



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, MNDL-S, FFL

Introduction

The landlord seeks compensation under section 67 of the *Residential Tenancy Act* ("Act"). They seek recovery of the filing fee under section 72 of the Act. And, they seek to retain the tenants' security deposit against any monetary award granted.

The landlord filed an application on September 7, 2020 and a dispute resolution hearing was held on December 17, 2020. The landlord and two tenants attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

Issues

1. Is the landlord entitled to any or all of the compensation claimed?
2. Is the landlord entitled to recovery of the application filing fee?
3. Is the landlord entitled to retain the security deposit?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on August 8, 2019 and ended on August 24, 2020, when the tenants vacated (or, "abandoned" the rental unit as characterized by the landlord). The tenancy was a fixed term tenancy that was to end on August 31, 2020. Monthly rent was \$2,800 and it was due on the first of the month. A security deposit of \$1,400 was paid by the tenants, and the landlord holds that deposit in trust pending the outcome of this application. A copy of the residential tenancy agreement was provided by the landlord.

In their application the landlord claims the following, which she repeated in her oral testimony and submissions in the hearing:

Tenants have requested via e-mail to move out in July 2020. Our property manager at the time advised them that the 1 year lease is effective until August 31, 2020, and that the tenants are still required to pay for the August rent. The tenant responded through e-mail acknowledging that then they will move out on August 31, 2020. Despite our attempts to request for the August rent, the tenants ignored the requests. They returned the keys on August 24, but refused to pay for August rent in e-mail.

In addition to rent for August in the amount of \$2,800, the landlord seeks \$192.00 for, as described in their application:

Monetary loss and other money owed include: A late payment fee \$50 for the month of August; the loss of interest for \$42 at 1.5% interest rate; and the \$100 fee for Application for Dispute Resolution. As well as any associated legal cost that will incurred during this process (ex: process service). Estimating total cost for now not including process service request would be \$192.

The landlord clarified that the late fee is a charge contained within the tenancy agreement, and the \$42 interest was the amount lost from not being paid the rent.

The landlord seeks \$999.50 for the following (reproduced as written):

-sink repair fee -window screen wickets repair -paints removal -chipped floor tile repair (not the one indicated on the inspection report) -Cleanning fees (Tenants left without doing an inspection report with landlord (ex: carpet, blinds and balcony cleaning fees). -associated service GST

Invoices for the repairs of \$829.50 and \$160.00 were submitted into evidence.

A Condition Inspection Report was completed at the start of the tenancy, and one of the tenants signed the Report. The Report indicated that everything was in good condition, however, there are several references to various carpets and other components of the rental unit being dirty. The landlord did not complete the Report at the end of the tenancy. She submitted a few photographs of specific areas of the rental unit, but no comprehensive photographs.

The tenants deny the entire claim made by the landlord. They said that the tenant J.L. “did not enjoy the condo as she was supposed to,” and this is the reason she ended the tenancy and moved out early. They noted that there was “no professional cleaning” done before she moved in, and “everything was dirty.” They spoke about the window screens being broken when they moved in, and, issues regarding the sink.

Two issues of which the tenants spoke were (1) the washing machine was “intolerably dirty” and they told the landlord about this. And (2), they told the landlord about an issue with the gas range – they could smell gas – on August 2, 2020. The tenant F.Z. testified that, yes, there were a few items left on the balcony, but that he cleaned that up. As for cleaning, the tenant J.L. said that she did her best to clean up before she moved out and, that she left the rental unit “cleaner than when [I] moved in.”

In rebuttal, the landlord submitted that the issue concerning the washer was only brought to her attention six months into the tenancy, and that she found instructions to fix it, and that she paid part of the cost to repair the washer in order to appease the tenant.

Regarding the gas range, the landlord first heard about the issue in August 2019 and she was able to find instructions which appeared to have solved the problem. Nothing further was heard from the tenant until August 2, 2020, after the tenant had already given notice to end the tenancy. Finally, as for the kitchen sink board issue, the landlord testified that she was never told about this from the tenant.

Submitted into evidence were copies of email exchanges between various parties, along with copies of WeChat conversations, to which I shall refer to a few below.

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.

Claim for Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The tenants did not dispute that they did not pay the rent for August 2020. Rather, it was simply their position that they “did not enjoy the unit as she was supposed to.”

Submitted into evidence was an email from the landlord’s property manager sent to the tenant on July 24, 2020 in which the property manager states, “As per our conversation, I am sorry we will still need to charge you rent payment for the month of August.” He then receives an email from the tenant on August 1, 2020 in which she states, “I will move out on 31 August.”

I find that, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, the landlord has proven on a balance of probabilities that the tenants did not pay the rent for August 2020.

That the tenants had some sort of issues with enjoying the rental unit, or issues with the gas range, or with the sink, are, insofar as their legal obligations to pay rent to the landlord, irrelevant. The tenants were legally required to pay August’s rent, but they chose not to.

As such, I award the landlord the amount claimed for \$2,800.00 in unpaid rent for August, along with the claim for interest of \$42.00 and the late payment charge of \$50.00, for a total of \$2,892.00.

Claim for Cleaning and Repairs

While the landlord completed a Condition Inspection Report at the start of the tenancy, she did not complete the report at the end of the tenancy. While there were some photographs submitted into evidence, they do not provide a persuasive representation of the various damages and cleaning for which the landlord seeks compensation.

Indeed, I find it rather peculiar that the landlord seeks cleaning costs for carpet cleaning when the Condition Inspection Report clearly indicates that the carpets are dirty. Moreover, there is no reference to the window screens or anything window-related in the report, even though those items are claimed for at the end of the tenancy.

Section 21 of the *Residential Tenancy Regulation* states the following about condition inspection reports:

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 application, while the landlord has submitted a few photographs, based on the fact that the landlord did not complete the report at the end of the tenancy, I do not find that the landlord has provided a preponderance of evidence proving the various cleaning and damages being claimed for.

As the landlord has not provided any evidence that the tenants breached the Act, I must dismiss the landlord's claim for compensation related to cleaning or repairs. That aspect of her application is dismissed without leave to reapply.

Claim for Filing Fee and Document Service Costs

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 largely successful, I grant her claim for reimbursement of the \$100.00 filing fee.

Regarding her claim for \$63.00 for document service costs, those costs are not recoverable under the Act. Costs associated with these types of matters are limited to fees under section 72 of the Act. As such, that aspect of the landlord's claim is dismissed without leave to reapply.

Summary of Award, Retention of Security Deposit, and Monetary Order

In summary, a total of \$2,900.00 is awarded to the landlord.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlord may retain the tenants' security deposit of \$1,400.00 in partial satisfaction of the above-noted award.

The balance of the award, \$1,500.00, is granted to the landlord by way of a monetary order that is issued in conjunction with this decision.

Conclusion

I grant the landlord's application, in part.

I hereby grant the landlord a monetary order in the amount of \$1,500.00, which must be served on the tenants. Should the tenants fail to pay the landlord the amount owed, the landlord 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: December 17, 2020

Residential Tenancy Branch