Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on November 08, 2021 the Dispute Resolution was personally served to a male with the first name of Matt, who is friend of the Tenants who lived in a different residence on the same residential property. The Tenant stated that neither Respondent received these documents from Matt, although she does know that individual.

Section 89 of the *Residential Tenancy Act (Act)* outlines various methods of serving an Application for Dispute Resolution to a Respondent. Serving it to a friend who does not live with the Respondent is not one of the methods of service permitted by section 89. I therefore find that neither Respondent was properly served with this Application for Dispute Resolution.

The Tenant stated that:

- approximately two weeks ago the Respondent with the initials "YW" received an email from the Residential Tenancy Branch;
- this was the first time the Tenants were made aware of these proceedings;

- the Residential Tenancy Branch provided the Respondents with the necessary numbers to dial into this teleconference; and
- she is representing “YW” at these proceedings.

As the Tenants are now aware of these proceedings, I find it reasonable to proceed with the matter. The Tenant was advised that I am prepared, on my own volition, to adjourn these proceedings to provide the Respondents with a fair opportunity to respond to the claims being made by the Landlord. In determining that the hearing should be adjourned I determined that an adjournment would allow the parties with a fair and reasonable opportunity to address the issues in dispute.

The Tenant opposed the proposed adjournment as she did not wish to wait any longer to recover her security/pet damage deposit. While I recognize that a delay in the proceedings would result in the Tenants waiting longer before their deposits are either returned or granted to the Landlord, dismissing the Application for Dispute Resolution would likely further delay that process, as the Landlord would have the opportunity to file a second Application for Dispute Resolution.

It was clear from the Tenant’s responses that she understood the Landlord was seeking compensation from unpaid rent for November of 2021 and compensation for a missing fridge. The Tenant stated that she is prepared to proceed with the hearing today, without the need for an adjournment, as she wants the matter concluded.

On November 01, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that she initially attempted to serve the Application for Dispute Resolution and the evidence submitted to the Residential Tenancy Branch on November 01, 2021 by personally delivering it to the forwarding address provided by the Tenants. She stated that a child at that address told her that the female Tenant is his/her sister; that the female Tenant does not live at the forwarding address; and that he/she did not know where the Tenant was living.

The Agent for the Landlord stated that this evidence was personally served to Matt with the Application for Dispute Resolution. The Tenant stated that these documents were not received from Matt.

Section 88 of the *Act* outlines various methods of serving evidence to a Respondent. Serving it to a friend who does not live with the Respondent is not one of the methods of service permitted by section 88. I therefore find that neither Respondent was properly

served with the Landlord's evidence package of November 01, 2021. As the evidence was not properly served with the evidence and it was not received by the Tenants, the parties were advised that this evidence package would not be accepted as evidence for these proceedings.

The Agent for the Landlord requested an adjournment for the purposes of re-serving her evidence package to the Tenants. This request was denied, in large part because the Landlord had a forwarding address for the Tenants and the Landlord could have served the evidence package to that forwarding address by registered mail, pursuant to section 89(1)(d) of the *Act*.

The Agent for the Landlord stated that when she first served evidence to Matt, she did not know she was able to send it by registered mail to the forwarding address provided by the Tenants. She stated that she subsequently learned this was an option and she served other evidence in that manner. Upon learning that she had the right to serve evidence by registered mail, I find that it would have been reasonable for the Landlord to send the evidence package of November 01, 2021 to the Tenants by registered mail.

The parties were advised that during the hearing the Agent for the Landlord may refer to documents submitted on November 01, 2021, but I will not be physically viewing these documents.

During the hearing the parties referred to their tenancy agreement, which had been submitted to the Residential Tenancy Branch by the Landlord on November 01, 2021. Both parties advised that they were in possession of this tenancy agreement at the time of the hearing. As such, the parties were advised that I would accept this document as evidence for the proceedings and I would be viewing the tenancy agreement. I find this is not prejudicial to either party, as both parties have a copy of it and were parties to that agreement. I also find it may assist me in determining the terms of the tenancy agreement.

On May 18, 2022 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that on May 18, 2021 this evidence was sent to the forwarding address for the Tenants. The Tenant stated that this evidence was received on May 20, 2022, which was 11 days prior to the hearing.

Although this evidence was not received by the Tenants at least 14 days prior to the hearing, I find that with the exception of the letter of explanation, all of the evidence has

been previously viewed by the Tenants. I therefore concluded that accepting the evidence would not unduly prejudice the Tenants and that it would likely assist me in reaching a just decision. The parties were advised that this evidence package would be accepted as evidence for the proceedings.

The Tenant was asked if she needed an adjournment for the purposes of responding to the May 18th evidence package and she replied that she did not.

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 a refrigerator that was removed from the unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- The tenancy began on August 01, 2021;
- The Tenants signed a tenancy agreement;
- The tenancy agreement names the Respondents as the only Tenants of this rental unit;
- The Tenants agreed to pay monthly rent of $3,500.00;
- There is another residence on the rental property, which is rented by two other people;
- The people living in the other residence are known to the Tenants, but they occupy that residence on the basis of their own tenancy agreement with the Landlord;
- A security deposit of $1,750.00 and a pet damage deposit of $1,750.00 was paid for this tenancy;

- The Tenants did not give the Landlord authority to retain their security/pet damage deposit; and
- The Landlord still retains the security/pet damage deposit.

The Agent for the Landlord stated that the rent was due by the first day of each month. The Tenant stated that it was due, in advance, on the 29th day of each month.

The Landlord submitted a copy of a letter which the parties agree was delivered to the Landlord's home on October 30, 2021. Although the letter is dated November 26, 2021, the Tenant stated that this is a clerical error. In the letter the Tenants:

- Provide a forwarding address;
- Declare that they will be vacating the unit on October 29th/30th;
- Explain why they are vacating;
- Explain that the letter serves as their "official 30 days notice"; and
- Declare that rent for November has been paid.

The Agent for the Landlord stated that the rental unit was vacated on October 29, 2021. The Tenant stated that it was vacated on October 30, 2021.

The Landlord is seeking compensation of $3,500.00 in lost revenue for November of 2021 due to improper notice provided by the Tenants.

The Tenant stated that rent for November was paid, in cash, to the male Landlord on October 29, 2021. She stated that the male Landlord provided her with a receipt for this cash payment, which was submitted in evidence by the Landlord.

The Agent for the Landlord stated that:

- the male Landlord went to the rental unit on October 29, 2021 with several recent receipts, including one for November of 2021;
- the Landlord went with the rent receipt for November of 2021 because he anticipated rent would be paid for November on October 29, 2021;
- rent for November was not paid on October 29, 2021;
- the Landlord inadvertently provided the Tenants with a rent receipt for November of 2021, in the amount of $3,500.00; and
- the note on the receipt that says "Did not get paid" was not written on the receipt provided to the Tenants.

The Agent for the Landlord asked the Tenant why she would pay rent for November if she was moving out of the rental unit and she replied it was paid because the Tenants

did not provide notice to end the tenancy until October 30, 2021, which she understood to mean that rent was due for November.

In an email, dated November 01, 2021, the author of the email declared rent has not been paid for November. The Tenant stated that this declaration is not true.

The Landlord is seeking compensation of $700.00 in compensation for a refrigerator that was removed from the rental unit at the end of the tenancy.

In support of this claim the Agent for the Landlord stated that:

- when the tenancy began the Landlord gave the Tenant $700.00 for the purposes of purchasing a refrigerator for the rental unit;
- the Tenant asked if she could purchase a better quality refrigerator for the unit and she was advised that the Landlord was only willing to pay $700.00 for a refrigerator;
- the Tenant purchased a fridge that cost more than $700.00;
- the Landlord never agreed to pay for a higher quality refrigerator;
- the refrigerator was removed from the rental unit at the end of the tenancy; and
- she will accept the return of the refrigerator in lieu of her $700.00 claim.

In response to this claim the Tenant stated that:

- when the tenancy began the Landlord gave her $700.00 for the purposes of purchasing a refrigerator for the rental unit;
- the Landlord told her the budget was $700.00;
- the Tenant asked if she could purchase a better quality refrigerator and the Landlord agreed;
- the Landlord told her that she would pay for the higher quality refrigerator;
- she paid $1,670.00 for a new refrigerator, which included delivery;
- the Landlord did not pay for the additional $970.00 for the refrigerator;
- she took the refrigerator from the rental unit at the end of the tenancy because the Landlord had not paid the full cost of the refrigerator; and
- she will return the refrigerator to the rental unit prior to June 07, 2021.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenants entered into a tenancy agreement for this rental unit, for which they agreed to pay monthly rent of $3,500.00.

On the basis of the undisputed evidence, I find that a security deposit of $1,750.00 and a pet damage deposit of $1,750.00 was paid for this rental unit.

I find that there is insufficient evidence to determine if rent was due by the first day of each month, as the Agent for the Landlord submits, or if it was due in advance, by the 29th day of each month, as the Tenant submits. I am satisfied, however, that the rent was to be paid no later than the first day of each month.

Section 45(1) of the *Act* stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, 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.

As the tenancy agreement does not establish that this is a fixed term tenancy, I find that this was a periodic tenancy and that the Tenants had the right to end this tenancy in accordance with section 45(1) of the *Act*.

As rent was to be paid no later than the first day of each month, I find that the Tenants were obligated to serve the Landlord with notice of their intent to end the tenancy, pursuant to section 45(1) of the *Act*, on or before the last day of the month. To end the tenancy on November 30, 2021, the Tenants were obligated to provide the Landlord with written notice of their intent to end the tenancy no later than October 31, 2021.

On the basis of the undisputed evidence, I find that the on October 30, 2021 the Tenants provided the Landlord with the letter dated November 26, 2021. As the letter was received on October 30, 2021, it is clear that the letter was not written on November 26, 2021.

I find that this letter served as proper notice to end the tenancy in accordance with section 45(1) of the *Act*. Although the letter does not explicitly declare that the tenancy would end on November 30, 2021, it was received on October 30, 2021 and it declares that the letter serves as their “official 30 days notice”. I find that the Landlord should

have understood that this letter served as written notice to end the tenancy on November 30, 2021.

In the letter delivered October 30, 2021 the Tenants also declare that they will be vacating the rental unit on October 29, 2021 or October 30, 2021. On the basis of the undisputed evidence that the rental unit was vacated by October 30, 2021, I find that the tenancy actually ended on October 30, 2021, regardless of the written notice that the tenancy would end on November 30, 2021.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends when the tenant vacates or abandons the rental unit. I find that the tenancy ended on October 30, 2021 when the rental unit was vacated, pursuant to section 44(1)(d).

In circumstances where tenants do not give proper notice to end a tenancy, I typically find that a landlord would be entitled to compensation for lost revenue, presuming that the landlord lost revenue as a result of the improper notice and the landlord made reasonable attempts to find a new tenant.

In these circumstances, however, the Landlord has failed to meet the burden of proving that the Landlord lost revenue for November of 2021. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that rent was not paid for November of 2021. Conversely, the Tenant's testimony that rent was paid for November of 2021 is strongly supported by the rent receipt for that month, which was submitted in evidence by the Landlord.

Although I accept it is possible that the November rent receipt was issued in error, as the Agent for the Landlord contends, it is equally possible that it was issued because rent was paid for November of 2021, as the Tenant contends. As the Landlord is claiming compensation for lost revenue for November, the Landlord bears the burden of proving rent was not paid. I find that the Landlord has failed to meet that burden and I dismiss the claim for lost revenue for November of 2021.

In adjudicating this matter, I have placed little weight on the Tenants' declaration that rent has been paid for November, which is contained in the letter dated November 26, 2021. I have also placed little weight on the Landlord's declaration that rent has not been paid for November which is contained in the email dated November 01, 2021. I find that these are simply unsupported, contradictory declarations that have limited evidentiary value in these circumstances.

While I accept that it is unusual for a tenant to pay rent for the month after they vacate the rental unit, I cannot conclude that it establishes rent was not paid. I find it entirely possible that the Tenants paid the rent for November of 2021 because they understood they did not give proper notice to end the tenancy.

On the basis of the undisputed evidence, I find that the Landlord gave the Tenant $700.00 for the purposes of purchasing a refrigerator for the rental unit and that the Tenant purchased a refrigerator that was worth considerably more than $700.00.

I find there is insufficient evidence to determine if the Landlord agreed to pay more than $700.00 for the refrigerator, as the Tenant contends, or if the Landlord told the Tenant she would only be given $700.00 for the refrigerator, as the Agent for the Landlord contends. I find this is not relevant to my decision today, although it may become relevant if the Tenants file an Application for Dispute Resolution seeking compensation for the additional cost of the refrigerator.

What is relevant today is that the Tenants removed a refrigerator from the rental unit which they did not own. I therefore find that the Tenants must either return the refrigerator to the rental unit or pay the Landlord the $700.00 they were given for the refrigerator. In the event the Tenants choose to return the refrigerator, they retain the right to file an Application for Dispute Resolution for the additional cost of the refrigerator. If they opt to file an Application for Dispute Resolution, they will bear the burden of providing the Landlord agreed to pay more than $700.00 for the refrigerator.

I grant the Landlord compensation of $700.00 for the refrigerator and I will be issuing a monetary Order in that amount. The Landlord only has the right to enforce this monetary Order if the refrigerator is not returned to the rental unit, in good working condition, by June 15, 2022. I will not be granting the Landlord authority to retain $700.00 from the Tenants' security deposit, as it is entirely possible that the refrigerator will be returned, as promised by the Tenant.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

As this tenancy ended on October 30, 2021; the Landlord received a forwarding address for the Tenants on October 30, 2021; and the Landlord filed this Application for Dispute Resolution on November 01, 2021, I find that the Landlord complied with section 38(1) of the *Act*. As the Landlord complied with section 38(1) of the *Act*, the penalty imposed by section 38(6)(b) of the *Act* does not apply.

Sections 24(2) and 36(2) of the *Act* outline the circumstances in which a landlord's right to claim against a security deposit or a pet damage deposit for damage to residential property is extinguished. These sections do not apply to these circumstances, as the Landlord also applied for compensation for lost revenue. As such, the Landlord had the right to file a claim against the security/pet damage deposit, even if condition inspection reports were not completed.

As the Landlord has failed to establish a right to retain any portion of the security/pet damage deposit, I find that those deposits must be returned to the Tenants.

I find that the Landlord's Application for Dispute Resolution has some merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord is granted a monetary Order for $700.00 in compensation for the refrigerator that was removed from the rental unit. This monetary Order may only be enforced if the refrigerator is not returned to the rental unit, in good working condition, by June 15, 2022. In the event the Tenants do not return the refrigerator as stated, this Order may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Landlord is entitled to recover the filing fee of $100.00. Pursuant to section 72(1) of the *Act,* I authorize the Landlord to retain this amount from the Tenants' security deposit. The Landlord must return the remainder of the security and pet damage deposits, in the amount of $3,400.00.

Based on these determinations I grant Tenants a monetary Order for the balance $3,400.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, 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: June 01, 2022

Residential Tenancy Branch