



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNDC-S, FF
For the tenant: MNSDB-DR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord, on January 28, 2021, applied for:

- compensation for a monetary loss or other money owed;
- authority to keep the tenant's security deposit and pet damage deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The tenant, on February 2, 2021, applied for the following:

- a return of their security deposit and pet damage deposit; and
- to recover the cost of the filing fee.

The hearing convened on May 14, 2021, and was adjourned due to the length of the testimony and consideration of evidence issues. An Interim Decision was made in this matter, dated May 14, 2021. That Interim Decision is incorporated by reference herein and should be read in conjunction with this Decision.

At the reconvened hearing, the landlord's agent, the tenant, his daughter, and the landlord's interpreter attended, as they had at the first hearing, and the hearing proceeded to consider the merits of the tenant's application.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and necessary to the findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Issue(s) to be Decided

1. Is the landlord entitled to retain the tenant's security deposit and pet damage deposit, further monetary compensation, and to recovery of the filing fee paid for this application?
2. Is the tenant entitled to a monetary order comprised of their security deposit and pet damage deposit and to recovery of the filing fee paid for this application?

Background and Evidence

This tenancy began on November 1, 2019 and was renewed on November 1, 2020, with a fixed-term ending on June 30, 2021. The monthly rent was \$1,300 and the tenant paid a security deposit of \$700 and a pet damage deposit of \$200.

The landlord has retained the security deposit and pet damage deposit, as they made their claim against the deposits.

Landlord's application –

The landlord's monetary claim in their application was listed at \$8,046.86; however, that amount included a claim for loss of rent revenue of \$1,300 for March, April, May and June, 2021, each.

At the hearing, the landlord's agent (agent) stated that the landlord's amended and actual monetary claim is \$2,946.90, which included \$1,300 for January and \$1,300 for February 2021 for loss of rent revenue, \$48.74 for unpaid hydro (1/3 of \$146.23), a cleaning fee of \$150, and a lock change cost of \$48.16.

The landlord has retained the tenant's security deposit and pet damage deposit, having made this claim against it.

As to the landlord's claim for loss of rent, the agent submitted that the tenant gave a verbal notice on December 15, 2020, that they were ending the tenancy early. The agent submitted that the tenant vacated the rental unit on December 27, 2020, causing the landlord to suffer a loss of rent revenue as the tenant broke the terms of the fixed-term tenancy agreement.

The agent submitted that the landlord advertised the rental unit on at least three different online platforms, but were unable to find a new tenant until March 2021. Filed into evidence were copies of the advertisements.

The landlord claims a loss of rent revenue for January and February 2021, due to the insufficient notice from the tenant prior to the end of the fixed term.

The agent said the final inspection of the rental unit was on December 28, 2020, and because the tenant failed to return the keys to the rental unit, the landlord had to change the locks to the front door. Filed into evidence was a copy of a lock change receipt.

The agent submitted that the tenant agreed to pay a cleaning fee of \$150 and 1/3 of the utilities, as per the written tenancy agreement.

Tenant's response –

The tenant, through their interpreter, submitted that he had a conversation with the landlord on December 15th about ending the tenancy early. The tenant submitted that the landlord agreed they could move out by January 1, 2021, without being obligated to pay any further rent. The tenant submitted that he relied on their verbal agreement to vacate the rental unit at the end of December 2020, without further penalty, and rented another property.

The tenant submitted that one of the primary reasons for ending the tenancy was that the landlord did not want his wife to quarantine at the residential property after she arrived from another country.

Filed into evidence was an audio recording, transcription, and a denial of entry into the country letter, dated January 12, 2021, addressed to the tenant's wife.

The tenant submitted that there was an initial move-out inspection on December 28, 2020, and that there was to be a final cleaning and move-out inspection on December 31, 2020; however, the landlord changed the locks on December 30th.

The tenant submitted that they returned the keys to the landlord by dropping them in the mail slot.

Tenant's application –

The tenant is requesting that the landlord return their security deposit of \$700 and pet damage deposit of \$200.

The tenants submitted that they provided the landlord with their written forwarding address on the proper Residential Tenancy Branch (RTB) form, by dropping it in the landlord's mail slot, on January 14, 2021. To date, the landlord has not returned either deposit, according to the tenant.

Filed into evidence was a copy of the written request to the landlord.

The tenant submitted that there was no move-in inspection of the rental unit, and due to the landlord's lock change, there was no final move-out inspection.

The tenant submitted that they agreed to the landlord's request of \$150 for the cleaning fee and \$48.74 for unpaid hydro.

Agent's response –

The agent said the landlord received the tenant's written forwarding address on January 16th, 2021

The agent agreed there was no move-in condition inspection report (Report) and that is why the landlord did not claim for damages.

The agent submitted that the landlord did not have a verbal agreement with the tenant to allow them to break the fixed-term tenancy agreement.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to prove their claim on a balance of probabilities.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Landlord's application –

Loss of rent, January and February 2021 –

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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 other words, the tenant is to provide written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

Here, there was no dispute that the tenants moved out of the rental unit prior to the end of the fixed-term, or June 30, 2021.

In the case before me, however, the tenant asserted that they had a verbal agreement with the landlord that they could move out by January 1st or January 15th, 2021, without penalty, or being obligated to pay any further rent.

I find support for the tenant's position in their documentary evidence. I have reviewed the certified transcription into English of an oral recording of communication of what appears to be between the landlord and/or spouse and the tenant. Specifically, one statement of the landlord is as follows:

"If you move out on January 1st, then you don't pay any rent afterward, that goes without saying. You won't be staying then."

Another statement by the same person is as follows:

"Or you leave on January 1st if you want. I allow you to go, okay?"

Another statement by the same person is as follows:

"I certainly won't ask you for extra rent. Even if you leave on January 1st, I won't want your extra rent."

Further, the same speaker also said:

"But your wife cannot come. It's as simple as that."

[All reproduced as written]

While the agent stated that the landlord did not agree to the tenant leaving early, I find on a balance of probabilities the parties did have a verbal agreement that the tenancy could end by January 1, 2021, without the tenant being required to pay any further rent.

The agent provided hearsay, or second-hand testimony, and as a result, I could not rely on the agent's statement, in light of the transcription as noted above, which contradicted the agent, and due to the tenant's clear and consistent testimony. Further, I find the transcription supports the testimony of the tenant, in that the landlord did not want the tenant's wife at the residential property. The landlord did not attend the hearing to provide rebuttal testimony.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Based on the above, I find that the terms of this verbal agreement to end the tenancy by January 1st or 15th, 2021, without the tenant being obligated to pay any further rent, are recognized and enforceable under the Act.

For these reasons, I find the landlord has submitted insufficient evidence to support their claim for the loss of rent revenue for January and February 2021. I therefore **dismiss** the landlord's claim for \$2,600.

Cleaning fee; unpaid hydro –

The tenant agreed to these claims and I therefore **grant** the landlord a monetary award of \$198.74, or \$48.74 for unpaid hydro (1/3 of \$146.23) and the cleaning fee of \$150.

Lock change charge –

The agent said that the tenant did not return the keys and the tenant contends that the tenancy was not yet over when the landlord changed the locks. The tenant submitted that they still had cleaning to do and would be out by December 31, 2020.

In light of the disputed testimony, I find the landlord has not met their burden of proof on a balance of probabilities. I therefore **dismiss** the landlord's claim for \$48.16.

Tenant's application –

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit or pet damage deposit has been extinguished, a landlord must either repay a tenant's security deposit and pet damage deposit or file an application for dispute resolution to retain the security deposit and pet damage deposit

within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

If a landlord fails to comply with the Act, then the landlord must pay the tenant double the security deposit and pet damage deposit, pursuant to section 38(6) of the Act.

In the case before me, the tenant said they delivered their written forwarding address to the landlord on January 14, 2021 and the agent said the landlord received the tenant's written forwarding address on January 16, 2021.

Even if I accept the tenant's evidence that the landlord was served their written forwarding address on January 14, 2021, the landlord had until January 29, 2021, to make their application claiming against the tenant's security deposit and pet damage deposit. As the landlord's claim for compensation for other than damages was filed on January 28, 2021, I find the landlord complied with their obligation under the Act.

I therefore find the tenant is not entitled to double the recovery of the deposits.

I, however, find they are entitled to a return of their security deposit and pet damage deposit, less any monetary award granted to the landlord.

Both applications-

As both parties have been partially successful with their applications, I dismiss their request to recover the filing fee.

The landlord has been granted a monetary award of \$198.74.

I deduct the landlord's monetary award of \$198.74 from the tenant's security deposit of \$700 and their pet damage deposit of \$200, or \$900 in total, and grant the tenant a monetary order for the balance due, or \$701.26, pursuant to sections 62(3) and 67 of the Act.

Should the landlord fail to pay the tenant this amount without delay, the order may be served on the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court if it becomes necessary. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord is granted a monetary award of \$198.74.

The above amount was deducted from the tenant's security deposit and pet damage deposit, giving a monetary award to the tenant in the amount of \$701.26.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 22, 2021

Residential Tenancy Branch