixed term on March 31, 2019. The tenancy agreement states that $1,400.00 in rent is due on the first day of each month and that only water, garbage collection, recycling services, free laundry, parking for two vehicles, a refrigerator, an oven and stove, a dishwasher, window coverings and carpets are included in the cost of rent. The tenancy agreement also states that a $700.00 security deposit and a $700.00 pet damage deposit were paid.

The addendum to the tenancy agreement clarifies where the parking for the rental unit is located and provides details about the garbage and recycling collection services. It also states that the Tenant has one cat and two dogs, that general yard and garden maintenance and snow removal are the responsibility of the Tenant, that there is to be no smoking in the rental unit, and that all utilities not included in rent are the responsibility of the Tenant. Both the tenancy agreement and the addendum were signed by the Landlords on January 21, 2018, and by the Tenant on January 24, 2018.

Although the Applicant is the only tenant listed on the tenancy agreement, the parties agreed that another adult occupant also resided in the rental unit with the Tenant. In the hearing the Tenant stated that the tenancy became month to month after the end of the

fixed term but the Landlords denied this, stating that a new fixed term tenancy agreement was signed with the same rent and all of the same terms with the exception of a clause requiring the Tenant to give two months notice to end the tenancy. A copy of this tenancy agreement was not submitted for my review or consideration. Neither party disputed any of the other terms of the tenancy agreement outlined above.

The parties agreed that a move-in condition inspection and report were properly completed and that a copy of the inspection report was given to the Tenant, in accordance with the *Act* and regulations.

The parties agreed that the RCMP were called on October 17, 2019, and that the Tenant was subsequently hospitalized that date. The Landlords stated that as rent was still owed for October, a 10 Day Notice was personally served on the adult occupant of the rental unit on October 18, 2019. The Landlords stated that the adult occupant signed the Proof of Service document, a copy of which was submitted for my consideration.

The 10 Day Notice in the documentary evidence before me, dated October 18, 2019, states that the Tenant failed to pay $1,400.00 in rent due on October 1, 2019, and has an effective date of October 28, 2019. Although the Tenant did not dispute that the 10 Day Notice was served as described above, they stated that they did not become aware of it until approximately October 24, 2019, as a result of their hospitalization. Despite the amount listed as outstanding on the 10 Day Notice, the parties agreed in the hearing that only $631.00 is owed to the Landlords for October 2019 rent.

In the hearing the Landlords stated that they changed the locks to the rental unit on either October 20, 2019, or October 21, 2019, and acknowledged that they did not give the Tenant or the adult occupant a copy of the new key. However, the Landlords stated that they did not lock the property and that the adult occupant was allowed access beyond the end date of the 10 Day Notice. The Landlords stated in the hearing and in their written submissions that they attended the rental unit on October 24, 2019, at the request of the Tenant's family, as the Tenant's family wanted the adult occupant of the rental unit gone. The Landlords stated in the hearing and in their written submissions that the adult occupant advised them that their belongings were packed, and that they were planning to move out on October 26, 2019, and detailed numerous entries made by them to the property for the purpose of assessing and completing cleaning and repairs between October 24, 2019, and October 29, 2019, when the Tenant's family finished removing the Tenant's belongings from the rental unit.

The Landlords stated in the hearing and their written submissions that they believed that the Tenant's family was acting on the Tenant's behalf and that they worked with the Tenant's family members to have the Tenant's belongings removed. The Landlords stated that they believe that both the Tenant and all occupants were out of the rental unit by the end of October, 2019.

The Landlords stated that the Tenant did not leave the rental unit reasonably clean and undamaged at the end of the tenancy, except for reasonable wear and tear, as required, and that there had been an unreported flood in the basement, which required significant cleaning and repairs to remediate. They stated that a move-out condition inspection was completed with the Tenant's Mother showing the state of the rental unit at the end of the tenancy, a copy of which was submitted for my consideration.

The Landlords also stated that the Tenant owes money for outstanding rent and utilities, as well as lost rent for the two months it took them to clean and repair the rental unit. The Landlords therefore sought $7,901.08 in repair and cleaning costs, unpaid rent, lost rent, unpaid utility bills and other associated monetary losses. Although the Landlords acknowledged that the rental unit was vacant for two months in order for them to complete the required cleaning and repairs, they stated that this was preferable to waiting for contractors or tradespeople to complete the work, which would have caused an additional 1-2 month delay in the completion of the work due to lack of availability in the area and significantly increased the cost. The Landlords also acknowledged that they did over 100 hours of additional work to the rental unit for which the Tenant has not been charged, as they already planned to complete these repairs at the end of the tenancy. While the Landlords stated that they replaced some of the damaged items in the rental unit, such as carpeting, with different materials, such as laminate flooring, they did this as it was less time consuming and more cost effective to purchase and install these new items versus replacing them with the exact same material.

The Landlords submitted a significant amount of documentary evidence in support of their claims, including written statements, photographs, invoices and receipts, detailed accounts and spreadsheets for materials and labour (charged at $20.00 per hour per person), copies of utility bills, as well as the tenancy agreement and addendum.

In the hearing the Landlords broke their claim down as follows:

- $4,470.08 for cleaning, renovations, repairs, outstanding utilities and other associated costs;
- $631.00 in outstanding rent for October 2019;
- $2,800.00 in lost rent for November and December of 2019.

The Landlords stated that the Tenant agreed in writing for them to keep their $700.00 security deposit and $700.00 pet damage deposit and that the Tenant's mother paid them $2,000.00 towards damage and rent owed. The Landlords stated that these amounts have already been factored into their claim, and that the amounts sought in the hearing represent the remaining balances owed after the above noted payment and retention of the security and pet damage deposit.

The Tenant stated that the condition of the rental unit has been greatly exaggerated by the Landlords and that their ability to clean and repair the rental unit was negated by the Landlord's unlawful ending of the tenancy by changing the locks. The Tenant also denied that their family members were ever authorised to act on their behalf in relation to the tenancy, and therefore argued that the Landlord was not entitled to end their tenancy with their family members, to allow their family members access to the rental unit or the removal of their possessions or to complete the move-out condition inspection with them. Although the Tenant did not specifically recall having given written authorization for the Landlords to withhold their deposits, they acknowledged that their signature appears on the move-out condition inspection report authorizing this and stated that their Mother must have brought it to them in the hospital for them to sign. In any event, they agreed in the hearing that the Landlords could retain the deposits but argued that the amounts sought by the Landlords for repairs, cleaning and other costs are unreasonable as they believe that the $700.00 security deposit, $700.00 pet damage deposit, and the $2,000.00 paid to the Landlords by their Mother are more than sufficient to cover any costs incurred by the Landlords or outstanding rent and utilities owed. As the Tenant denied that the rental unit was as dirty or damaged at the end of the tenancy as claimed by the Landlords, they also argued that the Landlords should not be entitled to claim lost rent for November and December of 2019 and stated that the Landlords are just trying to take advantage of them by improving the rental unit at their cost. However, the Tenant agreed that they owe $631.00 in outstanding rent for October 2019.

Analysis

There was no dispute between the parties that the Tenant owes $631.00 in outstanding rent for October 2019. As a result, I award the Landlords recovery of this amount. As the Tenant also agreed that the Landlords are entitled to withhold their deposits, I grant the Landlords authorization to do so.

I accept the Landlords' testimony and documentary evidence with regards to service of the 10 Day Notice and therefore find that it was personally served on October 18, 2019, in accordance with the *Act* as it was personally served on an adult who resides in the rental unit with the Tenant on that date. As there is no evidence before me that the Tenant paid the rent shown on the 10 Day Notice in full, or filled an Application with the Branch seeking to dispute the 10 Day Notice, within the five days set out under section 46 (4) of the *Act*, I therefore find that the Tenant is conclusively presumed to have accepted that the tenancy was ending on October 28, 2019, and was required to vacate by that date in accordance with the 10 Day Notice, pursuant to section 46 (5) of the *Act*. Based on the above, I find that the tenancy ended on October 28, 2019, and that the Tenant and the occupant, or both, overheld the rental unit when they failed to vacate on this date.

However, I do not find that the Landlords were entitled to change the locks to the rental unit on either October 20, 2020, or October 21, 2020, without providing the Tenant with a key, as neither the period for disputing the 10 Day Notice under the *Act* nor the effective date for the 10 Day Notice had lapsed, the Tenant did not consent to this and was not given a key, the Tenant's possessions remained inside the rental unit while the Tenant was hospitalized, and therefore the Tenant cannot reasonably have been considered to have abandoned the rental unit, and the Landlord's did not have an order from the Branch authorizing them to do so or granting them an Order of Possession for the rental unit. I also find that the Landlords were not entitled to enter the rental unit without having given proper notice under section 29 of the *Act*, despite the Tenant's absence from the rental unit due to hospitalization or service of the 10 Day Notice, to have allowed the Tenant's family members access to the rental unit for the purpose of removing their possessions, or to have allowed the Tenant's family members to end the tenancy and complete the condition inspection without authorization from the Tenant to do so, or an order from the Court authorizing the Tenant's family members to act on their behalf. While I believe the Landlords were acting in good-faith, I find that they were not entitled to accept that the Tenant's family members had authority to act on the Tenant's behalf in terms of the tenancy, as they had no legal or other documentary evidence of this nature, such as an order from the court or a signed document from the Tenant, authorizing the Tenant's family members to act on the Tenant's behalf.

Based on the above, I therefore find that the Landlords violated the *Act* when they changed the locks to the rental unit without giving a new copy to the Tenant, by entering the rental unit themselves without providing the Tenant with proper notice under the *Act* and/or authorizing the entry of the Tenant's family members to the rental unit, and by ending the tenancy in a way other than permitted under the *Act*. While I acknowledge

that October 2019 rent remained unpaid and that a 10 Day Notice had been served, if the Landlords wanted possession of the rental unit, they needed to apply to the Branch for an Order of Possession based on the 10 Day Notice and if necessary, obtain a writ of possession through the BC Supreme Court and hire a bailiff to remove the Tenant's possessions. It was not open to them to simply change the locks and authorize the Tenant's family members to end the tenancy and remove the Tenant's possessions.

Despite the foregoing, I am satisfied by the Landlords testimony and documentary evidence that the value of the loss suffered by them is as stated in their Application, as a result of the Tenant's failure to pay rent and utilities as owed, and to leave the rental unit reasonably clean and undamaged at the end of the tenancy. Although the Tenant argued that the amounts sought by the Landlords were unreasonable, they did not submit any documentary or other evidence in support of this argument, such as lower priced quotes or price comparisons. Except as otherwise stated in this decision, I therefore find that I am satisfied that the amounts claimed by the Landlords are for losses suffered as a result of the Tenant's failure to comply with the *Act*, the value of the losses suffered and that the amounts sought do not represent more than a reasonable cost for the services rendered. However, I am not satisfied that the Landlords did whatever was reasonable to minimize their loss as they negated the Tenant's ability to clean and repair damage to the rental unit before the end of the tenancy by changing the locks without authority and ending the tenancy improperly.

As part of their $4,470.08 claim for repairs, cleaning and other costs, the Landlords sought $231.84 for the cost of a security system, which I find is an improvement and therefore a cost to be born solely by the Landlords. As a result, I decline to award them any compensation for the cost of a security system. I also decline to award the Landlords the $4.45 sought for key cutting and the $66.61 for lock replacement, as I have already found in this decision that the Landlords changed the locks in breach of the *Act*.

The Landlords also sought the full cost of tools purchased for the purpose of completing renovations and repairs, such as a wet/dry vacuum, painting and drywall tools, and flooring installation tools. While I find that these tools were necessary for the completion of the work, and that this work was necessary as a result of the Tenant's breach of the *Act*, the Landlords did not present evidence or testimony that purchasing these items was more cost-effective than renting them, or that rentals were not available for these items, and I am satisfied that the Landlords will continue to derive financial and other benefits by owning these items. As a result, of the above, and the Landlord's failure to

mitigate loss, I therefore reduce the Landlords' remaining claim amount of $4,167.18 for repairs, cleaning and other costs by 50%, and award them recovery of only $2,083.59.

Although the Landlords sought recovery of two months of lost rent pursuant to section 7 of the *Act*, they acknowledged in the hearing that they also completed over 100 hours of renovations and repairs to the rental unit unrelated to damage caused by the Tenant. As a result, I find that approximately two weeks of the total renovation period (calculated as between 6-8 hours of work per day), was a result of renovations and repairs for which the Tenant is not responsible. I therefore award the Landlords recovery of only one and a half months in lost rent in the amount of $2,100.00.

As the Landlords were reasonably successful in their Application, I also grant them recovery of the $100.00 filing fee, pursuant to section 72 (1) of the *Act*. Based on the above and pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of $4,914.59.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of **$4,914.59**. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

In addition to the above, the Landlords are entitled to retain the Tenant's security and pet damage deposits totalling $1,400.00.

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: July 28, 2020

Residential Tenancy Branch