



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on May 22, 2020 the Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch on May 20, 2020 was sent to the Tenant at the email address on file with the Residential Tenancy Branch. Service by email was permitted on May 22, 2020 due to the COVID-19 pandemic. On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I accept that these documents were served to the Tenant by email and the evidence was accepted as evidence for these proceedings.

On August 28, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was not served to the Tenant. As this evidence was not served to the Tenant, it was not accepted as evidence for these proceedings.

In a decision dated September 03, 2020, a Residential Tenancy Branch Adjudicator granted the Landlord the right to serve evidence to the Tenant at the email address on file for the Tenant.

On September 06, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant,

via email, on September 06, 2020. Legal Counsel for the Landlord and the Landlord both testified that this email, addressed to the Tenant, was copied to them. On the basis of the testimony of all three participants, I accept this evidence was served to the Tenant by email and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence and to make relevant submissions. Each participant, with the exception of legal counsel, affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for liquidated damages, to compensation for unpaid rent/lost revenue, to compensation for late fees, to compensation for legal costs, to compensation for a Strata fine, for aggravated damages, and to keep all or part of the security deposit?

Background and Evidence

The Landlord submits that:

- the tenancy began on September 17, 2018;
- the Landlord and the Tenant signed a fixed term tenancy agreement, the fixed term of which ended on September 30, 2019;
- the Landlord and the Tenant signed a second fixed term tenancy agreement, the fixed term of which ended on September 30, 2020;
- rent for the second fixed term tenancy was \$2,408.00;
- rent was due by the first day of each month;
- the Tenant paid a security deposit of \$1,175.00;
- the Landlord was granted authority to retain a portion of the security deposit at a previous dispute resolution proceeding;
- the Landlord still retains \$275.00 of the security deposit;
- the Tenant did not provide a forwarding address after the tenancy ended;
- on February 13, 2020 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, which had an effective date of March 31, 2020;
- the One Month Notice to End Tenancy for Cause was served because the Tenant breached a material term of the tenancy agreement by repeatedly failing to pay rent when it was due, by creating unreasonable disturbances, and by failing to maintain reasonable sanitary standards;
- The Tenant did not dispute the One Month Notice to End Tenancy for Cause;

- at a previous dispute resolution proceeding on April 21, 2020, the Landlord was granted an Order of Possession, which was effective two days after it was served on the Tenant;
- the Tenant did not vacate the rental unit after the Order of Possession was served to him;
- on July 02, 2020 the Landlord was granted a Writ of Possession;
- the Writ of Possession was enforced by a bailiff on July 06, 2020, at which time the rental unit was vacated; and
- the Tenant paid no rent for April, May, or June of 2020.

The Landlord is seeking compensation, in the amount of \$2,200.00 for bailiff fees and \$87.00 for filing fees to obtain a Writ of Possession. The Landlord submitted invoices for these costs.

The Landlord is seeking unpaid rent for April, May and June of 2020. The Landlord is also seeking lost revenue for July, August, and September of 2020. The Agent for the Landlord stated that the rental unit was not ready to re-rent until August 01, 2020, as the Landlord needed to repair damages, remove property left behind by the Tenant, and clean the unit. The Agent for the Landlord stated that the unit was advertised for rent at the beginning of August and it was re-rented on September 15, 2020.

The Landlord is seeking \$450.00 in "late fees". The Landlord identified 18 months between November of 2018 and July of 2020 when the Tenant either paid the rent late or did not pay it at all, including April, May, June, and July of 2020. Term 10 of the tenancy agreement submitted in evidence stipulates that the Tenant must pay a late fee of \$25.00 whenever he is late paying rent.

The Landlord is seeking \$1,204.00 in liquidated damages. Term 8 of the tenancy agreement submitted in evidence stipulates that the Tenant must pay liquidated damages of \$1,204.00, in part, if the Tenant breaches a material term of the tenancy agreement that causes the Landlord to end the tenancy before the end of the fixed term.

The Landlord is seeking compensation of \$200.00 for a fine for a noise bylaw infraction. Legal Counsel for the Landlord stated that the Strata Counsel levied four previous fines for noise bylaw infractions, which the Tenant was ordered to pay at a previous dispute resolution proceeding. Legal Counsel stated that this is the fifth fine in this series of infractions. The Landlord submitted a copy of a letter from the Strata Counsel, dated April 29, 2020, which declares this fine has been imposed.

The Landlord is seeking compensation of \$217.35 for repairing the parking gate. Legal Counsel for the Landlord stated that the Strata Counsel determined the Tenant damaged the gate on July 06, 2020 and that the Landlord was presented with an invoice for the repair, a copy of which was submitted in evidence.

The Landlord is seeking compensation of \$262.50 for cleaning. The Agent for the Landlord stated that no cleaning was completed at the end of the tenancy because the Tenant was removed by the bailiff. The Landlord submitted an invoice for this expense. The Landlord is seeking compensation of \$41.79 for replacing light bulbs. The Landlord stated that he replaced 8 light bulbs at the end of the tenancy. The Landlord submitted a receipt for 12 light bulbs, in the amount of \$41.79.

The Landlord is seeking compensation of \$89.00 for replacing the microwave. The Landlord submitted a photograph of the microwave that the Landlord submits was burned during the tenancy. The Landlord submitted an on-line ad for a microwave, in the amount of \$79.97.

The Landlord is seeking compensation of \$7,585.23 for legal fees. The Landlord submitted a statement of account for legal fees. Legal Counsel for the Landlord stated that:

- the Landlord is seeking compensation for fees she charged to deal with issues leading up to the eviction and with obtaining the Writ of Possession;
- the Tenant is a trained lawyer and, as such, the Landlord felt he needed to be represented by legal counsel during the eviction process; and
- the Landlord is not seeking compensation for any legal costs associated to preparing for these proceedings.

The Landlord is seeking compensation of \$600.00 for a management fee. The Agent for the Landlord stated that his company charged the Landlord an additional \$600.00 for the 6 hours he spent preparing for these proceedings and for the 6 hours he spent serving the One Month Notice to End Tenancy for Cause, serving the Order of Possession, and meeting with the bailiff.

The Landlord is seeking \$5,000.00 in aggravated damages. Legal Counsel for the Landlord submits that aggravated damages are appropriate in these circumstances because:

- the Tenant was clearly aware that the tenancy ended on March 31, 2020;
- the Tenant frequently told the Landlord he would make the eviction process as difficult and as expensive as possible;

- the Tenant told Legal Counsel that he would take all steps available to him to delay the eviction;
- the Tenant told the Landlord he would not willingly pay the rent;
- the Tenant's decision to delay the eviction process was a waste of Residential Tenancy Branch and Court time;
- the intentional delay is deserving of rebuke.

In support of the claim for aggravated damages Legal Counsel referred to an email, dated June 08, 2020, in which the Tenant informed the Agent for the Landlord that it made more sense for him to withhold any rent due and to make the Landlord collect it "after the fact". In this email, which is partly redacted, the Tenant declares that he thinks they can "work something out" if the Landlord is willing to be flexible.

Analysis

On the basis of the undisputed evidence I find that the Tenant entered into a fixed term tenancy agreement, the fixed term of which ended on September 30, 2020, and that he agreed to pay monthly rent of \$2,408.00 by the first day of each month.

On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, which had an effective date of March 31, 2020 and that the Tenant did not dispute the One Month Notice to End Tenancy for Cause. As the Tenant did not dispute the One Month Notice to End Tenancy for Cause, I find that the tenancy ended on March 31, 2020, pursuant to section 47(5) of the *Residential Tenancy Act (Act)*.

On the basis of the undisputed evidence, I find that an Order of Possession was served to the Tenant; that the Tenant did not vacate the unit on the basis of that Order; and that the unit was vacated on July 06, 2020, with the aid of a bailiff. As the Tenant did not vacate the unit on the basis of the Order of Possession; the Landlord incurred the costs of obtaining a Writ of Possession; and the Landlord incurred the costs of hiring a bailiff, I find that the Tenant must compensate the Landlord for those costs, which were \$2,200.00 for a bailiff and \$87.00 for court filing fees.

Section 26 of the *Act* requires tenants to pay rent when it is due. Although this tenancy ended on March 31, 2020, the Tenant remained obligated to pay overholding rent for any period he remained in the unit after March 31, 2020. As he remained in the unit for April and May of 2020, without paying rent, I find that he must pay \$4,816.00 in

overholding rent for those two months. As he remained in the unit for 6 days in July of 2020, I find that he must pay pro-rated overholding rent of \$466.02 for those days.

Section 7 of the *Residential Tenancy Regulation* permits a landlord to collect a fee of up to \$25.00 whenever a tenant does not pay rent when it is due, providing the tenancy agreement prescribes that fee. On the basis of the undisputed evidence, I find that the Tenant did not pay rent when it was due on 14 occasions between November of 2018 and March of 2020. As his tenancy agreement stipulates that the Tenant must pay a \$25.00 fee whenever he is late paying rent, I find that the Tenant must pay the Landlord \$350.00 in late fees.

As this tenancy ended on March 31, 2020, the Tenant was no longer required to pay rent by the first day of each month. This does not mean he was no longer to pay rent for any period he remained in the unit after March 31, 2020. Rather, it means he was no longer required to pay the rent by the first day of each month. As the Tenant was not required to pay rent by the first day any month after March 31, 2020, I dismiss the Landlord's claim for late fees for any period after March 31, 2020.

On the basis of the undisputed evidence, I find that a Residential Tenancy Branch Arbitrator previously determined that the Landlord had grounds to end this tenancy pursuant to section 47 of the *Act*. As it has been established that the Landlord had grounds to end this tenancy prior to the end of the fixed term of the tenancy, I find that the Landlord is entitled to collect liquidated damages of \$1204.00, pursuant to term 8 of the tenancy agreement.

On the basis of the undisputed evidence, I find that this tenancy ended before the fixed term of the tenancy because the actions of the Tenant provided the Landlord with grounds to end the tenancy pursuant to section 47 of the *Act*. I therefore find that the Tenant's actions resulted in the Landlord experiencing lost revenue for the remainder of the fixed term of the tenancy, which was the period between July 06, 2020 and September 30, 2020.

On the basis of the undisputed evidence, I find that the Landlord made reasonable efforts to re-rent the unit but, in spite of those efforts, he experienced lost revenue for the period between July 06, 2020 and July 31, 2020, in the amount of \$1,941.98; lost revenue for August of 2020, in the amount of \$2,408.00; and lost revenue for the period between September 01, 2020 and September 15, 2020, in the amount of \$1,204.00. As the lost revenue experienced by the Landlord was directly related to the actions of the

Tenant, I find that the Landlord is entitled to compensation of \$5,553.98 for lost revenue.

On the basis of the undisputed evidence, I find that the Landlord was fined \$200.00 for a bylaw infraction as a result of noise disturbances created by the Tenant or his guest. I therefore find that the Tenant must compensate the Landlord for this fine.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the parking gate he damaged on July 06, 2020. I therefore find that the Landlord is entitled to compensation for the cost of repairing the gate, which was \$217.35.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the rental unit, which was \$262.50.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to replace 8 light bulbs that burned out during the tenancy. I therefore find that the Landlord is entitled to 8/12 of the \$41.79 he paid to purchase 12 lightbulbs, which is \$27.86.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the microwave that was damaged during the tenancy. The evidence shows that the Landlord can reasonably expect to pay \$79.97 to purchase a new microwave, plus tax of \$9.60. As the Landlord has only claimed compensation of \$89.00, I find he is only entitled to \$89.00.

The dispute resolution process is reasonably straight forward. The Residential Tenancy Branch is available to provide significant assistance to those who are unfamiliar with the dispute resolution process. The vast majority of landlords are able to end tenancies without the assistance of legal counsel. The vast majority of tenants are also able to

resolve issues with their landlords without the aid of legal counsel, even when the landlords are professionals with an abundance of experience.

Although a landlord has every right to obtain the services of legal counsel at any point during a tenancy, I do not accept that it was necessary to do so in these circumstances. I find that the Landlord could have successfully evicted the Tenant without the aid of legal counsel even though the Tenant had legal training. I therefore dismiss the claim for legal fees, as the Tenant should not be held responsible for the Landlord's choice to be represented by legal counsel.

I find the fees charged by the Landlord's management company for the 6 hours he spent serving the One Month Notice to End Tenancy for Cause, serving the Order of Possession, and meeting with the bailiff were for costs typically associated to doing business as a Landlord. I find that the Tenant is not obligated to compensate the Landlord for costs associated to doing business as a Landlord, even if the Landlord opts to hire a third party to conduct his business. I therefore dismiss the Landlord's claim to recover management fees for these services.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord's claim to recover any fees paid in regard to the Agent for the Landlord preparing or participating in these proceedings.

Residential Tenancy Branch Policy Guideline #16 reads, in part:

Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

I find that the Landlord has been reasonably compensated for losses associated with this tenancy and, as such, I find that aggravated damages are not warranted.

Even if I accepted the Landlord's submission that the Tenant deliberately delayed this eviction and the Tenant refused to willingly pay the rent that was due, I find there is insufficient evidence to establish that those actions are "deserving of rebuke", as the

Landlord submits. I find it entirely possible that the Tenant was simply unable to pay the rent and/or to find alternate accommodations, for reasons beyond his control.

In considering the claim for aggravated damages I was influenced by the email, dated June 08, 2020, in which the Tenant informed the Agent for the Landlord that he thinks they can “work something out” with regard to rent, if the Landlord is willing to be flexible. This email, in my view, does not demonstrate that the Tenant is intentionally attempting to injure the Landlord or that he is categorically refusing to pay rent.

I find that the Landlord’s Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$15,573.71, which includes \$5,282.02 in overholding rent; \$5,553.98 for lost revenue; \$350.00 in late fees; \$2,200.00 for bailiff fees; \$87.00 for court filing fees; \$1,204.00 in liquidated damages, \$200.00 for a noise bylaw fine; \$262.50 for cleaning; \$217.35 for repairing the parking gate; \$27.86 for replacing light bulbs; \$89.00 for replacing the microwave; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant’s remaining security deposit of \$275.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$15,298.71. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: October 4, 2020

Residential Tenancy Branch