Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPL, MNDL-S, FFL
Tenant: CNL-MT; CNC, AS, OLC, MNDCT

Introduction

This hearing dealt with crossed Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought more time to cancel a notice to end tenancy; to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, her witness and the tenant.

At the outset of the hearing, neither party identified any issues with the service of evidence. However, both parties acknowledged, at the start of the hearing, that the tenant had vacated the rental unit on or before November 1, 2021. As a result, I have determined the landlord no longer requires an order of possession and I amend the landlord's Application to exclude the matter of possession.

Likewise, as the tenancy is ended, I have determined the tenant no longer requires additional time to submit an application to dispute a notice to end tenancy; to dispute a notice to end tenancy; an order to allow her to assign or sublet her tenancy; or to have the landlord comply with the *Act*. Therefore, I amend the tenant's Application to exclude all matters related to an ongoing tenancy.

As such, the remaining issues on each application or their respective claims for compensation. The landlord seeks $206.65 for cleaning and/or damage to the rental unit. The tenant also remains only with a monetary claim.

However, I note that the tenant's original Application indicated a claim of $6,700.00 plus filing fee and much of her documentary evidence indicated differing amounts of what she was seeking in terms of compensation. In various forms the tenant had suggested she was seeking $6,700.00 (in her original application) or $9,437.00 or $35,000.00 or $30,000.00 or $27,000.00.

When asked to clarify, in the hearing, the amount she sought as compensation she responded by stating the highest amount she could claim.

Residential Tenancy Branch Rule of Procedure 4 outlines the requirements for considering amendments to an Application for Dispute Resolution.

Rule 4.1 states that an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution form and filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch or through a Service BC Office. It goes on to say an amendment may add to, alter or remove claims made in the original application.

Rule 4.2 stipulates that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the issue of how much the tenant sought in compensation could only be determined by the tenant herself, I find that the landlord could not reasonably anticipate an increase from the originally stated $6,700.00. As such, I decline to make an amended without the benefit of the submission of and service to the landlord of an "Amendment to an Application for Dispute Resolution" form.

I offered to the tenant that we could proceed on her $6,700.00 claim as is or she could withdraw her claim at this time and file a new application in the amount she thought was fair. The tenant chose to proceed with her original claim of $6,700.00.

I note here, that during the first part of the hearing both parties did not appear to understand the proceedings and it took some time for them to both understand how and when to present their responses. Once clarified the hearing ran more smoothly.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for cleaning of and damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenant is entitled to a monetary order for compensation and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 67, and 72 of the *Act.*

Background and Evidence

Both parties submitted copies of a tenancy agreement signed by the parties on November 25, 2020 for a month-to-month tenancy beginning on December 1, 2020 for a monthly rent of $1,600.00 due on the first of each month with a security deposit of $800.00 paid.

The parties agreed the tenancy ended when the tenant moved out on October 31, 2021. A move out inspection was conducted on November 1, 2021. The landlord and her witness submitted the tenant failed to complete the inspection and that she constantly demanded her security deposit back before she would hand over the keys to the rental unit. In support of her position, the landlord provided a link to a YouTube video recording of the inspection.

The landlord also submitted a copy of a Condition Inspection Report (CIR) recording the condition of the rental unit at the start and end of the tenancy. The report records that the taps, sink and stoppers as well as the refrigerator required cleaning at the end of the tenancy and that the living room floor had some water damage (at the end of the tenancy) in addition to some scratches and buckling at the start of the tenancy. It also records added damage to the dining room floor in addition to scratches that had been there at the start of the tenancy.

The landlord submitted that she sought only the cost to repair the damaged section of the floor and not to refinish the entire floor in an amount of $106.65 for a 27 square foot section at $3.95 per square foot. The landlord also sought $100.00 for cleaning of the rental unit. The landlord submitted that she returned $593.35 to the tenant and currently retains the balance of $206.65.

The parties agree the tenant provided the landlord with her forwarding address on November 2, 2021. However, the landlord submitted that the address provided was a “fake” address as it was incomplete, and the tenant moved into a location in a different town than what her forwarding address was.

The tenant seeks compensation in the amount of $6,700.00. The tenant submits that the landlord has not provided a “moment’s peace since March 1, 2021.” She submitted that when she had to kick out her roommate for using drugs the landlord did everything that she could to end the tenancy. The tenant seeks compensation for loss of quiet enjoyment and lack of housing security.

The tenant submitted the landlord bullied and harassed her since February or March 2021. She submitted that the landlord had done everything in her power to make the tenancy unbearable, so she had no choice but leave. She seeks compensation for the landlord issuing continual threats and eviction notices that were unfounded and punitive and the harassment, including calling the tenant’s new prospective landlord to advise him not to rent to the tenant. The tenant stated she could not get the new landlord to provide a letter to confirm this.

The tenant submitted the final straw was when the landlord “interrogated” her newest roommate in September to the point where she moved out. The tenant submitted that the arbitrator, in their July 2021 hearing, stated the landlord could not unreasonably withhold her approval for a new roommate. The tenant submitted that the landlord wrote the tenant’s “new tenant” and had her in tears after which her “new tenant” decided to move out.

The landlord acknowledged that the arbitrator, in their July hearing, had instructed that the landlord could not unreasonably withhold approval to a new roommate but that she also instructed the tenant that she could not just move someone into the rental unit without getting the landlord’s prior approval. The landlord also submitted that at the time the new roommate moved in she had already issued the Two Month Notice to End Tenancy for Landlord’s Use of Property and she expected this tenancy to end and so she informed the tenant’s new roommate.

Neither party provided a listing or timeline of any events that occurred between March and July other than the issuance of a One Month Notice to End Tenancy for Cause on March 30, 2021 with an effective vacancy date of June 30, 2021 citing the tenant had assigned or sublet the tenancy without the landlord’s permission. The hearing to determine the validity of this Notice was held on July 16, 2021 (file number provided on the cover sheet of this decision).

Since then, the landlord has issued four Notices to End Tenancy as follows (in chronological order):

- Two Month Notice to End Tenancy for Landlord’s Use of Property on July 19, 2021 with an effective vacancy date of September 30, 2021 citing the tenant’s child was planning, in good faith, to move into the rental unit;
- 10 Day Notice to End Tenancy for Unpaid Rent issued on August 5, 2021 with an effective vacancy date of August 15, 2021 citing the tenant had failed to pay rent in the amount of $1,600.00 due on August 1, 2021;
- 10 Day Notice to End Tenancy for Unpaid Rent issued on September 3, 2021 with an effective vacancy date of September 13, 2021 citing the tenant had failed to pay rent in the amount of $1,600.00 due on September 1, 2021; and
- One Month Notice to End Tenancy for Cause on September 12, 2021 with an effective vacancy date of October 31, 2021 citing the tenant is repeatedly late paying rent; the tenant or a person permitted on the property by the tenant has put the landlord’s property at significant risk; and the tenant has assigned or sublet the rental unit without landlord’s written consent.

At the hearing the parties confirmed there was no outstanding rent owed to the landlord.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In relation to the tenant's Application, I find that the *Act* allows a landlord to issue a notice to end a tenancy for among other things, cause as identified under Section 47; for unpaid rent under Section 46; and for landlord's use of the property under Section 49. While the landlord was unsuccessful in ending the tenancy based on the One Month Notice to End Tenancy issued on March 30, 2021, I find the landlord was entitled to issue the Notice and as it was a first notice to end tenancy issued to the tenant, I find it was not excessive or could be considered an infringement on the tenant's right to quiet enjoyment.

However, I note that the validity of the remaining notices to end tenancy issued by the landlord were never tested by a hearing. In fact, this hearing was originally set to test the validity of the Two Month Notice and the second One Month Notice (by amendment). As such, since the tenant moved out without ever providing her own notice to end tenancy that complies with the *Act*, I find the tenant accepted the end of the tenancy based on one of them and in the absence of any other proof she cannot now say that these notices were breaching her quiet enjoyment.

In addition, if a tenant has failed to pay rent when it is due and the landlord issues two 10 Day Notices for two months in a row when the tenant fails to pay rent on the date that it is due in a month, I cannot find that to be excessive or harassing, as the landlord is entitled to do so.

As to the tenant's "final straw" of the landlord's interrogation of the tenant's "new tenant", I find that the tenant's failure to comply with the requirement in the addendum of the tenancy agreement to have the new roommate presented to the landlord and give the landlord the opportunity to approve the roommate in writing was caused by the tenant herself.

If the tenant had presented her new "perspective" roommate to the landlord prior to having the roommate move in, there would have been no need for the landlord to send a letter to the roommate and set up an appointment to assess the roommate's suitability as a tenant under the tenancy agreement. As such, I find the tenant cannot blame the landlord for these events or consider them harassment or bullying.

I find the tenant has failed to establish that she suffered any loss as a result of the landlord giving her a poor reference to her current landlord – as noted he is her current landlord, so she obviously was accepted as a tenant.

I find, on the whole, the tenant has failed to establish that the landlord has bullied, harassed or impeded the tenant's right to quiet enjoyment under the tenancy agreement. In addition, a landlord is not responsible, under the *Act*, for the tenant's "lack of housing security".

Therefore, I dismiss the tenant's Application for Dispute Resolution, in its entirety, without leave to reapply.

Section 37 of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must:

a) Leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
b) Give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 35 of the *Act* requires the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit. Section 36 stipulates that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the tenant has not participated.

Upon hearing the testimony of the landlord, her witness, and reviewing the YouTube video recording of the move out inspection, I find the tenant not only failed to participate in the move out inspection but rather her whole purpose in attending was to intimidate the landlord and force her to return the entire deposit or she would hold the keys to the rental unit as ransom.

While I accept that the tenant brought someone with her who appeared to be her "agent" during the inspection, I note that he too became confrontational and neither the tenant or her agent stayed for the completion of the inspection. As such, I find, pursuant to Section 36, the tenant has extinguished her right to return of the security deposit at all.

In addition, I prefer the landlord's evidence in regard to the condition of the rental unit at the end of the tenancy, primarily because of the tenant's behaviour during the inspection. It is clear that the tenant did not participate or have any understanding of the condition she left the unit in as her only focus was to get her security deposit back in full, despite the fact the landlord has no legal obligation to return the deposit on the date the tenancy ends. As such, I find the tenant failed to comply with her obligations under Section 37 and as a result, the landlord suffered a loss in the amount claimed.

However, I acknowledge that the landlord has already returned $593.35 and only retained $206.65. I cannot order the return of the amount already returned as the landlord returned it willingly and did not include recovery of it in her Application. As the landlord was successful in her claim, I also award her recovery of her filing fee.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$306.65** comprised of $206.65 rent owed and the $100.00 fee paid by the landlord for this application.

I order the landlord may deduct the remaining security deposit held in the amount of $206.65 in partial satisfaction of this claim. I grant a monetary order in the amount of **$100.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: December 29, 2021

Residential Tenancy Branch