Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT
MNRL-S, MNDCL-S, MNDL-S, FFL
MNSDS-DR, FFT

Introduction

This hearing dealt with the twice adjourned cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the "Act"). The matter was set for a conference call.

The Tenant's Application for Dispute Resolution was made on February 6, 2020. The Tenant applied for the return of their security deposit and the return of their filing fee.

The Landlord's Application for Dispute Resolution was made on May 12, 2020. The Landlord applied for a monetary order for losses due to the tenancy, monetary order for unpaid rent, a monetary order for damage to the rental unit caused by the tenant, for permission to retain the security deposit and to recover their filing fee.

The Tenant also filed a Direct Request Application on May 13, 2020. The Tenant applied for the return of their security deposit and the return of their filing fee.

The Tenant submitted an amendment application on June 2, 2020, to their original application dated February 6, 2020. The Tenant amended their application to include a request for a monetary order for losses due to the tenancy.

The Landlord, their Agent (the "Landlord") and the Tenant attended the third hearing and were reminded that they had been affirmed to be truthful in their testimony during the first hearing and that their affirmation carries forward to today's proceedings. The Tenant and the Landlord were each provided with the opportunity to continue to present their evidence orally and in written and documentary form, and to

make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary matter – *Jurisdiction*

During these three proceedings, these parties testified that in addition to a landlord and tenant relationship, these parties had also run a business that housed international students on the rental property.

The testimony provided by both these parties showed that there were many financial issues outstanding from the business that these parties were seeking to have resolved during these proceedings, in addition to the disputed items related to this tenancy.

The parties were advised, throughout these proceedings, that the Residential Tenancy Branch did not have jurisdiction over the business relationship and that all claims related to the business could not be heard during this proceeding.

During the hearing, the Tenant withdrew their claim for $2,304.76 in a monetary order due to losses due to the tenancy, stating that the losses were all as a result of the business and not the Tenancy.

I find it appropriate to grant the Tenant's request and allow the withdrawal of their claim for a monetary order due to losses due to the tenancy. I will continue in this hearing on the Tenant's remaining claim for the recovery of the security deposit.

During the hearing, I reviewed the Landlord's application; I find that several of the items the Landlord has claimed for are losses due to the business and not the tenancy.

Accordingly, I decline jurisdiction on the following claims made by the Landlord; $825.00 for an "advance collected," and $587.72 for "stuff moved out by the Tenant."

Overall, I decline jurisdiction on all matters related to the international student housing business run by these parties. I have made no determination on the merits of either party application in relation to this business. Nothing in my decision prevents either party from advancing their claims regarding these matters before a Court of competent jurisdiction.

Preliminary Matter - *New Worksheets submitted by the Landlord*

During the third hearing, held on August 27, 2020, it was noted that the Landlord had submitted a new monetary worksheet, date July 22, 2020, increasing their claim from $34,638.00 to $38,661.83.

The Landlord was advised during the August 27, 2020, proceedings, that their claim could not be increased for three reasons. The first was that an amendment application was required to increase a claimed amount and that it was insufficient to mealy submit a new monetary worksheet without filing the required amendment application.

Secondly, the interim decision, dated July 21, 2020, ordered that no amendments could be made to either application.

Finally, the Landlord was also advised that claims are limited to a maximum of $35,000.00, with the Residential Tenancy Branch, and that claims in excess of that amount must be filed with the Supreme Court of British Columbia.

Accordingly, I will not consider the Landlord's monetary worksheet date, July 22, 2020, in this decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for damages or losses due to the tenancy?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?
- Is the Tenant entitled to the return of their security deposit?
- Is the Tenant entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the tenancy began on December 1, 2018, as a one-year fixed term tenancy, that rolled into a month to month tenancy at the end of the initial fixed term. The parties agreed that they had contracted to rent in the amount of $6,000.00 a month, to be paid by the first day of each month, and the Landlord had been given a $3,000.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The parties agreed that the tenancy ended on January 6, 2020, when the Tenant moved out of the rental unit. The Landlord testified that the move-in/moveout inspection report had not been completed for this tenancy.

The Landlord testified that $30,747.74 or rent was outstanding for this tenancy, for the period between August 2019 through January 2020; consisting of $5,780.00 for August 2019, $6,000.00 a month for September, October, November and December 2019, and $967.74 for six days in January 2020. The Landlord is requesting a monetary order for the unpaid rent. The Landlord submitted a spreadsheet, detailing the rent payment history for this tenancy into documentary evidence.

The Tenant testified that they had paid all of the rent for this tenancy and that they had actually overpaid their rent. The Tenant argued that they had reached an agreement for a rent reduction with the Landlord, to reduce the rent to $5,000.00 a month, as of April 1, 2020. The Tenant submitted a spreadsheet, detailing the rent payment they had made for this tenancy into documentary evidence.

The Tenant also testified that they and the Landlord had run an international student housing business out of the rental property, and that the Landlord had received deposits for the business into their personal account, and that those deposits covered some of the rent due for this tenancy. Additionally, the Tenant testified that part of the Tenant's salary was paid through rent deductions. The Tenant testified that as per the spreadsheet they submitted into documentary evidence, a total of $15,491.42 had been paid by the business towards the rent and that by their calculations, the Landlord had been overpaid in rent for this tenancy.

The Landlord testified that they agreed that they were in business with the Tenant and that deposits for the business had been made to their personal account, but that those funds were not part of the tenancy and were not applied to rent payments. The Landlord testified that all salary payments that were due to the Tenant were paid, and that salary was never applied to rent.

The Landlord also testified that $6,181.00 of the payments the Tenant had sent them were for the purchase of furniture.

The Tenant testified that all of the payments they sent the Landlord were for rent.

The Landlord testified that the tenant had returned the rental unit to them damaged and uncleaned. The Landlord testified that the Tenant had installed a divider between two rooms to create an additional room to house a student. The Landlord testified that they removed the divider at the end of this tenancy at a cost $1,627.00, to remove and patch the wall. The Landlord submitted a copy of the invoice for the repair work into documentary evidence.

The Landlord also testified that the rental unit required additional cleaning at the end of the tenancy and that it had cost them $973.87 to have the rental unit properly cleaned. The Landlord submitted a copy of the invoice for the cleaning into documentary evidence.

The Tenant disagreed, stating that the rental unit had been returned with only normal wear and tear, no damage to the wall, and was reasonably cleaned at the end of the tenancy.

The Landlord testified that the bathtub in the rental unit was damaged during the tenancy, stating that something heavy must have been dropped into the bathtub, which caused it to crack. The Landlord testified that they received an estimate that it would cost $3,800.00 to have the bathtub repaired. The Landlord submitted a copy of the estimate into documentary evidence.

The Landlord testified that the rental property had sold in June 2020, and confirmed when asked, that the bathtub had not been repaired before the sale closed and that they were not required to repair the bathtub at any point in the future as a condition of the sale. The Landlord argued that the final sale price of the rental property had been reduced due to the crack in the bathtub and that they should, therefore, still be entitled to the repair cost.

The Tenant testified that they had reported the crack in the bathtub to the Landlord as soon as they noticed it and that they stopped using that bathtub to ensure that no water damage was caused to the rental unit due to the crack. The Tenant testified that they do not know what caused the crack, and that they had not dropped anything heavy in the bathtub.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord has claimed for $30,747.74 in unpaid rent for this tenancy, consisting of $5,780.00 for August, $6,000.00 a month for September, October, November and December 2019, and $967.74 for January 2020.

The Tenant argued during these proceedings that all of the rent for this tenancy had been paid in full for two reasons, the fist that they had an agreement with the Landlord to reduce the rent from $6000.00 a month to $5000.00 a month, starting April 1, 2019. The second was that they received a portion of their salary for the business the Tenant, and the Landlord ran together in the form of rent.

I will first address the claimed rent reduction; after reviewing the Landlord's calculation of the outstanding rent, I noted that the rate of rent charged on their spreadsheet was all at the original contracted amount of $6,000.00 a month, except for January 2020, which had been calculated at a daily rate but was based on a monthly rate of $5,000.00 a month. I find this discrepancy in the Landlord's calculations for January 2020 pay rent rate, lends support to the Tenant's claim that a rent reduction had, in fact, been agreed to by these parties and that the Landlord is seeking to retro actively remove that agreement.

When combined with the Tenant's testimony regarding the exitance of an agreement to reduce the rent and a review of the Tenants supporting documentary evidence, I find that, on a balance of probabilities, there was an agreement between these parties to reduce the rent to $5,000.00 a month. Therefore, I find that as of April 1, 2019, the monthly rent for this rental unit was $5,000.00 per month, due on the first day of each month.

Accordingly, I find that a total of $69,967.74 was due in rent for the entire period of this tenancy; consisting of $24,000.000 for the months of December 2018, January, February and March 2019, at a rate of $6,000.00 a month, $45,000.00 for the months of April, May, June, July, August, September, October, November and December 2019, at a rate of $5,000.00 a month, and $967.74 for the period of January 1 – 6, 2020, at a rate of $161.29 per day.

As for the Tenant's argument that they received their salary, from the Landlord, in the form of rent payments, I have reviewed all of the documentary evidence submitted by both these parties, and I find that there is no evidence to show that the Tenant's salary was paid to in the form of rent payments. As the Landlord has claimed that all salary due to the Tenant had been paid by other means, I find that I can not assign any amounts due to the Tenant in the form of salary to the rent for this tenancy. As stated above, I find that all issues related to the business, including salary paid or not paid to the Tenant, are not within my jurisdiction and will not be included in this decision. Accordingly, the Tenant may wish to advance their claims regarding any unpaid salary before a Court of competent jurisdiction.

After reviewing the Tenant's documentary evidence, I find that the Tenant has proven that they have paid the Landlord a total of $56,493.70 towards the rent for this tenancy.

I find that there is a remaining $13,474.04 in rent due for this tenancy. Accordingly, I award the Landlord $13,474.04 is outstanding in rent.

I acknowledged the Landlord's argument that a portion of the funds they received from the Tenant was for the purchase of furniture. However, I find that the purchase of this furniture was not directly related to the tenancy agreement and, therefore, not within my jurisdiction. Additionally, I find that there was sufficient documentation to show that any the funds paid to the Landlord from the Tenant were for anything other than rent. If there remains a dispute between these parties regarding the purchase of furniture, these parties are free to advance their claims regarding that matter before a Court of competent jurisdiction.

The Landlord has also claimed for the recovery of $1,627.50 in repair costs for a damaged wall and $973.87 in cleaning costs to the rental unit at the end of this tenancy. I find that the parties, in this case, offered conflicting verbal testimony regarding the need for repairs to this wall and additional cleaning to the rental unit at the end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden

to provide sufficient evidence over and above their testimony to establish their claim. As this is part of the Landlord's claim, it is the Landlord who holds the burden of proving their claim, beyond their testimony.

An Arbitrator normally looks to the move-in/move-out inspection report (the "inspection report") as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy; as it is required that this document is completed in the presence of both parties and is seen as a reliable account of the condition of the rental unit. However, this inspection report was not completed, by the Landlord, as required under sections 23 and 35 of the *Act*. Accordingly, I find that the Landlord is in breach of sections 23 and 35 of the *Act* by not completing the required inspection reports for this tenancy.

In the absence of that report, I must look to the additional documentary evidence submitted by the Landlord to prove the condition of this rental unit at the beginning and End of this tenancy to determine if damage occurred during this tenancy that was beyond normal wear and tear.

After reviewing the entire evidence package submitted by the Landlord, I find that there is insufficient evidence to prove to my satisfaction that the Tenant damaged the wall during this tenancy or that the rental unit had been returned not reasonably clean on January 6, 2020. As there is insufficient evidence to prove the Landlord's claims, I must dismiss the Landlord's claims for $1,627.50 in wall repair costs and $973.87 in cleaning costs.

As for the Landlord's claim for the recovery of their estimated costs to repair a damaged bathtub, I accept the Landlord's testimony that this rental property has been sold and that the cracked bathtub was not repaired before the sale of this property closed, and nor will it be repaired by this Landlord at any point in the future. Therefore, I find that the Landlord has not have suffered a loss due to their costs to repair this bathtub, and I dismiss this portion of the Landlord's claim.

Although, I do agree that the cracked tub may have affected the final sale price of the rental property. However, the Landlord has not applied for the recovery of losses due to a reduced final sale price of the rental property. As the true nature of the Landlord's claim, on this point, was not disclosed in the Landlord's application, I find it would be procedurally unfair to the Tenant to allow the Landlord to amend their claim at this late date, during this, the third day of hearings. Accordingly, I grant leave to the Landlord to

apply for losses due to a reduce resale value of the rental property due to possible damage caused during this tenancy.

As for the $3,000.000 security deposit paid for this tenancy, section 38(1) of the Act provides the conditions in which a Landlord may make a claim to retain the security deposit at the end of a tenancy. The Act gives a landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

> ***Return of security deposit and pet damage deposit***
>
> ***38*** *(1) 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,*
>
> *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.*

In this case, I find that this tenancy ended on January 6, 2020, the dated the moved out of the rental unit. I accept the testimony of the Tenant, supported by their documentary evidence, that the Tenant provided their forwarding address to the Landlord on April 17, 2020, by email, as permitted by Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act) made March 30, 2020 (the "Emergency Order"). Pursuant to the by Residential Tenancy (COVID-19) Order, documents served by email, are deemed received three days after being sent; therefore, I find that the Landlord had received the Tenant's forwarding address as of April 20, 2020.

Accordingly, the Landlord had until May 5, 2020, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit.

I have reviewed the Landlord's application for this hearing, and I find that the Landlord submitted their Application for Dispute resolution to claim against the deposit on May

12, 2020. I find that the Landlord breached section 38(1) of the *Act* by not filing their claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

> ***Return of security deposit and pet damage deposit***
>
> *38 (6) If a landlord does not comply with subsection (1), the landlord*
>
> *(a) may not make a claim against the security deposit or any pet damage deposit, and*
>
> *(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable*.

Therefore, I find that pursuant to section 38(6) of the *Act*, the security deposit for this tenancy had doubled in value and is now worth $6,000.00. I grant the Landlord permission to retain the $6,000.00 security deposit for this tenancy, in partial satisfaction of the amount awarded above.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in this application, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this application.

Overall, I find that the Landlord has established an entitlement to a monetary order in the amount of $7,570.04; consisting of $13,474.04 in outstanding rent, $100.00 in the recovery of the filing fee for this hearing, less the $6,000.00 in the doubled security deposit awarded to the Tenant.

Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **$7,574.04.** The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenants 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.

I decline jurisdiction on all matters related to the student housing business run by these parties. I have made no determination on the merits of either parties application in relation to this business. Nothing in my decision prevents either party from advancing their claims regarding matters related to their student housing business before a Court of competent jurisdiction.

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: September 2, 2020

Residential Tenancy Branch