



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SIERRA HOLDIN CO. LTD. WINCESTER COURT
APTS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on January 29, 2022, in which the Landlord sought monetary compensation from the Tenant for unpaid rent, the cost to clean the carpets and drapes at the rental unit and recovery of the filing fee. The Landlord also sought authority to retain the Tenant's security deposit towards any amounts awarded.

The hearing of the Landlord's Application was scheduled for 1:30 p.m. on September 12, 2022. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord's representative K.G. called into the hearing and the Tenant was assisted by her son J.C.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Settlement

At the outset of the hearing the Tenant confirmed she was agreeable to the Landlord's request for compensation for the cost to clean the carpets and drapes in the amount of

\$115.50 and \$151.20 respectively. I therefore award the Landlord compensation for this amount.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent?
2. Should the Landlord be authorized to retain the Tenant's security deposit towards any amounts awarded?
3. Should the Landlord recover the fee paid for filing their Application from the Tenant?

Background and Evidence

The Landlord's District Representative, K.G. testified as follows. The tenancy began April 1, 2021. Monthly rent was \$1,300.00 and the Tenant paid a security deposit of \$650.00. The Tenant moved out at the end of December 2021.

The Landlord claimed unpaid rent and loss of rent alleging the Tenant failed to give proper notice to end her tenancy. K.G. testified that the only time he saw a notice to end tenancy was when the Tenant gave the Landlord a letter on January 4, 2022.

K.G. stated that on December 27, 2021 the Tenant asked for access to the back of the building as she stated that her movers were coming. Arrangements were made to have her move out and they attempted to do a move out inspection on December 31, 2022. K.G. confirmed that at the time, she informed him that she had provided written notice to move out. He told her that he would meet with her again and they did so on January 4, 2022, at which time she provided the original notice and a copy. K.G. submitted that they should have received the *original* notice to end tenancy and not a copy.

K.G. confirmed they did receive December's rent from the Tenant.

The Landlord sought unpaid rent for January 2022 as well as loss of rent for February 2022 claiming they were not able to re-rent the unit until March of 2022. In terms of marketing, K.G. stated that they showed the suite 14 times including:

- twice on January 12;
- twice on January 14;
- twice on January 16;
- once on January 19;
- twice on January 20;
- twice on January 21;
- four times on January 28; and,
- one showing on February 2, 2022.

He confirmed that it was the last showing on February 2, 2022 that resulted in a new tenancy..

In response to the Landlord's claim, the Tenant's son testified as follows. J.C. stated his mother, the Tenant wrote the notice to vacate in her hand writing, following which J.C. went to a local printer and copied the notice and provided copies of the notice and the original to his mom. J.C. stated that the Tenant gave a copy of the Notice to the Landlord with her December rent payment which she provided at the end of November 2021. He confirmed that she provided the rent and the notice by putting it through the manager's mail slot as requested by the Landlord.

The Tenant rented a new apartment as of November 30, 2021 and did that so she could provide proper notice to end her tenancy. He noted that she viewed another suite on November 24 and viewed the suite she decided to take on November 30.

The Tenant's son submitted that there is no way the Tenant didn't provide notice to end her tenancy when she paid December rent as he put the rent cheque and the notice together with a paper clip and did so to make sure they didn't get separated as she has arthritis.

J.C. also noted that originally the Landlord asked the Tenant to agree to forgo her security deposit, yet when she disagreed, they increased their claim to include not one, but two months' rent.

J.C. also noted that at no time did the Landlord indicate that they expected an original of any documentation.

The Tenant testified that she put the notice through the door with her rent cheque. She stated that with her limited income she would not have made this mistake. She also

stated that she provided a copy of the notice, not the original as that is her regular practice. She stated that she provided adequate notice and it was not her fault it didn't rent sooner.

In reply to the Tenant's response, K.G. confirmed it was the Landlord's expectation that the Tenants communicate in writing by putting documents through the mail slot of the building manager's unit (C.M.). C.M. did not testify as they have left the Landlord's employ.

The Landlord stated that the reason they don't accept copies is because they believe copies can be altered after the fact. K.G. claimed they did not receive the original and confirmed that he would have told the building manager not to accept a copy. K.G. also stated that he was "blown away" when he saw the original because he believes that they just made a mistake and never provided notice.

K.G. stated that he was at one point, willing to accept the original security deposit and call it even but could not agree to this anymore as now there are "no renters".

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case the Landlord claimed unpaid rent and loss of rent on the basis they allege the Tenant failed to give adequate notice to end her tenancy.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) 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.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I find, on balance, it more likely the Tenant provided notice to end her tenancy in writing to the Landlord with her December rent cheque on or before November 30, 2021. I therefore find she gave notice to end her tenancy effective December 31, 2021 such that the Landlord is not entitled to further rent from her.

I find the Landlord's request, that all documentation be put through the managers mail slot, to create a situation where documents may become lost or detached. This risk should not be born by the Tenant, but by the Landlord. I also do not accept K.G.'s submission that only originals are acceptable. Section 52 requires a notice to be in writing, it does not require that notice to be the original.

The Tenant, and her son testified that the December rent cheque was provided to the Landlord together having been paperclipped to one another. The Landlord's manager, who would have received those documents, did not testify at the hearing before me. As such, I have the sworn testimony of both the Tenant and her son on this critical issue,

and only K.G.'s submissions as to what was standard practice. I am persuaded by the Tenant's testimony in this regard.

Conclusion

The Landlord's claim for compensation from the Tenant is granted in part. The Tenant agreed to compensate the Landlord for the cost to clean the drapes and carpet in the amount of \$151.20 and \$115.50 for a total of **\$255.70**; I therefore award the Landlord compensation for this sum.

The Landlord's claim for compensation from the Tenant for unpaid rent and loss of rent is dismissed. I find the Tenant gave proper notice to end her tenancy.

Having only been partially successful, I dismiss the Landlord's request to recover the filing fee.

Pursuant to section 38 and 72 of the *Act* I authorize the Landlord to retain \$255.70 of the Tenant's \$650.00 security deposit. The Tenant is entitled to return of the balance in the amount of \$394.30. In furtherance of this I grant the Tenant a monetary order in the amount of **\$394.30**. Should the Landlord not pay the funds to the Tenant, she must serve the order on the Landlord and may file and enforce it in the B.C. Provincial Court (Small Claims Division).

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: October 11, 2022

Residential Tenancy Branch