



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for unpaid rent; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; a monetary order for damage to the rental unit or property; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

Both landlords attended the hearing, one of whom gave affirmed testimony. The tenant also attended, gave affirmed testimony, and called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issues to be Decided

- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for utilities?
- Have the landlords established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on August 15, 2019 expiring on August 15, 2020, however the tenant vacated the rental unit without notice to the landlords on or about July 15, 2020. Rent in the amount of \$1,525.00 was payable on the 1st day of

each month, and the landlords collected a pro-rated amount of rent for the first month of the tenancy. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$762.50 as well as a pet damage deposit in the amount of \$762.50, both of which are still held in trust by the landlords. The rental unit is a basement suite and the landlords reside in the upper level of the home. A copy of a portion of the tenancy agreement has been provided by the landlords as evidence for this hearing.

The landlord further testified that the rental unit has not been re-rented, and the landlords received the tenant's forwarding address in writing, in a hand-written letter on or about July 15, 2020. No move-in or move-out condition inspection reports were completed.

The tenant paid half of a month's rent for July, 2020, and the landlords claim half a month's rent for July as well as to the end of the fixed term, which is to August 15, 2020, for a total of \$1,525.00.

The parties had discussions, and the landlord told the tenant that if he intends to move the stairs needed to be repaired. He just never came back. The tenant's roommate also left. The tenant started moving out sometime in July but wouldn't speak to the landlords. The landlords have provided photographs of the stairs, and the landlord testified that the landlords weren't sure if the damage was caused by the tenant or his dog. The tenant sent a text message to the landlord saying that it was 100% the tenant, and not the dog. A copy of the text message has been provided for this hearing. The house is less than 3 years old.

Although not specified in the tenancy agreement, the tenant was required to pay half of the utilities, which he did by e-transfer every month until July, 2020. Only the landlord and her mother reside upstairs. The landlords have provided a copy of a Fortis gas bill and a BC Hydro bill in text messages that were sent to the tenant. The landlords claim 50% of the bills, which totals \$217.78.

The tenant testified that rent was always paid on time except for a few times, and when the tenant lost work due to COVID-19 he borrowed money from his girlfriend to pay the landlords.

The stairs are in the common area. The tenant took the blame in a text message over his dog because he didn't want to have to get rid of the dog. The tenant is a 230 pound guy, and the landlords blamed the tenant, but the landlords use the same stairs. People in the electrical room as well used them; it was a common area. Another time, 3 or 4 people were in the electrical room. The tenant believes the stairs were not built to code, a hazard for the tenant and a safety issue. It was normal wear and tear. Photographs have also been provided by the tenant for this hearing.

At the end of June, 2020 the landlord taped a letter to the rental unit door telling the tenant that he was no longer on a month-to-month tenancy, but a yearly tenancy and that at the end of July the tenant would have to move out. There was no month-to-month option, just get out.

The landlords did not like the tenant's roommate, and put up cameras, leaving the tenant with no privacy; always being watched.

The tenant lost it a few times when he should not have about parking and other issues. On July 15, 2020 the landlords told the tenant that he could leave. The landlords knew that the tenant was suffering financially due to the pandemic and told the tenant that he could vacate earlier than the end of the fixed term on August 15, 2020, so long as the tenant fixed the stairs. However, the tenant didn't think he should have to fix the stairs. The tenant left early because police told him in a telephone conversation to have no contact with the landlords or the tenant would be charged with harassment. The tenant was not allowed on the property. The tenant was not there from July 15 to August 15, 2020 yet the landlords still want him to pay for utilities. The tenant stayed at his girlfriend's house starting July 11, 2020. Besides, the landlords said the tenant couldn't stay past the year, so he'd have to go.

With respect to utilities, there were 3 levels in the rental home. Two thirds are occupied by the landlords and one third was the tenant's space, and the tenant was not able to control the heat.

The tenant's witness is the tenant's girlfriend who testified that she felt like she and the tenant had to sneak in and out of the rental unit. The landlords felt like bullies. The tenant had no access to the back yard, and his anxiety went up, he was shaking and the witness noticed a change in the tenant.

As far as the witness is aware, the tenant pays his bills on time, except during COVID-19 when he was struggling.

The tenant's dog now lives with the witness, and has not caused any damage to her home. The witness also testified that she saw no marks on walls or anything that would lead her to believe that the tenant's dog did any damage in the rental unit.

Analysis

Firstly, with respect to the end of the tenancy and the landlords' claim for unpaid rent, the *Residential Tenancy Act* specifies how a tenancy ends (underlining added):

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 *[tenant's notice]*;

(i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;

(ii) section 46 *[landlord's notice: non-payment of rent]*;

(iii) section 47 *[landlord's notice: cause]*;

(iv) section 48 *[landlord's notice: end of employment]*;

(v) section 49 *[landlord's notice: landlord's use of property]*;

(vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;

(vii) section 50 *[tenant may end tenancy early]*;

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

Where a landlord gives a notice to end the tenancy, the notice must be in the approved form. Further, a landlord may not change a term of a fixed-term tenancy without the written consent of the tenant, so to advise the tenant that the tenancy ends at the end of the fixed term and that the term becomes annual and not month-to-month is not lawful. There is nothing in the tenancy agreement requiring the tenant to move out at the end of the fixed term. Given the circumstances in this case, I find that the tenancy ended as a result of the tenant vacating, not abandoning the rental unit, which I find ended the tenancy effective July 15, 2020.

A tenant is required to give a landlord notice in writing to end the tenancy which must be received by the landlord prior to the date rent is payable and must be effective at the end of the following rental period. In this case, the tenant gave no notice to vacate, and the

landlords claim unpaid rent for the last half of July and the first half of August, 2020, for a total of \$1,525.00. The fixed-term expired on August 15, 2020, and any notice that the tenant would have given at any time in July would not have been effective before that date in any event, and I find that the landlords are entitled to unpaid rent for half of July and half of August, 2020, for a total of **\$1,525.00**.

With respect to utilities, there is nothing in the tenancy agreement specifying that the tenant pay any utilities to the landlords. However, the tenant did not dispute the landlord's testimony that he paid utilities at 50% each month from the beginning of the tenancy. Further, there is no evidence before me that the tenant ever mentioned to the landlords that he didn't feel he should pay utilities, he just paid them. I'm not satisfied that the tenant has demonstrated any mitigation, and instead raises it at this hearing without making an Application for Dispute Resolution. I have reviewed the utility bills, and having found that the tenancy effectively ended on July 15, 2020, and the Fortis Natural Gas bill is due on July 10, 2020 and the BC Hydro bill date is July 9, 2020, I find that the tenant is liable for \$9.18 for Fortis Natural Gas and \$208.60 for BC Hydro, for a total of **\$217.78**.

The *Act* requires a landlord to return a security deposit and/or pet damage deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for an order to keep it within that 15 day period. If the landlord does neither, the landlord must repay the tenant double the amount. The *Act* also specifies that a claim against a pet damage deposit may only be made for damages caused by a pet.

The *Act* also puts the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed at the beginning and end of the tenancy, and the regulations go into detail of how that is to occur. If the landlord fails to ensure the reports are completed in accordance with the regulations, a landlord can make a claim for damages, but the landlord's right to make a claim against the security deposit and/or pet damage deposit for damages is extinguished.

In this case, I am satisfied that the landlord believed it was possible that the tenant's dog caused damage to the stairs and made a claim against the pet damage deposit, in other words, the landlord kept the pet damage deposit. However, since no move-in or move-out condition inspection reports were completed, the landlord's right to keep the pet damage deposit for damages caused by the pet is extinguished, and the landlord had no other choice but to return the pet damage deposit to the tenant. The landlords did not do so.

The landlord testified that the tenant's forwarding address was received on July 15, 2020 and the landlords made the Application for Dispute Resolution on July 20, 2020, which is

within the 15 days. I refer to Residential Tenancy Policy Guideline – 17. Security Deposit and Set off, which states, in Part:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a. a landlord's application to retain all or part of the security deposit; or
- b. a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act.

The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

In this case, the tenant has not applied for the return of the deposits. The Guideline goes on to say (underlining added):

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
 - if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
 - if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
 - if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
 - if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
 - whether or not the landlord may have a valid monetary claim.

I find that the **tenant** is entitled to double recovery of the pet damage deposit, or **\$1,525.00**.

In this case, the same doubling does not apply to the security deposit, because the landlords' right to make a claim against the security deposit for unpaid rent or utilities is not extinguished.

With respect to the damaged stairs, both parties have provided photographs, and I am totally satisfied that the front part of each step is made from very thin material of some sort, and I do not believe the tenant has deliberately caused the damage or that it is caused by any neglect of the tenant or the tenant's dog. It is clearly normal wear and tear and I dismiss the landlord's claim for damages.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the **\$100.00** filing fee.

In summary, I find that the landlords are entitled to **\$1,525.00** for unpaid rent, and **\$217.78** for utilities, and **\$100.00** as recovery of the filing fee, for a total of **\$1,842.78**.

I set off those amounts from the **\$762.50** security deposit and **\$1,525.00** pet damage deposit which total **\$2,287.50**, and I grant a monetary **order in favour of the tenant** for the difference of **\$444.72**.

Conclusion

For the reasons set out above, the landlords' application for a monetary order for damage to the rental unit or property is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$444.72**.

This order is final and binding and may be enforced.

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: October 09, 2020

Residential Tenancy Branch