



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-S, MNDCL, FFL

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, 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 female Landlord stated that on May 29, 2021 the Dispute Resolution Package and the evidence the Landlords submitted to the Residential Tenancy Branch in May of 2021 were sent to the Tenant, via registered mail, at the service address noted on the Application. She stated that the service address is the current residential address of the Tenant, who never resided in the rental unit. She stated that the Tenant's mother resided in the rental unit and was a co-tenant.

The Landlord submitted Canada Post documentation that corroborates the aforementioned statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however, the Tenant did not appear at the hearing. As the aforementioned documents have been served to the Tenant, the hearing proceeded in the absence of the Tenant and the aforementioned evidence was accepted as evidence for these proceedings.

In June of 2021 the Landlords submitted additional evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was served to the Tenant, via email, on June 03, 2021. In October of 2021 the Landlords submitted additional

evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was served to the Tenant, via email, on November 01, 2021.

The female Landlord stated that she does not know if the Tenant gave her permission to serve documents to her by email but she was told by the Residential Tenancy Branch that she could serve documents by email.

Section 88 of the *Act* permits a party to serve documents to the other party in the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (f) by any other means of service provided for in the regulations.

Section 43 of the *Residential Tenancy Regulation* stipulates that documents described in section 88 of the *Act* may, for the purposes of section 88 of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

I find that the Landlord has submitted no evidence to establish that the Tenant gave her permission to serve documents to her by email. I therefore find that the documents the Landlord served to the Tenant by email in June and October of 2021 were not served in accordance with section 88 of the *Act*. As I have insufficient evidence to conclude that the Tenant received these specific documents, they were not accepted as evidence for these proceedings.

In July of 2021 the Landlords submitted additional evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was not served to the Tenant, as it was an electronic message sent to the Landlords by the Tenant. As this evidence was not served to the Tenant as evidence for these proceedings, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of 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 female Landlord stated that:

- the tenancy began on October 01, 2017;
- the Tenant and her mother signed a tenancy agreement, which was submitted in evidence;
- when the tenancy began, rent of \$2,850.00 was due by the first day of each month;
- a security deposit of \$1,425.00 was paid;
- the Tenant was served with three month's notice of the Landlord's intent to increase the rent to \$2,960.00;
- the Tenant was not served with three month's notice of the Landlord's intent to increase the rent to \$2,960.00;
- on August 30, 2018 the parties signed a new tenancy agreement, which she thinks was submitted in evidence;
- the new tenancy agreement declared that rent of \$2,960.00 was due by the first day of each month;
- in January of 2020 the co-tenant agreed, in writing, to increase the rent to \$3,030.00;
- she thinks she submitted a document to show that the co-tenant agreed, in writing, to increase the rent to \$3,030.00;
- sometime in August of 2019 she served the Tenant with notice that the rent would increase to \$3,030.00 in January of 2020;
- she does not have a copy of that notice of rent increase with her, so she does not know exactly when it was served;

- she thinks she submitted the notice of rent increase that was served to the Tenant in August of 2019;
- the tenancy ended on April 30, 2021;
- the Tenant did not provide a forwarding address, but the Tenant named in this Application for Dispute Resolution did not move from the address the Landlord has on file for these proceedings; and
- in March of 2021 the Tenant paid \$1,000.00 for strata fines totalling \$815.00, leaving a credit of \$185.00.

The Landlords are seeking compensation for unpaid rent from April of 2021, in the amount of \$1,530.00. The female Landlord stated that \$1,500.00 in rent was paid for April of 2021.

The Landlords are seeking compensation for unpaid rent from June, July, September, and December of 2020, in the amount of \$120.00. The female Landlord stated that they are seeking this amount because the Tenant(s) only paid rent of \$3,000.00 for those months, when \$3,030.00 was due.

The Landlords are seeking compensation for unpaid rent from January, February, and March of 2021, in the amount of \$90.00. The female Landlord stated that they are seeking this amount because the Tenant(s) only paid rent of \$3,000.00 for those months, when \$3,030.00 was due.

The Landlords are seeking compensation, in the amount of \$600.00, for repairing and painting drywall that was damaged during the tenancy. The Landlord submitted photographs that show damage to the walls. The female Landlord stated that she and her husband repaired the damage themselves, which collectively took them approximately 10 hours.

The Landlords are seeking compensation, in the amount of \$250.00, for removing a propane heater and mattress that was left behind at the end of the tenancy. The female Landlord stated that she and her husband discarded the items, which collectively took them approximately 2 hours.

The Landlords are seeking compensation, in the amount of \$280.00, for cleaning the carpet, appliances, windows, and the patio. The Landlord submitted photographs that show cleaning was required. The female Landlord stated that she and her husband cleaned these areas, which collectively took between 5 and 6 hours.

The Landlords are seeking compensation, in the amount of \$400.00, for replacing a television stand that was provided with the rental unit. The female Landlord stated that this item was missing at the end of the tenancy. The Landlords did not submit evidence of the value of the stand.

The Landlords are seeking compensation for a Strata fine, in the amount of \$200.00, which the Landlords received in April of 2021 due to the Tenant failing to comply with a bylaw regarding the security gate. The Landlords submitted evidence of this infraction.

Analysis

On the basis of the undisputed evidence and the tenancy agreement submitted in evidence, I find that the Landlords, the Tenant, and a co-tenant signed a tenancy agreement, which required the Tenant(s) to pay monthly rent of \$2,850.00.

I find that the Landlords have submitted insufficient evidence to establish that the Landlord and the Tenants signed a second tenancy agreement in which the Tenants agreed to pay monthly rent of \$2,960.00. In reaching this conclusion, I was influenced by the fact this second tenancy agreement was not submitted in evidence.

I find that the female Landlord's testimony regarding the new tenancy agreement was not particularly reliable, as she initially told me that she served the Tenant with three month's notice that the rent would be increased to \$2,960.00. She subsequently retracted this statement and told me that the parties had signed a new tenancy agreement in which the rent was increased to \$2,960.00. She also told me that she believes the new tenancy agreement was submitted in evidence, which it was not. As the female Landlord's testimony in this regard was inconsistent, I am unwilling to rely in her testimony in regard to the alleged second tenancy agreement was signed.

As the Landlords have submitted insufficient evidence to establish that a second tenancy agreement was signed, I find that the Landlords have failed to establish that the parties entered into a new tenancy agreement which required the Tenant to pay rent of \$2,960.00. I therefore cannot conclude that the Landlords had the right to collect rent of \$2,960.00.

Section 42(2) of the *Act* stipulates that when a landlord wishes to increase the rent, the Landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. Section 42(3) of the *Act* stipulates that this notice of rent

increase must be in the approved form. The approved form for serving a rent increase is a RTB-7.

I find that the Landlords have submitted insufficient evidence to establish that the Tenant was served with notice that rent would be increased to \$3,030.00 in accordance with sections 42(2) and 42(3) of the *Act*. I find that the female Landlord's testimony that this notice was served to the Tenant is not particularly reliable, in part, because she told me that she believes the notice of rent increase was submitted in evidence, which it was not. In addition, the Landlords did not have that document with them at the time of the hearing and I find it entirely that the female Landlord's recollection of this notice of rent increase is flawed.

As the Landlords have submitted insufficient evidence to establish that the rent was increased to \$3,030.00 in accordance with the legislation, I cannot conclude that the Landlords had the right to collect rent of \$3,030.00. I note that there is evidence before me that shows the co-tenant paid rent of \$3,030.00 in 2020. I find that payment of rent by a tenant does not, however, establish that a landlord has a legal right to collect rent in that amount, as tenants often pay increased rent without understanding their rights under the *Act*.

As the Landlord has failed to establish that rent was properly increased from \$2,850.00, I find that the Tenant(s) were required to pay \$2,850.00 in rent for April of 2021. On the basis of the testimony of the female Landlord and the absence of evidence to the contrary, I find that rent of \$1,500.00 was paid for April of 2021. I therefore find that the Tenant still owes \$1,350.00 in rent for April of 2021.

On the basis of the undisputed testimony, I find that the Tenant(s) paid \$3,000.00 in rent for June, July, September, and December of 2020. As the Landlords have only established the right to collect rent of \$2,850.00 each of those months, I find the Tenant overpaid the rent by \$600.00 for those months. As the Landlords have failed to establish that they had the right to collect this \$600.00 in rent, I find that the Tenant is entitled to recover this rent payment, pursuant to section 43(5) of the *Act*. I find that the \$1,350.00 in rent owing for April of 2021 should be reduced by this \$600.00 overpayment, leaving a balance due for April of 2021 in the amount of \$750.00.

On the basis of the undisputed testimony, I find that the Tenant(s) paid \$3,000.00 in rent for January, February, and March of 2021. As the Landlords have only established the right to collect rent of \$2,850.00 for each of those months, I find the Tenant overpaid

the rent by \$450.00 for those months. As the Landlords have failed to establish that they had the right to collect this \$450.00 in rent, I find that the Tenant is entitled to recover this rent payment, pursuant to section 43(5) of the *Act*. I find that the remaining \$750.00 in rent owing for April of 2021 should be further reduced by this \$450.00 overpayment, leaving a balance due for April of 2021 in the amount of \$300.00.

On the basis of the cheques submitted in evidence by the Landlords, I find that the Tenant(s) paid \$3,030.00 in rent for January, February, March, April, and May of 2020. As the Landlords have only established the right to collect rent of \$2,850.00 each of those months, I find they overpaid their rent by \$900.00 for those months. As the Landlords have failed to establish that they had the right to collect this \$900.00 in rent, I find that the Tenant is entitled to recover this rent payment, pursuant to section 43(5) of the *Act*. I find that the remaining \$300.00 in rent owing for April of 2021 has been paid in full, leaving a rent overpayment of \$600.00.

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.

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 repair walls that were damaged during the tenancy. I therefore find that the Landlords are entitled to compensation for the time they spent repairing this damage. On the basis of the undisputed evidence that they spent 10 hours repairing the damage, I find that they are entitled to compensation of \$300.00. I find that compensation of \$30.00 per hour is reasonable compensation for labor of this nature.

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 remove all personal belongings at the end of the tenancy. I therefore find that the Landlords are entitled to compensation for the time they spent discarding the items. On the basis of the undisputed evidence that they spent 2 hours discarding the items, I find that they are entitled to compensation of \$60.00. I find that compensation of \$30.00 per hour is reasonable compensation for labor of this nature.

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 unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlords are entitled to compensation for the time they spent cleaning. On the basis of the undisputed evidence that they spent 5-6 hours cleaning, I find that they are entitled to compensation of \$165.00. I find that compensation of \$30.00 per hour is reasonable compensation for labor of this nature.

I am unable to award compensation for disposal costs or cost of supplies used to repair the drywall/clean the unit, as the Landlords submitted no evidence of those costs. I am also unable to award the Landlords' full claims for repairing the damage to the rental unit, as they have not established that they incurred the losses claimed.

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 did not leave a television stand in the unit that was provided with the tenancy.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. I find that the Landlords failed to establish the true cost of replacing the missing television stand. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlords' submission that the stand is worth \$400.00. When written receipts/estimates are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present that documentation. As the Landlords have failed to establish the value of the television stand, I dismiss the Landlords' application for \$400.00 to replace the stand.

As the Landlords have established a claim for damages to the rental unit, in the amount of \$525.00, I find that the Landlords have the right to retain this amount from the \$600.00 rent overpayment that was paid by the Tenant, leaving a rent overpayment balance of \$75.00.

On the basis of the undisputed evidence, I find that the Landlords were charged \$200.00 for a Strata fine in April of 2021 as a result of the Tenant(s) breaching a bylaw regarding the security gate. I therefore find the Landlords are entitled to recover this cost from the Tenant. I find that the Landlords have the right to file the rent overpayment balance of \$75.00 to this debt, leaving \$125.00 owing for the Strata Fine.

As the Tenant has a credit of \$185.00 from a strata fine overpayment made in March of 2021, I find this amount should be applied to the outstanding “gate infraction” fine of \$125.00, leaving the Tenant with a strata overpayment credit of \$60.00.

I find that the Landlords’ Application for Dispute Resolution has some merit and that the Landlords are entitled to recover the \$100.00 fee for filing this Application for Dispute Resolution. I find that the strata overpayment credit of \$60.00 should be applied to this fee, leaving a \$40.00 owing to the Landlords.

These findings are made pursuant to sections 62(3) and 67 of the *Act*.

Conclusion

The Landlords have established a monetary claim, in the amount of \$40.00. Pursuant to section 72(2) of the *Act*, I allow the Landlords to retain \$40.00 from the Tenant’s security deposit in full satisfaction of this monetary claim.

As the Landlords have failed to establish the right to keep the full security deposit of \$1,425.00, the Landlord must return the remaining \$1,385.00 to the Tenant.

Based on these determinations I grant the Tenant a monetary Order for \$1,385.00. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, 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: November 19, 2021

Residential Tenancy Branch