Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding pacific wellfare resource investment inc and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

The landlord filed an application for dispute resolution (the "Application") on May 11, 2020. They seek an order for compensation for monetary loss or other money owed. The landlord applies to use the security deposit towards compensation on these two claims. Additionally, they seek to recover the filing fee for the Application.

They presented how they delivered notice of this hearing to the tenant via email as emergency measures regarding for service then allowed. The tenants confirmed they received the initial pieces of evidence from the landlord; however, they did not receive the more recent evidence that the landlord provided. Both parties confirmed their service of evidence was carried out using email – "no paper".

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on September 11, 2020. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and present evidence during the hearing.

Issue(s) to be Decided

Is the landlord entitled to a money owed or compensation for damage or loss, pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the Residential Tenancy Agreement that both parties signed on February 1, 2020. The agreement is clear that the period of the tenancy is fixed, starting on February 1, 2020 and ending on June 30, 2020. It is specified that at the end of the term, the tenants must vacate. The rent amount is $5,000.00. The tenants paid a security deposit of $2,500.00 on February 1, 2020.

A clause in the addendum specifies that the tenants agreed to pay $25,000 in advance "on or before Feb 1st 2020". This is the sum total of rent owing for that fixed term period of five months.

Specifically, the agreements states in an addendum that: "Electricity, gas, water and other utilities in respect of the property will be covered by the tenants. And balance will be paid after get notice within 3 business day." Further: the tenants "[are] responsible for all payments and damages inflicted in the property".

The landlord reiterated throughout the hearing that the agreement was entered into by the tenants through fraud. Specifically, they did not provide credit information when asked to do so. The tenants presented that two months into the tenancy, the RCMP instructed them to pay their utilities directly to the contact name provided by the landlord as their spouse. In the hearing the tenants maintained that the RCMP told them they were the victim of fraud in this tenancy.

The landlord's Application for compensation is threefold. For each component, the landlord applies to retain the security deposit as part of the compensation.

First, the landlord claims for damage to the heating system, and the repairs they paid for. By March 17, the heating system failed again after a repair on March 12, 2020. The tenants paid for the initial repair on March 12, 2020 and provided a receipt to show this. The landlord maintains the subsequent repair was for the same reason, and after the repairperson instructed the tenants on how to operate the system correctly.

The landlord then paid $330.00 for repairs. For proof showing this, the landlord submitted a receipt dated March 17 showing "boiler troubleshooting" and "zone valve replaced". I paraphrase from the landlord's Application portion for compensation for damage caused by the tenant. This is my interpretation of the landlord's statement on this issue. It states: '

> the tenants damaged the boiler and we hired a worker to fix it urgently on the same day – tenant checked with worker to satisfy, but tenant damaged it again

> after the worker left – [the same] worker came back in the next day to re-fix, and the tenant used the wrong way to handle and damaged it again – the prior worker refused to come back to keep fixing the same problem – so we have to hire another worker to fix the same problem [for the third time] and tell the tenant not to touch the equipment after its repair'.

The tenants provided pictures, with a description of their interaction with the repairperson. They also provide photos of their text messages with the landlord as the heating system was causing urgent problems on March 12, 2020. They present this was due to a leak:

> Both repairmen who came clearly stated the issue was related to equipment (older unit and not maintained). We ensured they both spoke with [the landlord] to consent to the work and to explain that the required work was not related to anything we had done. The hole is clearly [sic] from a rusty spot on the back of the tank facing the wall.

For the second part of their monetary claim, the landlord provided the amount of $1.00. In the hearing, they stated "this is just to show good faith to the tenant". On their Application, they listed the difficulties they had throughout the brief tenancy. These include: the amount of time they spent dealing with the issue of the RCMP investigating claims of fraud; and their discomfort on not knowing key information about the tenants they did not provide on their initial application. They also state: "need tenant to say apologize." "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right

For the third party of their monetary claim, the landlord claims compensation for unpaid utilities and reimbursement for cleaning costs post move-out.

- They provided bills from electricity, gas and water – some of these receipts are shown as paid for the following month. Copies of the bills also show the account number crossed out with pen, and the account holder – who is the landlord's spouse – crossed out with pen. The amounts owing are not itemized and multiple copies of bills are in the landlord's evidence provided for this hearing.

- The landlord claims $1,560 for the cost of cleaning the unit. Evidence for this is a receipt dated July 2, 2020.

The amount provided by the landlord initially on their Application is $2,000.00. In the hearing they stated this was the amount of the claim in May, which they clarified that

was actually $2,431.00. They stated that at that time they could not include the move-out information to claim for cleaning. In the hearing, the landlord did not provide a sum total of the amount total they were claiming for compensation. They presented a list of fees and bill amounts in the hearing; they did so verbally.

In the evidence, there is an April 5 copy of an email to the tenants. It is providing a list of amounts. In response to this, the tenants asked the landlord for copies of bills. In their written submissions, the tenants stated: ". . .He has sent us emails requesting payments for bills beyond the amounts we owed and did not present the actual utility statements."

Additionally, the landlord provided a document titled "Fact" in which they present that the tenants were retrieving mailed bills from utilities from the mailbox.

Analysis

I do not resolve the matter of alleged fraud which is the charge levelled by either party against the other. The subject in this hearing is limited to monetary amounts owing to the landlord, as set forth above in the evidence. The landlord is the party who filed the Application asking for reimbursement. Amounts paid by the tenants do not receive my consideration in this hearing. The Residential Tenancy Branch Rules of Procedure outlines the steps for a party to file an application to counter a claim in Rule 2.11. The tenants did not undertake to do so here. Their evidence and information on what they feel is owing from the landlord on money they paid for an initial repair to the heating system receives no consideration.

First, on the claim for boiler repair, the landlord must establish that they paid an amount for repair. Then, I shall determine if the landlord is properly owed money by the tenants for the repair undertaken.

What the tenants provide for boiler repair evidence in the form of pictures is relevant to establish that the system needed repair. This lends weight to the evidence of the landlord to show they paid for repair amounts on March 17, 2020. I am satisfied that the landlord established evidence and provided a receipt to show they paid for repairs to the heating system.

To determine whether the tenants shall reimburse the landlord for this amount, I look to the tenancy agreement addendum. Clause "i" prescribes the need for the tenants to purchase "renters' insurance. . .to cover any accidental damages to the property". Also: "landlord do not take any responsibility for any lose or damge [*sic*] made by tenants."

Residential Tenancy Policy Guideline 1 provides a statement of the policy intent of the legislation. It describes the responsibility of each party for repairs. It states: "

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site."

I find the tenants established that the repairperson identified the age of the heating system as the cause of its breakdown. This is shown in the photos provided by the tenant. The damage shown is not that of a malfunction, and I find it more likely than not the damage was due to older elements of the heating system that failed. I find the fact that follow-up work was needed is more likely caused by an older heating system – i.e., wear and tear – rather than repeated actions by the tenant exacerbating the problem. Any actions by the tenants to damage the heating system are not adequately explained in the evidence presented. There is no evidence to establish that the tenants damaged the heating system either deliberately or through neglect.

For this portion of the claim, I find the landlord has not established on a balance of probabilities that the tenants caused damage to the heating system. The landlord has not provided sufficient evidence to outweigh that of the tenants. On this basis, I make no award for compensation on this amount

Secondly, I find in seeking a claim for the $1.00 amount, the landlord is seeking acknowledgment and an apology from the tenants for the difficulties and stress it presented. It is my interpretation that the landlord is seeking nominal damages to encourage an act of good faith by the tenants. I cannot clearly ascertain from the evidence presented that a landlord-tenant relationship warrants such an acknowledgement, nor is there any room in the legislation to make an award to cover this. As such, the $1.00 portion of the landlord's claim is dismissed.

Any intention the landlord expresses here is outside the scope of this hearing in which monetary claims are made for items within the *Act*, the regulations and tenancy agreement itself. I appreciate the gesture from the landlord, but it is not something I must consider here.

Finally, on the utility and post-clean-up amounts, I look to the substance of the evidence presented. I consult the Rules of Procedure on this portion of the claim as well, and then evaluate the evidence that the landlord presents here.

Rule 3.7 provides: "All documents to be relied on as evidence must be clear and legible." Moreover: "To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible."

The evidence which the landlord presents for this portion of their claim is not organized to a degree that I can make a fair determination on any amounts owing. I note the following in regard to the documentation presented:

- receipts for utilities are presented several times in the evidence – moreover, the name of the customer, and the account number, is crossed out with pen in the copies provided – on this basis, I cannot determine if the landlord is indeed the utility account holder. The evidence here shows otherwise.

- The receipt for cleaning provided by the landlord shows the amount of $1,560.00. This is not an itemized receipt. There is no indication of time, materials or hourly rate or the service provider. "We" (as the writer of the document so indicates) is not defined and there is no company or firm name. What is described in the document is not reflected in a move-out condition inspection report and the photos provided only show a dirty oven door and mattress and other materials in some yard space. There is not sufficient explanation of what the clean-up of the unit entailed, nor the amount of work accomplished.

- The April 5, 2020 email to the tenants is not legible and shows various additions and subtractions and does not provide a final total amount owing. Again, there are no other receipts provided to show what the amount owing is. I cannot determine that any of the amounts listed have a basis in reality.

- On the utility amounts, the tenants provided evidence showing receipt of payments to another individual who was stated to be the spouse of the landlord. This is the same name that appears on the bills provided as copies showing amounts owing. I cannot determine that the Applicant landlord here is the correct party who should be receiving these bills. The evidence does not show the landlord here is entitled to recompense for these amounts.

In sum, amounts claimed by the landlord for cleaning costs and utility amounts owing are not sufficiently presented in the evidence. The landlord was not able to clarify amounts owing clearly in the hearing. The landlord focused more on their accusations against the tenants of their fraud in establishing the tenancy. There was also lack of clarity regarding proper ownership of the property and this was not explained to an adequate degree in the hearing.

As stated in Rule 3.7, I am not considering the evidence that the landlord presents for this amount. The landlord has not established that they are out-of-pocket expenses for which they must be reimbursed. The landlord has not met the burden of proof to establish a proper claim to these amounts and did not accurately present what that amount is. Additionally, the landlord provided their evidence to the Residential Tenancy Branch on a date that was very close to the actual hearing date. Under oath, the tenants stated they had not received these pieces of evidence. This further diminishes the tenant's claim.

In consideration of all evidence presented by the landlord for this hearing, they have not established the burden of proof that compensation or other monetary amounts are owing to them. They did not provide sufficient or clear evidence to establish a valid monetary claim.

As the landlord was not successful in their Application, I find they are not entitled to recover the filing fee.

Conclusion

For the reasons outlined above, I dismiss the landlord's Application for compensation, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 30, 2020

Residential Tenancy Branch