Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the Act) on February 14, 2022, seeking:

- Monetary compensation for the cost of repairs to the rental unit;
- Recovery of unpaid rent;
- Recovery of the filing fee; and
- Retention of the security deposit.

The hearing was convened by telephone conference call on October 21, 2022, at 9:30 A.M. (Pacific Time), and was attended by the Landlord, who provided affirmed testimony. No one appeared on behalf of the Tenant. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon by the applicant at the hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord testified that the Notice of Dispute Resolution Proceeding (NODRP) was sent to the Tenant by registered mail at the forwarding address provided by the Tenant at the end of the tenancy on October 5, 2022. The Landlord provided me with the registered mail tracking number, which I have recorded on the cover page of this decision. Residential Tenancy Branch (Branch) records indicate that the Tenant called the Branch on October 13, 2022, stating that they had just received the registered mail and will be out of the country at the time of the hearing. Branch records indicate that the

Tenant was provided with information on their ability to have someone attend the hearing on their behalf to request an adjournment.

Section 90(a) of the Act states that documents given or served by mail, if not earlier received, are deemed served on the fifth day after mailing. As a result, I find that the NODRP was deemed served on the Tenant on October 10, 2022. Further to this, I am satisfied that the NODRP was received by the Tenant via registered mail as they advised the Branch that it was on October 13, 2022. Branch records indicate that the NODRP was sent to the Landlord by email on October 3, 2022, and at the hearing the Landlord provided affirmed and undisputed testimony that the NODRP was sent to the Tenant via registered mail on October 5, 2022, two days after it was received by them via email. Based on the above, I find that the Landlord served the Tenant with the NODRP, which includes a copy of the Application and the notice of hearing, for the purpose of section 59(3) Act in the rule 3.1 Rules of Procedure.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. I verified that the hearing information contained in the NODRP was correct, and I note that the Landlord had no difficulty attending the hearing on time using this information. Although the Tenant contacted the Branch on October 13, 2022, stating that they would be out of the country on the date of the hearing, no information appears to have been provided by the Tenant regarding why they would not be able to attend the teleconference while out of the country, a process which is relatively easy and common. Further to this, Branch records indicate that the Tenant was provided with information on October 13, 2022, about their ability to send an agent to the hearing on their behalf, pursuant to rule 6.7 of the Rules of Procedure, so that an adjournment request could be made. However, no one attended the hearing on behalf of the Tenant to either request an adjournment, or make submissions on the Tenant’s behalf. Finally, although rule 5.1 of the Rules of Procedure allows parties to reschedule a dispute resolution hearing with the written consent of both the applicant and the respondent, provided written consent is received by the Branch not less than 3 days before the scheduled date of the hearing, the Landlord stated that the Tenant made no contact with them to advise them that they would be unavailable at the time of the hearing or to request that the hearing be rescheduled.

The Landlord and I attended the hearing on time and ready to proceed, and I was satisfied as set out above that the Tenant was deemed served with the NODRP for the purpose of the Act on October 10, 2022, and that they had received it no later than

October 13, 2022, by their own admission. I therefore commenced the hearing as scheduled at 9:30 A.M. on October 21, 2022, despite the absence of the Tenant, pursuant to rule 7.3 of the Rules of Procedure, which states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. Although the teleconference remained open for the full duration of the 24-minute hearing, no one attended the hearing on behalf of the Tenant.

The Landlord was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Landlord was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Landlord was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the Landlord confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed at the hearing.

Preliminary Matters

The Landlord stated that the documentary evidence before me was personally served on the Tenant on September 13, 2022, at the forwarding address provided by the Tenant at the end of the tenancy. Branch records indicate that the Tenant called the Branch on September 15, 2022, and confirmed that they had received documentary evidence from the Landlord.

As a result of the above, and as there is no evidence before me to the contrary, I find that the Tenant was personally served with the documentary evidence before me from the Landlord at the forwarding address provided by them to the Landlord at the end of the tenancy, on September 13, 2022. I therefore accept the Landlord’s documentary evidence for consideration.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation for the cost of repairs to the rental unit?

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retention of the security deposit?

Background and Evidence

The most recent one-year fixed term tenancy agreement in the documentary evidence before me indicates that the fixed term commenced on August 15, 2018, that rent in the amount of $2,200.00 is due on the first day of each month, and that a security deposit in the amount of $875.00 was paid in 2017. During the hearing, the Landlord stated that the $875.00 security deposit is still held in trust.

The Landlord stated that they had served the Tenant with a notice to end tenancy for landlord's use of property giving them 6 months notice, rather than the required 2 months, and that the Tenant was provided with compensation in the amount of 1 months rent as a result. The Landlord stated that the tenancy was scheduled to end on February 1, 2022, but on January 29, 2022, the Tenant sent them a message stating that they had already moved out and that they had left the keys behind in the rental unit. The Landlord stated that they gave the Tenant 2 opportunities to attend a move-out condition inspection, but the Tenant did not respond. However, the Landlord acknowledged that they did not use the Branch form RT22, the Notice of Final Opportunity to Schedule a Condition Inspection, as they were unaware of it. The Landlord stated that they then completed they move-out condition inspection without the Tenant. Although the Landlord stated that a move-in condition inspection was completed with the Tenant at the start of the tenancy, they acknowledged that they did not complete a move-in condition inspection report, stating that they were a new landlord and were unaware of that requirement.

The Landlord stated that the Tenant did not leave the rental unit undamaged except for reasonable wear and tear at the end of the tenancy. The Landlord stated that during the

tenancy the Tenant removed a door in the rental unit and although they put it back, they put it back without the door frame. As a result, the Landlord sought $288.75 for replacement of the door frame. The Landlord stated a carbon monoxide detector was missing and replaced in the amount of $60.47, that the two satellite dishes installed by the Tenant and left on the roof at the end of the tenancy were removed and disposed of at a cost of $184.80, and that drywall was repaired at a cost of $787.50.

The Landlord stated that they are also seeking recovery of $525.00 they believe was improperly deducted from the rent in December of 2021 by the Tenant. The Landlord stated that they had authorized the Tenant to have the chimney inspected and cleaned and that as part of that inspection/cleaning it was recommended that chimney caps be installed. The Landlord stated that they allowed the Tenant to deduct $682.50 from the rent due in December of 2021 for the cost of chimney cleaning and the installation of chimney caps, that were allegedly paid for by the Tenant. However, the Landlord stated that they never received verification from the Tenant or the company that the chimney caps were installed, and that they only ever received a quote for their installation at a cost of $525.00. As a result, the Landlord stated that the Tenant should have to repay the additional $525.00 deducted above the chimney cleaning cost of $157.50.

I asked the Landlord if they had verified whether chimney caps were installed or at what cost, and they stated no. They acknowledged that they have not checked the chimney themselves to see whether chimney caps were installed, and that they did not contact the company to verify their installation or confirm the cost of the installation.

The Landlord submitted various documents in support of their Application, including a monetary order worksheet, a quote from the fireplace cleaning company, copies of text and email communications, photographs, invoices, and receipts. Although the teleconference remained open for the full duration of the hearing, no one attended on behalf of the Tenant to provide any evidence or testimony for my consideration.

Analysis

Section 37(1)(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged. Residential Tenancy Policy Guideline (Policy Guideline) #1 states that tenants are not responsible for reasonable wear and tear to the rental unit and defines reasonable wear and tear as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. Section 7 of the Act states that if a

landlord or tenant does not comply with the Act, regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

From the uncontested affirmed testimony of the Landlord and the documentary evidence before me, I am satisfied on a balance of probabilities that the Tenant failed to leave the rental unit undamaged, except for pre-existing damage or reasonable wear and tear, at the end of the tenancy, as required by section 37(2)(a) the Act. I am also satisfied that the Landlord incurred the costs sought at the hearing to return the rental unit to the required level of repair after the end of the tenancy. As a result, I grant the Landlord the $1,321.52 sought for repair, removal, and replacement costs.

Although the Landlord sought the return a $525.00 in rent deducted by the Tenant from December 2021 rent, I find that this claim is premature, as the Landlord acknowledged that they do not know whether or not the Tenant actually incurred this cost to have chimney caps installed, as they have not checked the roof or contacted the chimney cleaning company. As a result, I dismissed this claim with leave to reapply. If the Landlord determines that the chimney caps were never installed and that therefore the Tenant did not incur this cost and would not have been entitled to deduct this amount from rent as permitted by the Landlord, then the Landlord may file a subsequent application for dispute resolution seeking recovery of that amount from the Tenant.

Despite the above, as the Landlord was largely successful in their Application, I grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. I will now turn to the matter of the security deposit. The Landlord acknowledged at the hearing that a move-in condition inspection report was not completed at the start of the tenancy. Section 23(4) of the Act states that the landlord must complete a condition inspection report in accordance with the regulations. Section 24(2)(c) of the Act states that the right of a landlord to claim against the security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. As a result, I find that the Landlord extinguished their right to claim against the security deposit but only in relation to damage to the rental unit. As the Application also related to the recovery of unpaid rent, I find that the Landlord was nonetheless entitled to retain the Tenant’s security deposit pending the outcome of the Application.

I accept the affirmed an undisputed testimony of the Landlord that the tenancy ended on February 1, 2022, as set out on the notice to end tenancy, despite the fact that the Tenant vacated the rental unit a few days prior without advance notice to the Landlord. I also accept the Landlord's affirmed and undisputed testimony that the Tenant provided their forwarding address in writing by e-mail on January 29, 2022. Section 38(1) of the Act states that except as provided for in subsection 3 or subsection 4A, 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 to the tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit. As the Landlord's Application seeking retention of the security deposit was filed on February 14, 2022, I find that it was filed within the timeline set out under section 38(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's $875.00 security deposit in partial repayment of the above noted amounts owed.
As a result of the above, I find that the Landlord is entitled to a Monetary Order pursuant to section 67 of the Act in the amount of $546.52; $1,421.52 owed to the Landlord by the Tenant, less the $875.00 security deposit, and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's $875.00 security deposit. Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **$546.52**. 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 Branch under Section 9.1(1) of the Act.

Dated: October 25, 2022

Residential Tenancy Branch