Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was scheduled for 1:30 p.m. on October 30, 2020 concerning an application made by the landlords seeking 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 and each gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

One of the landlords testified that the tenant was served with the Application for Dispute Resolution, notice of this hearing and evidence by registered mail on July 24, 2020 and additional evidence by registered mail on September 15, 2020. The landlords were permitted to upload into the automated system of the Residential Tenancy Branch proof of such service. I now have 2 Canada Post cash registered receipts containing those dates as well as tracking numbers, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act.*

Issue(s) to be Decided

- 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 security deposit in full or partial satisfaction of the claim?

Background and Evidence

The first landlord (BG) testified that this fixed-term tenancy began on December 1, 2019 and was to expire on November 30, 2020. A copy of the tenancy agreement has been

provided for this hearing which names 2 tenants. On February 6, 2020 the tenancy agreement was amended to remove one of the tenants, and the other tenant remained until May 29 or 30, 2020. A copy of the Amendment to the tenancy agreement has been provided as evidence for this hearing.

Rent in the amount of $2,250.00 was due on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of $1,125.00, and half of that amount ~~which~~ is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is the top floor of a house, and the lower level is also tenanted. Neither of the landlords reside on the property.

No move-in or move-out condition inspection reports were completed. At the beginning of the tenancy, the tenant wanted the keys 3 days early, so the inspection was not completed; and at the end of the tenancy, due to COVID-19 the landlord told the tenant that once the landlord had disinfected the rental unit, the landlord would check and let the tenant know if anything was damaged or not. The tenant was advised that the kitchen faucet was broken.

The landlords have provided 2 Monetary Order Worksheets. The first is dated July 24, 2020 and sets out the following claims as against the tenant, totaling $1,272.57:

- $600.00 for rental loss;
- $200.00 for travel expenses to show the rental unit;
- $194.44 for a hydro bill;
- $17.34 for a Fortis bill;
- $100.79 for a faucet;
- $105.00 for a front lock;
- $55.00 for a back lock and garage lock.

The second is dated September 11, 2020 and makes the following additional claim for a new amount of $1,340.01:

- $32.78 for water bills;
- $29.86 for BC Hydro bills;
- $64.80 for Fortis bills;
- $1,272.57 from the first Monetary order worksheet.

The landlord testified that the rent had to be reduced in order to re-rent, and was re-rented effective June 1, 2020 for $2,150.00, which is $100.00 less than the tenant's rent prior to

vacating. A copy of the tenancy agreement for the new tenants has been provided as evidence for this hearing. The landlords claim $600.00 for loss of rental revenue from June 1, 2020 to the end of the fixed term, November 30, 2020.

The landlords are siblings and one lives in the Interior of BC and the other resides out of the Country. The rental unit is in the lower mainland of BC and the landlord had to travel on May 22 and 23 to conduct open houses in an effort to re-rent. The landlords claim $200.00 in travel expenses.

Utilities were shared and an Addendum to the tenancy agreement specifies that the tenant is responsible for half of all utilities, except for gas; the tenant is responsible for 75% of the gas bills. The landlords have provided copies of hydro, gas and water bills, and the landlords claim the tenant's pro-rated share.

The faucet in the kitchen sink was damaged and had to be replaced. A copy of a receipt in the amount of $100.79 has been provided for this hearing, which is dated June 21, 2020 and includes taxes.

The tenant and the previous co-tenant had a falling out, and the tenant who vacated first tried to break in. The window screen was damaged, and the new tenants wanted new locks. The landlords replaced 1 lock and had 2 others re-keyed. The landlords have provided receipts totalling $159.60 for new locks, which the landlords claim as against the tenant.

The landlords have been served with an Application for Dispute Resolution by the tenant claiming the security deposit. The hearing is scheduled for November 10, 2020.

The second landlord (JG) testified that on April 29, 2020 the tenant had called and was vague about moving out of the rental unit. The landlord told him that to end the tenancy a form from the Residential Tenancy Branch needed to be signed, and the landlord sent it to him by email. The landlord later texted the tenant, but received no response from the email or the text message.

The landlord contacted the tenant to advise that the kitchen faucet was broken, but the tenant really didn't say anything else about it. No other damages were mentioned to the tenant after the other landlord conducted the inspection at the end of the tenancy.

The tenant gave the landlords permission to enter the rental unit to conduct the open houses, and the tenant gave his consent and gave the landlord his dad's phone number; the tenant was in a treatment program at the time.

The rental unit was advertised at the same amount of rent on Craigslist and Kijiji commencing on May 1, 2020, but copies of the advertisements have not been provided as evidence for this hearing. However the landlords received no responses from interested tenants for a week. A few who called after that asked if the rent amount was negotiable. There was a lot of availability for rentals at that time due to COVID-19 when usually there would have been a lot of calls. The landlords realized that in order to re-rent, the rent would have to be reduced. The rental unit was re-rented for June 1, 2020 at $2,150.00 per month.

The landlord received the tenant's forwarding address on June 8, 2020 by email, which was his dad's address, however a copy has not been provided for this hearing.

On November 03, 2020, the tenant uploaded a treatment certificate, which was only enabled by my opening the evidence system for the landlords to provide proof of service of the Hearing Package and evidence. The tenant's document, which I find is necessary to consider states that the tenant was able to give notice to the landlords to end the tenancy.

Analysis

Firstly, because the landlords did not cause the move-in and move-out condition inspection reports to be completed, the right of the landlords to make a claim against the security deposit for damages is extinguished, and I so find. However, the landlords' right to make a claim for damages is not extinguished, and the landlords' right to make a claim against the security deposit for loss of rental revenue and unpaid utilities is not extinguished. In this case, the landlords claim damages, but also unpaid utilities and loss of rental revenue and travel expenses.

With respect to the claim for loss of rental revenue, a landlord must do whatever is reasonable to re-rent as soon as the landlord becomes aware that the tenancy is ending, particularly in a fixed-term tenancy. That requires establishing that the landlords advertised as soon as reasonable for a reasonable amount of rent, or the same amount of rent. In this case, the landlord testified that it was advertised on 2 websites for the same amount of rent and then reduced after a week because of the large availability in the area of rentals, but has not provided any evidence of any of the advertisements. Therefore, the landlords' claim for loss of rental revenue cannot succeed.

The landlords claim $200.00 for travel expenses, and given that the tenant signed a fixed term tenancy agreement and ended the tenancy earlier than the date of the fixed term, I

find the amount to be reasonable considering the distance the landlord had to travel to attempt to re-rent as soon as possible. I grant the landlords' **$200.00** claim for travel.

I have reviewed the utility bills, and considering the Addendum to the tenancy agreement that the tenant's portion is 50% except for gas, which is 75%, I find that the landlords have established a claim for unpaid utilities in the amount of **$560.78.**

Because the *Act* specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, and considering that there are no such reports in this case, I cannot be satisfied what shape the kitchen faucet was in at the beginning of the tenancy, or that any damage was beyond normal wear and tear. Therefore, I dismiss the landlords' claim for repair to the kitchen faucet.

With respect to the claim for locks, the *Residential Tenancy Act* states:

> **25** (1) At the request of a tenant at the start of a new tenancy, the landlord must
> (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
> (b) pay all costs associated with the changes under paragraph (a).

Therefore, the landlords' claims for a new lock and rekeying locks must be dismissed.

In summary, I find that the landlords have established claims as against the tenant of **$200.00** for travel expenses and **$560.78** for utilities. Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the **$100.00** filing fee.

<u>The landlords have also provided an Amended Tenancy Agreement, which specifies that the landlords had dealt with half of the $1,125.00 security deposit with the co-tenant and that the sum of $562.50 was yet to be paid by the tenant who remained a tenant.</u>

The landlords currently hold a security deposit in the amount of ~~$1,125.00~~ <u>$562.50</u> The *Act* requires a landlord to return a security deposit in full to a tenant or make an application for dispute resolution claiming against the security deposit 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. If the landlord fails to do either within that 15 day period, the landlord <u>must</u> repay double the amount. In this case, the tenancy ended on May 31, 2020; the landlords received the tenant's forwarding address in an email on June 8,

2020; and made the application for Dispute Resolution on July 21, 2020. That is beyond the 15 days required by the law.

I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set off, which states, in part (underlining added):

> C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION
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> 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 landlord's application to retain all or part of the security deposit; or
>
> • 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 Act14. 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.
>
> 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.

In this case, the landlords did not deal with the security deposit within 15 days, and I find that the landlords must repay double the amount.

I order the landlords to keep **$860.78** of the security deposit held in trust and return the balance of ~~**$1,389.22**~~ **$264.22** to the tenant.

Conclusion

For the reasons set out above, I hereby order the landlords to keep $860.78 of the security deposit held in trust, and return the amount of ~~$1,389.22~~ $264.22 to the tenant, and I grant a monetary order in favour of the tenant in that amount.

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: November 03, 2020
Amended: November 19, 2020

Residential Tenancy Branch