



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-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 unpaid rent, for a monetary Order for damage to the rental unit; to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that the Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch in August of 2020 were left in the office at the forwarding address the Tenant provided to him. The Tenant acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On November 26, 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on November 26, 2020. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party 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 unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on August 01, 2019;
- the Tenant agreed to pay monthly rent of \$950.00 by the first day of each month;
- the Tenant paid a security deposit of \$475.00, which is still being retained by the Landlord; and
- rent was not paid for July of 2019.

The Landlord is seeking compensation, in the amount of \$950.00, for lost revenue for July of 2019.

In support of the claim for lost revenue the Landlord stated that:

- he did not give the Tenant notice to end the tenancy;
- in June of 2020 he observed the Tenant moving boxes out of the rental unit, which caused him to suspect she was moving;
- he asked her if she was moving and she informed him she was just cleaning;
- sometime during the last week of June of 2020, he noticed a strong smell in the rental unit so he and the RCMP completed a “wellness check” of the unit;
- during the “wellness check” he observed a freezer and rotting garbage in the unit;
- after completing the “wellness check” he concluded that the Tenant was moving out of the unit;
- the Tenant never gave him written notice that she was vacating the rental unit;
- on July 01, 2020 she left the key in the front door and told him that she had removed all of her belongings, with the exception of a freezer;
- she moved the freezer on July 01, 2020 or July 02, 2020;
- in December of 2019 he told the Tenant that his daughter was going to move onto the property and share the upper living accommodations with him;
- on July 08, 2020 he advertised the rental unit, after it had been cleaned and painted;
- he was unable to re-rent the lower unit, so he moved into it on August 02, 2020;
- he moved into the rental unit because he was “tired of renting”; and
- he rented the upper portion of the residential complex, which was his former residence, to his daughter.

In response to the claim for lost revenue the Tenant stated that:

- the Landlord did not serve her with notice to end the tenancy;
- in May of 2020 she told the Landlord she would be moving, although she did not tell him when she would be moving;

- she never gave him written notice of her intent to move out of the rental unit;
- she was moving boxes out of the rental unit in June of 2020;
- on the last day in June of 2020 she informed him she had moved out of the rental unit;
- on the last day in June of 2020 she left the key inside the rental unit;
- all of her belongings, including the freezer, were moved by June 30, 2020; and
- sometime prior to June of 2020 the Landlord told her that he planned to move into her rental unit and that his daughter would move into the upper unit where the Landlord was living at that time.

The Landlord is seeking compensation, in the amount of \$500.00, for cleaning the rental unit and removing garbage.

In support of the claim for cleaning the Landlord stated that:

- the rental unit required significant cleaning after the rental unit was vacated;
- he paid \$350.00 to the Witness for the Landlord for cleaning the rental unit;
- the Witness for the Landlord cleaned the rental unit on July 04, 2020;
- the Witness for the Landlord spent approximately 12 hours to clean the rental unit after it was vacated, which was reasonable given the amount of cleaning that was needed;
- the two photographs he submitted in evidence, which were taken on July 02, 2020 or July 03, 2020, show the need for cleaning;
- the garbage bags seen in one of his photographs was full of garbage;
- the Witness for the Landlord moved garbage to the outside of the rental unit while she was cleaning; and
- he spent approximately 6 hours disposing of garbage and furniture left in the unit by the Tenant.

In response to the claim for cleaning the Tenant stated that:

- the two photographs the Landlord submitted in evidence do not reflect the cleanliness of the unit on June 30, 2020;
- those two photographs were taken prior to the Tenant fully vacating the unit, as the garbage bags shown in one of the photographs contained groceries, which she took with her;
- she does not understand how it could have taken the Witness for the Landlord 12 hours to properly clean the rental unit after she vacated;

- she estimates it would have taken the Witness for the Landlord 3 to 4 hours to clean the rental unit after she vacated, not including removing the dresser and couch she left in the unit; and
- some cleaning was required after she vacated the rental unit.

The Witness for the Tenant stated that:

- she is the Tenant's mother;
- she knows the Landlord and he has been planning to move into the rental unit "for a while";
- the rental unit was fully vacated by June 30, 2020;
- the garbage bags seen in the one of the photographs submitted in evidence by the Landlord contained groceries that were taken by the Tenant during her move;
- she estimates it would have taken the Witness for the Landlord 4 hours to clean the rental unit after the rental unit was vacated; and
- when the rental unit was vacated the Tenant left a "couple of bags of garbage", some items in the refrigerator, some furniture, and some "things on the floor".

The Witness for the Landlord stated that:

- on July 04, 2020 she cleaned the rental unit for the Landlord;
- she cleaned the unit on July 04, 2020;
- she was paid \$350.00 for cleaning the unit;
- she spent approximately 12 hours cleaning the unit, as a significant amount of cleaning was required; and
- in addition to removing garbage and items left by the Tenant, she needed to clean the floors and all the "little edges".

Analysis

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. In these circumstances, the burden of proof rests with the Landlord.

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46,

47, 48, 49, 49.1, and 50 of the *Act*. I find that neither party gave proper notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

In determining that that the Landlord did not give proper notice to end this tenancy, I was heavily influenced by the undisputed evidence that the Landlord did not serve notice to end this tenancy in accordance with sections 46, 47, 48, 49, 49.1, or 50 of the *Act*.

In determining that that the Tenant did not give proper notice to end this tenancy, I was heavily influenced by the undisputed evidence that the Tenant did not give the Landlord written notice of her intent to vacate the rental unit, as is required if a tenant wishes to end the tenancy pursuant to section 45 the *Act*. I specifically note that the Tenant was required to give written notice of her intent to vacate, even if the Tenant was vacating because she believed the Landlord had breached a material term of the tenancy agreement.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenant abandoned/vacated the rental unit.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

I find that the Tenant failed to comply with section 45 of the *Act* when she failed to provide the Landlord with written notice of her intent to end the tenancy. I find that the Tenant's failure to comply with section 45 of the *Act* prevented the Tenant from entering into a new tenancy agreement with another occupant for July 01, 2020, as the Landlord did not know, with any reasonable certainty, that the rental unit would be vacated by July 01, 2020. In the absence of written notice, the Tenant could have remained in the rental unit after June 30, 2020 and the Landlord would have had no legal right to take possession of the rental unit. I find that the Tenant's failure to provide proper written notice effectively prevented the Landlord from re-renting the unit for July 01, 2020.

Even if I accepted the Tenant's testimony that the Landlord planned to move into her rental unit once it was vacated, I find that the absence of proper written notice prevented the Landlord from making reasonable efforts to move into the lower rental unit and then re-renting the upper portion of the residential complex where he was living in July of 2020. I therefore find that the Landlord is entitled to compensation for lost revenue for July of 2020, in the amount of \$950.00.

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. In reaching this conclusion I was influenced by:

- the testimony of the Tenant, who acknowledged that some cleaning was required, and that property needed to be moved after she vacated the rental unit
- the testimony of the Witness for the Tenant, who stated that when the rental unit was vacated the Tenant left a "couple of bags of garbage", some items in the refrigerator, some furniture, and some "things on the floor";
- the testimony of the Witness for the Landlord who stated that a significant amount of cleaning was required and that in addition to removing garbage and items left by the Tenant, she needed to clean the floors and all the "little edges".

In my view, the testimony of the Tenant and both witnesses strongly supports the Landlord's submission that the rental unit required cleaning and he had to dispose of garbage/furniture left by the Tenant. I find it reasonable conclude that the floors and other areas of the unit would not have been left reasonably clean if the Tenant did not even remove all of her garbage/personal property.

In adjudicating the claim for cleaning I have placed no weight on the photographs submitted in evidence by the Landlord, as there is no evidence to corroborate the Landlord's testimony that the photographs were taken after the unit was vacated and there is insufficient evidence to refute the Tenant's testimony that they were taken before she had fully vacated.

When a tenant challenges the amount of time it would take to render a rental unit to state of reasonable cleanliness, it is incumbent upon the landlord to prove how long it would take. Although I accept that the Witness for the Landlord spent 12 hours cleaning the unit, I find that the Landlord submitted insufficient evidence to establish that 12 hours was necessary to bring the unit to a reasonable state of cleanliness. The Witness for the Landlord could have spent 12 hours cleaning the unit because the Landlord wanted it to be pristine, which is not the standard required.

In concluding that the Landlord submitted insufficient evidence to establish that 12 hours was necessary to bring the unit to a reasonable state of cleanliness, I was heavily influenced by the absence of evidence, such as photographs, that clearly establish the condition of the rental unit after it was vacated. Without the benefit of such photographs, I am unable to determine whether 12 hours was a reasonable amount of time for cleaning.

In the absence of evidence that establishes 12 hours was a reasonable amount of time for cleaning, I am left to the testimony of the Tenant and her Witness. As the Tenant estimated it would take 3-4 hours to clean the unit and her Witness estimated it would take 4 hours to clean the unit, I find it reasonable to conclude that it would have taken at least 4 hours to bring the unit to a reasonable state of cleanliness.

As I have concluded that it would have taken at least 4 hours to bring the unit to a reasonable state of cleanliness, I find that the Landlord is entitled to 1/3 of the amount her paid his Witness to clean the unit, which is \$116.66.

As the Tenant did not dispute the Landlord's testimony that it took him 6 hours to dispose of garbage and furniture left at the end of the tenancy, I find that the Landlord is entitled to \$150.00 is reasonable compensation for his time.

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 \$1,316.66, which includes \$950.00 for lost revenue, \$116.66 for cleaning; \$150.00 for disposing of garbage; 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 security deposit of \$475.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order **for the balance** \$841.66. 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: December 10, 2020

Residential Tenancy Branch