Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRL-S, MNDCL, FFL

Introduction

In this dispute, the landlord seeks compensation pursuant to sections 67 and 72 of the *Residential Tenancy Act* (the "Act").

The landlord filed an application for dispute resolution on April 23, 2020 and an arbitration hearing was held on August 28, 2020. The landlord's agent (the "landlord") and the tenant attended the hearing and were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the landlord entitled to any or all of the compensation claimed?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

By way of background, the tenancy started on September 1, 2019. The tenancy ended sometime in January 2020. Monthly rent, which was due on the first of the month, was $1,000.00. The tenant paid a security deposit of $500.00; the landlord currently retains this deposit in trust pending the outcome of the dispute.

A copy of the written residential tenancy agreement was submitted into evidence, and it is worth noting that it was a fixed-term tenancy that was to end on August 31, 2020.

The landlord testified that the tenant and her roommate were not getting along, and she ended up going back to China to spend time with family. The landlord was not sure if the tenant would be moving back into the rental unit but was not entirely clear in December 2019. It became clearer, however, in early to mid-January 2020 to the landlord that the tenant would not be coming back. The tenant cut off correspondence with the landlord and stopped paying rent for January 2020 and beyond.

The landlord was starting to feel desperate and had started aggressively looking for a new tenant. Both parties tried to help each other, for a brief period, in finding a new tenant. However, none was found, despite the landlord having constant advertising on several websites. No new tenant was found until May 1, 2020, at which point the landlord had advertised the rental unit for as low as $700 a month, in an effort to woe prospective tenants. Some difficulty was had, though, because the rental unit caters almost exclusively to students attending the nearby university. (“The condo is in the middle of nowhere,” the landlord remarked.) Submitted into evidence were various copies of advertisements that the landlord had taken out.

In late February or March 2020, the landlord said that the tenant sent her a forwarding address. However, the landlord explained that the address was for a condo building but it did not have the suite number.

The landlord’s claim is for $5,800.00 in unpaid, or loss of, rent. The amount if based on the rent that the tenant would have paid from January to April 2020 had she not broken the tenancy, and it includes the difference between what the tenant would have paid and what the new tenant is now paying between May and August 2020, inclusive.

In addition, the landlord seeks $31.50 in compensation for replacement keys and $75.00 for a fob that the tenant did not return to her at the end of the tenancy. A receipt for the key replacement cost and a ledger for the fob were submitted into evidence.

In her testimony, the tenant largely agreed with much of what the landlord said, in terms of why she decided to move out. Namely, that her roommate was having a boyfriend or boyfriends coming over constantly, in some cases staying for weeks. It was making the tenant really uncomfortable that this was happening and was “the reason I moved out.”

The tenant testified that she “very actively” tried finding a new tenant, but to no avail. As for the key (and the fob, though it was unclear), the tenant said that she returned these to a friend who lived in the condo building and they apparently returned the key and fob to the landlord. The landlord disputed this and said that nobody returned any keys.

Regarding the forwarding address, the tenant gave evidence that she sent her forwarding address to the landlord in an email on March 14, 2020. This was a later email, and it was included in her evidence. The email clearly shows that the address is a full address and includes the suite number.

In rebuttal, the landlord explained that she never received this email. (The landlord took some time sifting through her emails during the hearing, but she was unable to locate the email in question.)

In response to the landlord's rebuttal, the tenant said that she has additional copies of emails which show the landlord responding to the email of March 14, 2020, and that she "could send them to me" if I were interested in them. In addition, she remarked that she had a friend or friends who could testify to this issue. I note, however, that the deadline for submitting any evidence has long since passed, and the tenant did not call any witnesses to the hearing.

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.

(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.

. . .

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.

A. Claim for Loss of Rent

The tenancy was a fixed-term tenancy from September 1, 2019 until August 31, 2020. If a tenant ends the tenancy before the fixed-term tenancy is to end, then they are potentially liable for any loss of rent that results. Under a fixed term tenancy, a tenant may only end the tenancy in compliance with section 45(2) of the Act, which states, *inter alia,* that a tenant may only end a fixed term tenancy on a date that “is not earlier than the date specified in the tenancy agreement as the end of the tenancy.”

In this case, the tenant never gave the landlord formal notice under the Act that she was ending the tenancy. Rather, she simply left. Based on the circumstances I find that the tenant vacated or abandoned the rental unit in December 2019 or early 2020. Under section 45(1)(d) of the Act a tenancy can end when “the tenant vacates or abandons the rental unit.” This is what happened. In summary, I find that the tenant breached section 45(2) of the Act by not ending the tenancy in compliance with the tenancy agreement.

Having found that the tenant breached the Act, I must next determine whether the landlord’s loss resulted from that breach. This is known as *cause-in-fact,* and which focusses on the factual issue of the sufficiency of the connection between the respondent’s wrongful act and the applicant’s loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant’s loss or damage have occurred *but for* the respondent’s negligence or breach? If the answer is “no,” the respondent’s breach of the Act is a cause-in-fact of the loss or damage. If the answer is “yes,” indicating that the loss or damage would have occurred whether or not the respondent was negligent, their negligence is not a cause-in-fact.

In this case, but for the tenant's breaking of the tenancy, the landlord would not have suffered a loss of rent from January 2020 until the end of August 2020 as claimed.

Finally, I find that the landlord did whatever was reasonable to minimize the loss of rent. She constantly advertised on multiple website but to no avail. And, while there was some restriction on being able to rent to male students (the female tenant, the roommate that is, who continued to reside in the rental unit, is Muslim and as such there cannot be males in the rental unit for religious reasons), the market was tough. The property is outside the city and is geared toward students attending the nearby university. By early 2020, most students have already found housing. The landlord did all that she could have reasonably done to find a new tenant and mitigate her loss.

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 her claim for compensation of $5,800.00.

B. Claim for Replacement Keys and Fob

Section 37(2)(b) of the Act requires that a tenant return to the landlord "all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property" when the tenant vacates the rental unit.

Here, the landlord claims that the tenant never returned the keys and fob. The tenant disputes this and said that she gave them to a friend who supposedly gave the keys back. But there is no evidence that the friend did what they were supposed to do. In any event, the friend was under no obligation give the keys to the landlord. (Who, I might add, lives in another city 400 km away.)

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 her claim for compensation of $106.50.

To summarize, the tenant breached the Act by not returning the keys and the fob, the landlord would not have incurred replacement costs of $106.50 had the tenant returned the keys, and, the amount is proven by a receipt and a ledger. Finally, the minimal cost to replace these keys and fob is such that there is little more that the landlord could have done to minimize these costs. They are, it could be argued, rather fixed by the cost of having new keys cut, and, the fixed cost for a replacement fob set by the strata.

C. 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 her claim for reimbursement of the $100.00 filing fee.

D. Summary of Award

In total, I award the landlord compensation in the amount of $6,006.50.

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 the tenancy has long ago ended, I order that the landlord retain the tenant’s security deposit of $500.00 in partial satisfaction of the above-noted award.

The balance of the award, $5,506.50 is granted as a monetary order which is issued in conjunction with this Decision.

E. Security Deposit and Forwarding Address

Before concluding, I must address the issue raised by the tenant in respect of when she provided her forwarding address to the landlord.

Section 38(1) of the Act states the following regarding what a landlord’s obligations are at the end of the tenancy with respect to security and pet damage deposits:

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenant claims that she gave her forwarding address in writing (by email) to the landlord on March 14, 2020. A copy of this email was submitted into evidence. However, the landlord disputes that she ever received this email, which contained the tenant's full forwarding address.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the tenant has failed to provide any evidence that the landlord actually received the tenant's forwarding address by email. A copy of a sent email, without anything more, is not proof that the email was in fact received. While the tenant commented that she had additional evidence that would have proven this, she submitted no such evidence to support her claim.

Accordingly, I do not find that the landlord received the tenant's forwarding address in writing. Therefore, the tenant is not entitled to any compensation in respect of the security deposit.

Conclusion

I hereby grant the landlord a monetary order in the amount of $ 5,506.50, which must be served on the tenant. Should the tenant fail to pay the landlord the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

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

Dated: August 31, 2020

Residential Tenancy Branch