



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, RPP, FFT
 MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with adjourned cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on October 29, 2021. The Tenant applied for the return of their security deposit, for a monetary order for compensation for monetary loss or other money owed, for an order for the return of personal property and the return of their filing fee.

The Landlord’s Application for Dispute Resolution was made on November 10, 2021. The Landlord applied for a monetary order for unpaid rent, permission to retain the security deposit, for a monetary order compensation for damage caused by the tenant, their pets or guests to the unit, site, or property, and to recover their filing fee.

The Landlord, the Landlord’s Husband, the Landlord’s support person and the Landlord’s translator (the “Landlord”), as well as the Tenant and the Tenant’s Daughter (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Landlord and the Tenant testified that they received each others documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

I have reviewed the Tenant's application and noted that the Tenant did not submit and detailed calculation of their monetary claim. The Rules of Procedure section 2.5 states the following:

Documents that must be submitted with an Application for Dispute Resolution

"To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution."

The Tenant testified during the hearing that they did not understand the requirement to submit a monetary worksheet or provide an alternate form of a detailed calculation of their monetary claim.

Due to the absence of this required disclosure of the Tenant's monetary claim, I find it appropriate to dismiss the Tenant's claim for a monetary order for compensation for monetary loss or other money owed.

I will continue in this proceeding in the remaining items claimed for

by the Tenant, consisting of an order for the return of the personal property, the return of the tenant's security deposit and the return of the Tenant's filing fee. As well as the Landlord's application.

Issues to be Decided

- Is the Tenant entitled to the return of their security deposit?
- Is the Tenant entitled to an order to the return of their personal property?
- Is the Tenant entitled to the return of their filing fee?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site, or property?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to recover their filing fee?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that the tenancy began on September 1, 2021, as a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. The parties agreed that rent in the amount of \$2,000.00 was to be paid by the first day of each month. The tenancy agreement recorded that the Landlord had been given a \$1,000.00 security deposit at the outset of this tenancy. Both parties submitted a copy of the tenancy agreement into documentary evidence.

Both parties agreed that the Tenant stopped staying in the rental unit as of September 9, 2021, due to a disagreement between them and the Landlord but that the Tenant's possession remained in the rental unit.

The Parties agreed that the Tenant provided the Landlord with verbal notice to end the Tenancy during a phone call on September 11, 2021. The Landlord was asked if they had ever received written notice to end the tenancy. The Landlord responded no, but they had received several text messages from the Tenant indicating that they would be

moving out. The Landlord testified that it was their understanding that the Tenant was ending their tenancy as of September 11, 2021.

The Landlord testified that they received a message from the other renter living on the rental property in late September, advising them that the Tenant's rental unit was not secure. The Landlord testified that he attended the rental unit on September 28, 2021, to lock the windows and doors to the rental unit.

The Landlord testified that they again attended the rental unit on October 17, 2021 and changed the locks on the rental unit. The Landlord was asked why they chose to change the locks. The Landlord testified that since the Tenant had been gone for a month and the rent was two months past due, they determined abandonment and took back possession of the rental unit.

The Tenant testified that they had been locked out of the rental unit since late September 2021 and that they had been text messaging the Landlord to arrange a time to get back in to get their possession.

The Landlord agreed that they had communicated with the Tenant via text message regarding the Tenant coming to get their personal property and clean the rental unit.

Both parties agreed that they submitted several pages of text messages into documentary evidence but that most of their text message conversation had not been conducted in English and that neither the Landlord nor the Tenant provided a legal translation of these messages into evidence for these proceedings.

Both parties agree that they had been in regular communication via text message between September 9, 2021, to October 30, 2021, and that their conversations were concerning cleaning and vacating the rental unit, the collection of the Tenants personal property, the collection of the Tenants car from the property, conducting the move-out inspection and attempts to settle their dispute.

The Landlord testified that the rent for this tenancy had not been paid for September and October 2021. The Landlord is requesting a monetary order to recover the unpaid rent.

The Tenant testified that they had not paid the rent for this tenancy for September and October 2021 due to a disagreement they had with the Landlord.

The Landlord testified that the tenant had not paid their portion of the gas and electricity bills due for this tenancy, consisting of \$80.88 in gas and \$140.65 in electricity. The Landlord testified that the Tenant owed 50% of the utilities for the rental property as per section 21 of the tenancy agreement. The Landlord submitted three utility bills into documentary evidence. When asked the Landlord confirmed that they draft the Tenancy agreement for this tenancy.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

After reviewing the applications of these parties, the testimony and documentary evidence submitted to these proceedings; I find that the main issue that I have before me is whether or not the Landlord was correct in their determination of abandonment for this tenancy. The Landlord testified that on October 17, 2021, they deemed the rental unit abandoned and changed the locks to the rental unit. Section 24 of the *Residential Tenancy Regulation* (the "*Regulation*") state the following regarding the determination of abandonment:

Abandonment of personal property

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that the tenant has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which the tenant has not paid rent, or

(ii) from which the tenant has removed substantially all of the tenant's personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

*(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.*

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

I noted that section 27 (2) of the *Regulation* states that in order to determine abandonment the landlord must receive express oral or written notice of the tenant's intention not to return to the residential property.

I accept the agreed-upon testimony, supported by the documentary evidence that the Landlord and Tenant had been in communication with each other between September 9, 2021, and October 30, 2021, and that during these communications, the Tenant had expressed a desire return to the rental property to pick up their personal property and clean the rental unit.

Additionally, both the Landlord and Tenant testified that the Tenant provided verbal notice to end their tenancy to the Landlord on September 11, 2021. The *Act* requires that a Tenant provide written notice, but I will accept the testimony of the Landlord, that they were in receipt of the Tenant notice to end their tenancy as of September 11, 2021. Accordingly, pursuant to section 45(1) of the *Act*, this tenancy legal ended one clear rental period later, on October 31, 2021. However, the Landlord, even though the Tenant was in communication with them and was indicating a desire to return to the rental unit, chose to determine abandonment before the end of the legal notice period for this tenancy.

I find that the Landlord was incorrect in their determination of abandonment, as the Landlord was clearly still in contact with the Tenant, and that the Tenant was attempting to arrange a date to attend the rental unit to pick up their personal belongings and complete their move out in accordance with the *Act*. I find that the Landlord was in breach of section 27(2) of the *Regulations* when they decided to change the locks and claim abandonment before this tenancy had legally ended.

Accordingly, as the Landlord breached the *Act* and the *Regulations* in their determination of abandonment for this tenancy, I find that the Landlord is not entitled to claim for any of their costs associated with their breach of the *Act*. Consequently, I dismiss the Landlord's claims for their costs to remove the Tenant's personal belongings, to store the Tenant's personal belongings, for changing locks and the garage remote control access, for cleaning the rental unit at the end of this tenancy and for any lost rental income after the tenancy ended in their entirety.

During these proceedings, the Landlord testified that they continue to store the Tenant's personal property. Therefore, I order the Landlord to return the Tenant's personal property within 30 days of the date of receiving this decision.

I grant the Tenant permission to file a monetary claim against the Landlord for personal property losses and/or losses associated with being locked out of the rental unit.

As for the Landlord's claim for unpaid rent, section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

(3) *Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) *Subsection (3) (a) does not apply if*

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the agreed-upon testimony of these parties that the rent has not been paid for September and October 2021 for this tenancy. I find that the Tenant

breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$4,000.00, comprised of \$2,000.00 in rent for September 2021, and \$2,000.00 in rent for October 2021.

The Landlord has also claimed for unpaid utility bills consisting of \$80.88 in gas and \$140.65 in electricity. I have reviewed the tenancy agreement signed between these parties; section 21 of this agreement states the following:

“21. The Tenants are responsible for 100% of the utility, such as hydro and natural gas. The 2nd level will be responsible for 60% of the cost. Tenant is also responsible for any other expenses like telephone, internet and cable.”

[Reproduced as written]

After reviewing the Landlord’s testimony on this point and reviewing section 21 of this tenancy agreement, I find that I am unclear as to how much this Tenant was required to pay for utilities of this tenancy. During these proceedings, the Landlord verbally testified that 50% was due under the tenancy agreement; however, what is written in this agreement speaks to two different amounts, a 100% amount and a 60% amount.

Section 6(3) of the *Act* provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligation under it.

Enforcing rights and obligations of landlords and tenants

6 (1) *The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*

(2) *A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58*

(1) *[determining disputes].*

(3) *A term of a tenancy agreement is not enforceable if*

(a) the term is inconsistent with this Act or the regulations,

(b) the term is unconscionable, or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

After careful review of the tenancy agreement, I find that section 21 of this tenancy agreement does not clearly define what percentage of utilities are due under this tenancy agreement. Given that the Tenant was not present in these proceedings when the Landlord testified to this portion of their claim, I am unable to confirm what the Tenant's understanding of this term had been during this tenancy.

I find that it would be unreasonable to expect that the Tenant ought to have known what percentage they were responsible for paying, given the wording used in this section of this tenancy agreement. Therefore, I find that I must apply the legal rule of *Contra Proferentem* to this portion of the Landlord's claim.

Contra Proferentem is a rule used in the legal system when interpreting a contract, which basically means that any ambiguous clause contained in a contract will be interpreted against the party responsible for drafting the clause.

I accept the Landlord's testimony that they had been the person who had drafted this section of the tenancy agreement. As it was the Landlord who drafted this agreement, I find that I must settle the ambiguous nature of this section of the tenancy agreement against the Landlord. Consequently, I find that due to the ambiguous nature of section 21 contained in this tenancy agreement, I find that I must dismiss the Landlord's claim for utility bill payments in their entirety.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. Although the Landlord has been partially successful in their claim, I decline to award the Landlord the recovery of their filing fee due to the Landlord breach of the *Act* at the end of this tenancy.

Additionally, as the Tenant has not been successful in their application, I find that the Tenant is also not entitled to recover the filing fee they paid for this hearing.

I grant the Landlord a monetary order of \$3,000.00, consisting of \$2,000.00 in rent for September 2021, \$2,000.00 in rent for October 2021, less the \$1,000.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I find that the Landlord breached of section 27(2) of the *Regulations* in their determination of abandonment for this tenancy.

I order that the Landlord return the Tenant's personal property to the Tenant within 30 days of receiving this decision.

I find for the Landlord under section 26 and 65 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$3,000.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: March 14, 2022

Residential Tenancy Branch