



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlord seeks compensation, including the cost of the filing fee, against their former tenant pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act").

Agents for both parties attended the hearing, along with the tenant. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Issues

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The landlord seeks the following amounts:

1. \$4,000.00 for loss of rent for the month of March 2021,
2. \$2,450.00 for costs to repair walls, general cleaning, and carpet cleaning,
3. \$534.85 for unpaid Fortis BC bills and keys not returned (garage remote control, three door keys, and one mailbox key), and
4. \$100.00 for the application filing fee.

Documentary evidence for the repair costs to the call, and copies of the utility bills was provided. There is, I note, no supporting documentation (such as estimates or invoices) for the general cleaning, carpet cleaning, and the key replacement cost.

The tenancy began on April 1, 2020 and ended on February 21, 2021. This was a fixed term tenancy that was to end on March 31, 2021. Monthly rent was \$4,000.00. The tenant paid a security deposit of \$2,000.00 which the landlord currently holds in trust pending the outcome of this dispute.

Submitted into evidence was a copy of a written tenancy agreement and addendum.

The tenant who resided in the rental unit sent a note to the landlord's agent in early- to mid-February 2021, asking to end the tenancy early. The landlord said no. The tenant moved out on February 21 anyway. The landlord told the tenant that if they found someone to take over the tenancy on March 1 that the tenant would not have to pay rent for March. The landlord posted advertisements in mid-February to find a new tenant, to no avail. The tenant, who ended the fixed term tenancy early, did not pay rent for March. The landlord seeks to recover the loss of rent for that month.

The landlord testified that the tenant left a total of 61 holes in the halls, left the carpet and walls dirty, and damaged the rental unit. A copy of the Condition Inspection Report was in evidence, along with many photographs of the damage and holes. The tenant was given an opportunity by the landlord to attend for the move-out inspection, but the tenant never replied.

Finally, the landlord testified that the tenant did not pay the Fortis BC bills. As for the replacement keys, the landlord explained that he was not too worried about the rental unit keys. Rather, he simply seeks the \$200.00 that the strata will charge to replace one of the garage door remote keys.

The tenant's representative emphasized that it was never the tenant's intention to avoid their obligations under the tenancy agreement. And, on this, the representative stated that the tenant does not dispute the claim for unpaid utilities and for the key replacement cost.

Much was made of the early end of tenancy notice, however. The representative argued that the landlord had received an early notice to end tenancy, and that "both parties are supposed to mitigate [loss resulting therefrom]." The tenant or their representative tried to reach some sort of early termination and settlement with the landlord, but they were unable. Further, the representative added that they "didn't see any effort from the landlord trying to resolve or settle the early termination."

As for the cost of the repairs to the walls, the representative stated that it is an exaggerated amount. They “vehemently disagree” with the amount estimated. They have people who could undertake the repairs at a much lower cost. Indeed, he explained that it is a two-person job that would take no more than three hours to do.

Analysis

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 that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

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.

1. Claim for Loss of Rent

Section 45(2) of the Act deals with the method by which a tenant can end a fixed term tenancy. This section of the Act reads as follows:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, the tenant ended the tenancy by giving the landlord (through the representative) notice that they would be ending the tenancy early. The landlord, not surprisingly, said no. Nonetheless, the tenant moved out on February 21, 2021, and the tenancy was ended at that point.

Based on the evidence before me, I find that the tenant breached the tenancy agreement and section 45(2) the Act by ending the tenancy early as they did. And, but for the tenant's early termination of the tenancy, the landlord would not have suffered a loss of rent in the amount of \$4,000.00.

It is worth noting that, unless the parties agree to mutually end a tenancy early (see section [44\(1\)\(c\)](#) of the Act), a landlord is under no obligation to work with a tenant in "settling" or otherwise resolving the tenant's desire to end a tenancy early. There is no evidence before me to find that the landlord accepted the tenant's desire to end the tenancy early.

The evidence before leads me to further conclude that the landlord took reasonable steps to minimize a potential loss of rent, such as by advertising for the rental unit in mid-February. However, it is not surprising that no tenant was found in such a short period of time.

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 loss of rent for the month of March in the amount of \$4,000.00.

2. Claim for Wall Repairs and Cleaning

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate.

First, as to the general cleaning and carpet cleaning claims, the landlord provided no supporting documentation, such as an invoice or receipt, for the cost of these two matters. However, the tenant did not dispute that the rental unit required cleaning. Accordingly, I shall award nominal damages for these two claims.

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

As such, I award the landlord nominal damages in the amount of \$2.00.

Second, as to the wall repairs, the tenant did not dispute that there were 61 holes in the walls. But they disagreed with the \$2,500.00 estimate. The landlord submitted into

evidence a painting quotation from a painter in the Chinese community. No other estimates were provided.

Where an amount of this magnitude is being claimed and disputed, I must be satisfied that the amount claimed is a reasonable amount. This is generally satisfied through the presentation of at least two to three estimates from other contractors who may do the work. I am unable, based on this one estimate, to find that \$2,500.00 is a reasonable amount to be claimed by the landlord. Indeed, I find that I must agree with the tenant's representative that the amount claimed is exaggerated. For this reason, I am unable to award the amount claimed.

However, there are holes caused by the tenant, and thus I must award the landlord a nominal damage award of \$100.00.

3. Claim for Unpaid Fortis BC Bills and Replacement Keys

As the tenant did not dispute the unpaid Fortis BC bills (\$194.85) or the \$200.00 remote key replacement cost, I grant the landlord an award of \$394.85 for these claims.

4. Claim for Application Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord largely succeeded in their application, I grant them \$100.00 in compensation to cover the cost of the filing fee.

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

In summary, the landlord is awarded a total of \$4,596.85, which comprises \$4000.00 for loss of rent, \$2.00 in nominal damages (cleaning), \$100.00 in nominal damages (wall holes), \$394.85 for utility bills and key, and \$100.00 for the filing fee.

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 tenant's security deposit of \$2,000.00 in partial satisfaction of the above-noted award.

The balance of the award is issued to the landlord by way of a monetary order in the amount of \$2,596.85. A copy of this order is issued in conjunction with this decision, and the landlord must serve a copy of this order to the tenant.

Conclusion

I hereby grant the landlord's application, in part.

I hereby authorize the landlord to retain the tenant's security deposit of \$2,000.00.

I hereby grant the landlord a monetary order in the amount of \$2,596.85., which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

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

Dated: August 9, 2021

Residential Tenancy Branch