Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL-S, MNRL-S, MNSDS-DR, FFL, FFT

Introduction

The landlord seeks compensation for loss of rent, for repairing damages to the rental unit, and for recovery of the filing fee, pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act"). The tenant seeks compensation for the return of their security deposit, for the expense of having their vehicle towed and impounded, and for recovery of the filing fee, pursuant to sections 38, 67 and 72 of the Act.

The landlord filed an application for dispute resolution on July 15, 2020 and the tenant filed their application for dispute resolution on July 28, 2020. A dispute resolution hearing was, by way of teleconference, on November 6, 2020. The tenant, her husband, and an agent for the landlord (the "agent") attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses.

In terms of service of evidence, it appeared that the agent only served most of his evidence on the tenant the day before the hearing. This is, as explained to the parties, in contravention of the *Rules of Procedure,* which require an applicant to serve evidence on the other party at least 14 days before the hearing. However, it is also noted some of the evidence, such as a Condition Inspection Report, would have been in the possession of the tenant. That said, while I admit the landlord's evidence notwithstanding non-compliance with the *Rules of Procedure,* the issues on which this evidence turns will largely be determined on the basis of testimony and other evidence.

Issues

1. Is either party entitled to some or all of the compensation claimed?
2. Is either party entitled to recovery of the application filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of these applications. Only relevant evidence necessary to explain my decision is reproduced below.

The tenancy in this dispute officially began on July 1, 2019 and ended on June 30, 2020. I say “officially” because the tenant testified that they “quasi-moved in” in the middle May 2019, having started moving some of their belongings in. The tenancy was a one-year fixed-term tenancy, converting to a month-to-month tenancy after June 30. Monthly rent was $2,850.00 and the security deposit was $2,850.00. There was no pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

The agent, who remarked that he only took over managing the property earlier this year, testified that the landlord seeks $2,850.00 for the loss of rent in July 2020, because the tenant only gave notice to end the tenancy on June 4 for an effective date of June 30. He testified that advertisements were posted up “right after” the tenants gave notice and that he was only able to find someone to occupy the rental unit for September 2020.

In addition, the landlord seeks compensation in the amount of $1,050.00 for various damages to the rental unit. A copy of an invoice dated November 1, 2020 was submitted into evidence. The Invoice was broken down into $700.00 for labour and $300.00 for parts, and $50.00 for GST. Various photographs of the rental unit were submitted into evidence.

A copy of a Condition Inspection Report was submitted into evidence, but it only contained information recorded at the end of the tenancy. The agent explained that he did not have a copy of any report for the start of the tenancy, if one even existed.

The tenants (referring to the tenant and her husband interchangeably) testified that it was their understanding, from conversations they had the landlord “Nathan” that they would have to sign another one-year lease if they did not vacate at the end of the fixed-term tenancy.

They disputed the landlord’s assessment of the damages purportedly caused by them to the rental unit. And, they testified that they tried their best to put the rental unit into an “almost new” condition. They further added that there is no detail in the invoice submitted by the landlord, outlining what work actually needs to be done, or was done.

In respect of their application for compensation for towing and storage of their vehicle, the tenant testified that when they signed the tenancy agreement the landlord told them that their parking stall was numbered 162. They parked in stall 162 for several weeks without any issue. In early July 2019, the tenants departed for their summer vacation in Taiwan. Upon returning, they were shocked to discover that their car had been towed. As it turns out, the landlord had accidentally told them to park in the wrong spot. In fact, they were supposed to have parked in stall 161.

The tow truck came and towed the car to the impound lot, where the car sat for over a month. The total cost incurred by the tenants for the towing and retrieval of the car was $2,669.81. A copy of the towing company receipt was tendered into evidence. Also included in evidence were copies of several text messages between the landlord and the tenant about the parking problem. In one of the first texts the landlord writes as follows:

> I know when I have given your family the tour of the building I showed and indicated that your allocated stall is 162.
>
> It's very unfortunate you parked in the next stall over. I can't be responsible for this error.

Sometime later, the tenant texts the landlord as follows:

> Unfortunately our car are towed for weeks while we are out [of country]. We parked at the parking stall that you told us to park but [the] concierge told us it is wrong parking stall. Can you fix it please?

Eight minutes later the landlord responds, "Hi, I will check the parking stall number and get back to you in one hr". About an hour later, the landlord texts, "Parking stall number 161". To which the tenant responds, "You told us to park at 162 and we followed your instruction."

The tenants explained that the landlord initially felt partially responsible for the error and agreed to help pay for whatever the cost might be. He changed his mind once he saw the bill, however.

In rebuttal, the landlord's agent testified that is not aware of any conversation between the tenants and the landlord regarding what they were to do at the end of the tenancy. Neither, the agent said, did the landlord recall any such conversation.

The agent argued that the tenancy agreement itself was clear that at the end of the tenancy it would automatically convert to a month-to-month tenancy. This is also, he added, a requirement under the Act.

In respect of the parking issue, the agent testified that this occurred before his time of managing the property and had no knowledge of how the car came to be towed.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

A. Landlord's Application

Before turning to the individual claims, I must set out the test that is to be applied when deciding whether to grant a party compensation, or, a monetary award under the Act.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss resulting from the other's non-compliance must do what is reasonable to minimize the loss.

1. Claim for Loss of Rent

The landlord claims a loss of rent in the amount of $2,850.00 because the tenant gave notice on June 4, 2020 to end the tenancy effective June 30, 2020.

Section 45 of the Act states that a tenant may only end a month-to-month tenancy (which the tenancy was to become on July 1, 2020) by giving a full month's notice before their intended end of tenancy date. In other words, the tenant was required to have given the landlord notice to end the tenancy on June 30, 2020 no later than May 31, 2020. However, they gave notice on June 3, 2020.

In this case, the tenant failed to give notice to end the tenancy in compliance with the Act. With respect, whatever conversation occurred between the parties about what might (or might not) happen at the end of the tenancy is irrelevant, as it is the terms of the tenancy agreement and the requirements of the Act which prevail.

The agent testified that he took steps to mitigate the loss of rent by placing ads, but ultimately could not find a tenant until September 2020. The tenant did not dispute this testimony regarding the landlord's efforts to find a new tenant.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for a loss of rent in the amount of $2,850.00 for July 2020.

2. Claim for Damages to Rental Unit

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Further, section 21 of the *Residential Tenancy Regulation* states that

> In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this dispute, the landlord's agent submitted photographs of the rental unit at the end of the tenancy, but no photographs taken at the start of the tenancy. Moreover, there was no Condition Inspection Report completed and submitted for the start of the tenancy. Finally, it should be noted that the tenant and her husband disputed the landlord's assessment and claims of damage.

Accordingly, I find that in the absence of a condition report completed at the start of the tenancy, and in the absence of any photographs of the rental unit at the start of the tenancy, that the landlord has not provided a preponderance of evidence proving that the tenant breached section 37(2) of the Act.

Therefore, I find that on a balance of probabilities the landlord has not proven their claim for compensation for damage to the rental unit. This aspect of the landlord's application is therefore dismissed without leave to reapply.

3. Claim for Application Filing Fee

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was partly successful, I grant the landlord $50.00 as partial compensation for the filing fee cost.

B. Tenant's Application

1. Claim for Return of Security Deposit

As explained to the parties during the hearing, the tenants are entitled to the return of any portion of the security deposit that was not authorized by them to be retained by the landlord. Further, it should be noted that the landlord received the tenant's forwarding address, and that the landlord applied for dispute resolution, within the 15-day deadline imposed by section 38 of the Act.

2. Claim for Towing and Impoundment Expenses

Parking was included as part of the tenancy. This is evidenced on the written tenancy agreement. It is an expectation on a landlord to provide correct information in respect of a service or facility provided under a tenancy. In this dispute, however, the landlord negligently provided the incorrect parking stall to the tenant, who had her vehicle towed and impounded. But for the wrong stall number being provided to the tenant, the tenant would not have incurred towing and parking storage costs in the amount of $2,669.81.

In reviewing the evidence, with a particular emphasis on the texts between the parties, it is clear that the landlord erroneously told the tenant to park in stall 162. It was only later that he then claimed that he had told them to park in stall 161, which the evidence clearly does not support. Quite simply, the landlord made an error, and later realized that it was a rather expensive error. Further, as the agent had no knowledge of this interaction between the parties, I must accept the argument of the tenant that the landlord accidentally gave them the wrong stall number.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving their claim for $2,669.81.

3. Claim for Application Filing Fee

Pursuant to section 72(1) of the Act, I grant the tenant $100.00 as compensation for the filing fee cost.

By way of brief explanation, while the landlord is entitled to retain the security deposit in partial satisfaction of their claim, the tenant was fully successful in respect of their claim for the parking compensation. Had the landlord paid them the cost of their car being towed, in a timely manner during the tenancy, the tenant would not have had to file this application.

C. Summary of Awards and Monetary Order

The landlord's claim and award are calculated as follows:

CLAIM	AMOUNT
Loss of rent	$2,850.00
Filing fee	$50.00
LESS security deposit	($2,850.00)
Total:	$50.00

The tenant's claim and award are calculated as follows:

CLAIM	AMOUNT
Towing	$2,669.81
Filing fee	$100.00
Total:	$2,769.81

By way of set-off, $50.00 owed by the tenant to the landlord is deducted from the amount owed by the landlord to the tenant, resulting in the amount of $2,719.81 being awarded to the tenant.

A monetary order is granted to the tenant, and the order is issued in conjunction with this Decision to the tenant.

Conclusion

I grant, in part, the landlord's application. The landlord is entitled to retain the tenant's full security deposit in partial satisfaction of his claim.

I grant the tenant's application and issue a monetary order in the amount of $2,719.81, which must be served on the landlord. Should the landlord fail to pay the tenant the amount owed, the tenant may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: November 9, 2020

Residential Tenancy Branch