Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL, OPL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the Residential Tenancy Regulation (the regulation) or the tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), under section 38;
- an order of possession under a Two Month Notice to End Tenancy for Landlord's use of property (the Notice), pursuant to sections 49 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

Landlord JV and tenant DK (the tenant) attended the hearing. The landlord was assisted by interpreter AV (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing both parties agreed the tenancy ended on June 04, 2022.

The application for an order of possession is moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

Preliminary Issue – Evidence

Rule of Procedure 3.7 states:

> 3.7 Evidence must be organized, clear and legible
> All documents to be relied on as evidence must be clear and legible.
> To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the
> Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.
> For example, photographs must be described in the same way, in the same order, such as: “Living room photo 1 and Living room photo 2”.
> To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Rule 3.10.1 states:

> 3.10.1 Description and labelling of digital evidence
> To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch or through a Service BC Office, and be served on each respondent.
> A party submitting digital evidence must:
> • include with the digital evidence:
> o a description of the evidence;
> o identification of photographs, such as a logical number system and description;
> o a description of the contents of each digital file;
> o a time code for the key point in each audio or video recording; and
> o a statement as to the significance of each digital file;
> • submit the digital evidence through the Online Application for Dispute Resolution system under 3.10.2, or directly to the Residential Tenancy Branch or a Service BC Office under 3.10.3; and
> • serve the digital evidence on each respondent in accordance with 3.10.4.

The landlord submitted a monetary order worksheet in blank and 48 documents. The documents are not numbered and there is no index. The tenant confirmed he can understand the evidence and what this application is about.

I find the landlord did not comply with Rules of Procedure 3.7 and 3.10.1. As the tenant was able to understand the evidence, I accepted the landlord's evidence.

Preliminary Issue – Amendment

The application states:

> 01 - I want the tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy - request to retain security and/or pet damage deposit: $1,200.00: Having vehicle stored on property without my authorization. Making a firepit of some sort in the garden without my authorization and destroying the garden. Not maintaining his side of the property as it had stated in the lease agreement that we continued to use.
>
> 02 - I want compensation for my monetary loss or other money owed - request to retain security and/or pet damage deposit: $1,200.00: Months of late payments of Hydro and Gas. Late payment of rent. Abusing the dispute resolution by making false claims to stay longer.

At the hearing the landlord requested to amend the application for cleaning expenses and unpaid utilities.

Residential Tenancy Branch Rules of Procedure Rule 4.2 provides

> 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."

In this matter, the application does not state the landlord is claiming for cleaning expenses and unpaid utilities. I do not find that the tenant could reasonably have anticipated that the landlord would amend the application at the hearing to include claims for cleaning and unpaid utilities and, as such, I deny this request.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started in 2017 and ended on June 04, 2022. Monthly rent when the tenancy ended was $1,144.00, due on the third day of the month. At the outset of the tenancy a deposit of $550.00 was collected and the landlord holds it in trust.

The December 04, 2017 tenancy agreement (the tenancy agreement) was submitted into evidence. It indicates that rent is due on the third day of the month and that the tenant must pay 30% of the utilities bills (electricity and hydro).

On September 04, 2018 the parties signed a new tenancy agreement. The September 04, 2018 tenancy agreement (the new tenancy agreement) was submitted into evidence. It states:

> There will be a $100 late payment or NSF charge each time the monthly rent Is late or the postdated cheque is return.
> 21. The tenant shall be responsible for the tidying and cleanup on the front, side, and around their suite and unit.

The tenant affirmed he signed the new tenancy agreement but did not read it.

Both parties agreed they did not complete a move in inspection report.

The tenant texted the forwarding address to the landlord on July 19, 2022. The landlord confirmed receipt of the forwarding address around July 19, 2022. The landlord submitted this application on May 15, 2022.

The tenant did not authorize the landlord to retain the deposit.

Both parties agreed the tenant rented the basement rental unit and had exclusive usage of part of the rental unit's yard in the last two years of the tenancy.

The landlord is claiming compensation in the amount of $1,200.00, as the tenant parked an uninsured vehicle on the driveway and did not do the yard maintenance work.

The landlord asked the tenant to remove the uninsured vehicle several times for one year. The landlord stated the parties had a verbal agreement that the tenant could park only insured vehicles on the driveway.

The tenant testified he did not agree to park only insured vehicles on the driveway and the landlord asked him once or twice to remove the vehicle from the driveway.

The landlord said the parties had a verbal agreement that the tenant was responsible for the yard maintenance, as the tenant had exclusive use of the yard. The tenant affirmed he did not agree to do the yard maintenance and he did not do so because it is the landlord's obligation to do the yard maintenance.

The tenant stated that clause 21 of the tenancy agreement does not require the tenant to do yard maintenance or to cut the grass.

The landlord is claiming compensation in the amount of $1,200.00, as the tenant paid rent and utilities late. The landlord testified the tenant was responsible for 30% of the utilities bills. The landlord texted the utilities bills one or two weeks in advance to the tenant and the tenant was supposed to pay the utilities and rent on the third day of the month. The tenant said the landlord texted him the utilities bills three days before the due dates.

The landlord affirmed the tenant paid rent late in July and December 2021, February and April 2022 and paid the utilities late in August, September and November 2021 and January, February and March 2022.

The tenant stated he only paid rent late once in January 2021 and he paid the utilities bills late a few times.

The tenant testified the landlord informed him that it was “fine” to pay rent late. The landlord said he did not say that it was fine to pay the rent late.

The tenant affirmed the regulation allows a maximum late payment fee of $25.00.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

RTB Rule of procedure 6.6 states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The landlord did not provide testimony about claims related to damages caused by a firepit or abusing the dispute resolution process.

Deposit

Section 23 of the Act states:

> (1)The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
> […]
> (4)The landlord must complete a condition inspection report in accordance with the regulations.

I accept the uncontested testimony that the parties did not inspect the rental unit when the tenancy started.

Section 24 of the Act states:

> (2)The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
> […]
> (c)does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find the landlord extinguished his right to claim against the deposit, per section 24(c) of the Act, as the landlord did not inspect the rental unit when the tenancy started.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The tenant provided the forwarding address in writing on July 19, 2022 and the tenancy ended on June 04, 2022. The landlord retained the deposit in the amount of $550.00.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished his right to claim against the deposit and did not return the deposit within the timeframe of section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit retained.

RTB Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline. It states:

> The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

> […]
> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
> […]
> if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to $1,100.00 (double the deposit of $550.00).

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit.

Vehicle and yard maintenance

The parties offered conflicting testimony about agreeing to park only insured vehicles on the driveway. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The landlord did not provide any documentary evidence to support his claim that the parties agreed to park only insured vehicles on the driveway. The landlord did not call any witnesses.

The tenancy agreement does not indicate the tenant can park only insured vehicles on the driveway.

I find the landlord failed to prove, on a balance of probabilities, that the parties agreed the tenant could park only insured vehicles on the driveway.

I accept the uncontested testimony that the tenant had exclusive usage of part of the rental unit's yard in the last two years of the tenancy.

RTB Policy Guideline 1 states:

> 3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
> 4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
> 5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

> 6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

As the tenant had exclusive usage of part of the rental unit's yard, the tenant was responsible for routine yard maintenance, including cutting the grass.

I find the tenant breached the tenancy agreement by not doing routine yard maintenance and cutting the grass.

I find the landlord failed to prove that he suffered a loss due to the tenant's breach of the tenancy agreement. The landlord did not indicate how many times he cut the grass. The landlord did not submit receipts indicating a payment for yard maintenance work. Furthermore, the landlord vaguely affirmed he had a loss of $1,200.00 because the tenant parked an uninsured vehicle on the driveway and did not do the yard maintenance work.

I dismiss the landlord's claim.

Late payment

Based on the two tenancy agreements submitted into evidence and the landlord's more convincing testimony, I find the tenant agreed to pay rent and utilities on the third day of the month.

Based on the landlord's more convincing and detailed testimony, I find the tenant paid rent late in July and December 2021, February and April 2022.

Section 7(1)(d) of the Regulation allows an administration fee of not more than $25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent:

> A landlord may charge any of the following non-refundable fees:
> […]
> (d)subject to subsection (2), an administration fee of not more than $25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

RTB Policy Guideline 04 notes "a clause in a tenancy agreement providing for the payment by the tenant of a late payment fee will be a penalty if the amount charged is not in proportion to the costs the landlord would incur as a result of the late payment."

Section 5(1) of the Act states: “Landlords and tenants may not avoid or contract out of this Act or the regulations.”

I find the $100.00 late payment fee is not in accordance with Regulation 7(1)(d).

As the tenant had to do one payment for rent and utilities, I find the landlord is entitled to four late payment fees in the amount of $25.00 each for the months of July and December 2021, February and April 2022.

Thus, I award the landlord $100.00.

Filing fee and summary

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the $100.00 filing fee paid for this application.

The landlord is entitled to $200.00. The tenant is entitled to $1,100.00.

RTB Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

> 1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

In summary, the tenant is awarded $900.00.

Conclusion

Pursuant to section 38 of the Act, I grant the tenant a monetary order in the amount of $900.00.

The tenant is provided with this order in the above terms and the landlord must be served with this order. Should the landlord 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: August 12, 2022

Residential Tenancy Branch