



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-S, FFL, MNDCT, FFT

Introduction

This hearing was convened in response to cross applications.

The landlord filed an Application for Dispute Resolution, in which the landlord applied for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The tenant filed an Application for Dispute Resolution, in which the tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing an Application for Dispute Resolution.

DI stated that on July 22, 2023, the Dispute Resolution Package and the evidence the landlord submitted to the Residential Tenancy Branch in July of 2023 was sent to the tenant, via registered mail. The tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

NS stated that on July 22, 2023, the Dispute Resolution Package and the evidence the tenant submitted to the Residential Tenancy Branch in July of 2023 was sent to the landlord, via registered mail. The landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On December 10, 2023, the landlord submitted additional evidence to the Residential Tenancy Branch. DI stated that this evidence was sent to the tenant, via email, on December 12, 2023. The tenant acknowledged receipt of this evidence, and it was accepted as evidence for these proceedings.

On December 27, 2023, the tenant submitted additional evidence to the Residential Tenancy Branch. NS stated that this evidence was sent to the landlord, via email, on December 27, 2023. The landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On December 28, 2023, the tenant submitted additional evidence to the Residential Tenancy Branch. NS stated that this evidence was sent to the landlord, via email, on December 28, 2023. The landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

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 damage to the rental unit or unpaid rent/utilities?

Is the tenant entitled to compensation for repairs to the unit or moving costs?

Should the security deposit be retained by the landlord or returned to the tenant?

Background and Evidence

The landlord and the tenant agree that:

- the tenancy began on April 08, 2022;
- the tenant agreed to pay monthly rent of \$6,500.00 by the first day of each month;
- rent was increased to \$6,630.00, effective May 01, 2023;
- the tenant paid a security deposit of \$3,000.00 on March 29, 2022;
- the tenant paid a security deposit of \$250.00 on March 31, 2022;
- a condition inspection report was completed at the start of the tenancy;
- a final condition inspection report was completed on July 10, 2023;
- the landlord did not have written authority to retain any part of the security deposit;

- the rental unit was vacated on July 10, 2023;
- the landlord has not returned any part of the security deposit; and
- this tenancy was the subject of a previous dispute resolution proceeding, the number of which appears on the first page of this decision.

JT stated that when the final condition inspection report was completed on July 10, 2023, he wrote a forwarding address on a piece of paper and gave it to ZH. ZH denies receiving a forwarding address on July 10, 2023.

NS stated that the landlord was provided with a forwarding address, via email, on July 10, 2023. DI stated that this forwarding address was not received by the landlord.

The landlord and the tenant agree that the landlord was provided with a forwarding address, via email, on July 17, 2023.

DI stated that a copy of the final condition inspection report was sent to the tenant on July 17, 2023, via email, and a second copy was served to the tenant with the Application for Dispute Resolution on July 22, 2023. JT stated that the tenant did not receive a copy of this report on July 17, 2023. The tenant acknowledges receiving a copy with the Application for Dispute Resolution on July 22, 2023.

The Landlord applied for compensation of \$6,600.00 for unpaid rent from July of 2023. DI stated that this claim was decided at a previous dispute resolution proceeding and, as such, the landlord withdraws this claim. As this issue has been withdrawn, it was not considered at these proceedings.

The landlord is seeking compensation, in the amount of \$164.93, for an unpaid water bill. The landlord and the tenant agree that the tenancy agreement required the tenant to pay for water consumption during the tenancy agreement.

The landlord submitted a water bill for \$168.60. The landlord is seeking a pro-rated portion of this bill, in the amount of \$164.93. NS stated that she agrees the tenant owes \$164.93 for these charges.

The landlord is seeking compensation, in the amount of \$315.00, for cleaning the rental unit. The landlord submitted photographs of the interior of the unit, which ZH stated were taken on July 10, 2023. NS stated that she does not believe the landlord's photographs fairly represent the cleanliness of the unit at the end of the tenancy.

The tenant submitted photographs of the interior of the rental unit, which DI stated were taken on July 10, 2023. DI stated that she believes those photographs fairly represent the areas which were photographed, but they do not show all of the areas needing cleaning, which can be seen in the landlord's photographs.

The tenant submitted a cleaning invoice, which the tenant submits shows the rental unit was cleaned at the end of the tenancy. DI stated that the landlord does not dispute some cleaning was completed at the end of the tenancy, but the landlord submits more cleaning was required.

The landlord is seeking compensation, in the amount of \$315.00, for cleaning the yard at the end of the tenancy. The landlord and the tenant agree that the tenancy agreement required the tenant to maintain the yard.

The landlord submitted photographs of the yard, which ZH stated were taken on July 10, 2023. NS stated that she does not believe the landlord's photographs fairly represent the condition of the yard at the end of the tenancy.

The tenant submitted a few photographs of the yard, although NS acknowledged that they do not show the same areas that are depicted by the landlord's photographs.

The landlord submitted a copy of an invoice, which shows the landlord paid \$315.00, for cleaning the yard.

The tenant submitted an invoice, which the tenant submits shows the yard was in good condition at the end of the tenancy. DI stated that the invoice shows the yard work was completed on May 05, 2023 and that it does not, therefore, establish that additional work was not required by the end of the tenancy.

The landlord is seeking compensation of \$30.00 to replace three light bulbs. DI stated that three light bulbs were burned out at the end of the tenancy. NS stated that she does not recall if light bulbs were burned out at the end of the tenancy. DI stated that the landlord submitted no documentary evidence to establish the cost of replacing three light bulbs.

The tenant applied for compensation of \$966.06 for boarding up a broken glass door. NS stated that this door was broken when an unknown person broke into the house.

She stated that the claim was made because the landlord was asking the tenant pay for this expense, which the tenant has refused. She stated that she believes the matter has been resolved, as the landlord is no longer asking the tenant for compensation for this expense. As this matter has been resolved, I consider the claim withdrawn and it will not be considered at these 6 at these proceedings.

The tenant is seeking compensation for moving expenses as a result of a “wrongful eviction”. The landlord and the tenant agree that on June 14, 2023, the tenant gave the landlord notice, via email, of their intent to end the tenancy on July 15, 2023.

NS stated that the tenant decided to end this tenancy due to on-going deficiencies with the rental unit, which were not being addressed by the landlord.

Analysis of Landlord's Monetary Claims

As the landlord and the tenant agree that the tenancy agreement required the tenant to pay for water consumption during the tenancy and the tenant agrees that they owe \$164.93 of the water bill submitted in evidence, I find that this amount must be paid to the landlord.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

Section 37(2) of the *Act* requires a tenant to leave a rental unit reasonably clean and undamaged, with the exception of reasonable wear and tear, at the end of the tenancy.

Residential Tenancy Branch Policy Guideline #1 reads, in part:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

After viewing the photographs submitted in evidence, I find that the rental unit was left in reasonably clean condition. Although the landlord's photographs show a few areas needed some minor cleaning, I find that the tenant's photographs show that the vast majority of the unit was left in clean condition.

As the landlord has failed to establish that the unit was not left in reasonably clean condition, I dismiss the claim for cleaning the unit.

On the basis of the tenancy agreement submitted in evidence, I find that the tenant agreed to cut the grass; prune bushes; weed the flower beds; and maintain/weed flowerbeds.

On the basis of the photographs submitted in evidence by the landlord, I find that the garden needed weeding at the end of the tenancy. On the basis of the images submitted by both parties, I find that additional raking was required. I therefore find that the tenant breached their obligation to maintain the yard and that the landlord is entitled to the cost of cleaning up the yard, which was \$315.00.

I have placed no weight on the gardening invoice submitted by the tenant. This invoice shows that gardening was completed on May 05, 2023. It does not, in my view, establish that additional gardening was not required at the end of the tenancy.

On the basis of the DI's testimony and the absence of evidence to the contrary, I find that three light bulbs were burned out at the end of the tenancy, which should have been replaced by the tenant.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the landlord failed to establish the true cost of replacing three lightbulbs. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that

corroborates the landlord's submission that it cost \$30.00 to replace three lightbulbs. . When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts.

As the landlord has failed to establish the cost of replacing lightbulbs, I dismiss the claim for replacing them.

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.

The landlord has established a monetary claim, in the amount of \$579.93, which includes \$164.93 for water costs, \$315.00 for cleaning the yard, and \$100.00 for the fee to file an Application for Dispute Resolution.

Analysis of Tenant's Monetary Claims

On the basis of the undisputed evidence, I find this tenancy ended on the basis of tenant's notice to end the tenancy. As the tenant chose to end the tenancy and there was no "wrongful eviction", I dismiss the tenant's claim for moving costs, without leave to reapply. In the event the tenant believed the landlord was not meeting their legal obligation to make repairs and maintain the unit, the tenant could have filed an Application for Dispute Resolution seeking an Order requiring the landlord to make repairs, in which case the tenant would not have incurred moving costs.

I find that the tenant has failed to establish the merit of their Application for Dispute Resolution and I dismiss their application to recover the fee for filing an Application for Dispute Resolution.

Analysis of Security Deposit

On the basis of the undisputed evidence, I find that on June 14, 2023, the tenant gave the landlord notice, via email, of their intent to end the tenancy on July 15, 2023. As rent was due on the first day of each month, the tenant did not have the right to end the tenancy on July 15, 2023. Rather, the notice of June 14, 2023 should have declared that the tenancy was ending on July 30, 2023.

As the date on the tenant's notice to end tenancy does not comply with section 45(1) of the Act, I find, pursuant to section 53 of the Act, that the effective date is deemed to be

the earliest date that complies with section 45 of the Act. I therefore find that the tenant's notice to end tenancy served to end this tenancy on July 30, 2023.

I find there is insufficient evidence to conclude that JT gave the landlord a forwarding address on July 10, 2023, by handing ZH the address on a piece of paper. In reaching this conclusion I find there is insufficient evidence to corroborate JT's testimony that one was provided on that date or to refute ZH's testimony that one was not received on that date. I therefore cannot conclude that a forwarding address was received by the ZH on July 10, 2023.

I find there is insufficient evidence to conclude that the tenant gave the landlord a forwarding address, via email, on July 10, 2023. In reaching this conclusion I find there is insufficient evidence to corroborate NS's testimony that one was provided by email on that date or to refute DI's testimony that one was not received on that date. I therefore cannot conclude that a forwarding address was received by the landlord, via email, on July 10, 2023.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Regardless of whether this tenancy ended on the basis of the notice to end tenancy the tenant's served on June 14, 2023 or it ended when the rental unit was vacated on July 10, 2023, I find that the landlord complied with section 38(1) of the Act because the landlord filed an Application for Dispute Resolution seeking to retain the tenant's security deposit on July 17, 2023, which is the date they received the tenant's forwarding address.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the landlord complied with section 38(1) of the *Act*, I find that the landlord is not subject to this penalty.

Section 35(4) of the Act stipulates, in part, that the landlord must give the tenant a copy of the final condition inspection report.

I find that there is insufficient evidence to conclude that a copy of the final condition inspection report was sent to the tenant on July 17, 2023. In reaching this conclusion I was influenced by the absence of evidence that corroborates DI's testimony that one was sent to the tenant on July 17, 2023, via email, or that refutes JT's testimony that it was not received.

On the basis of the undisputed evidence, I find that a copy of the final condition inspection report was sent to the tenant on July 22, 2023. I therefore find that the landlord complied with section 35(4) of the Act, as the report was provided to them within a reasonable time of receiving a forwarding address for the tenant.

As the landlord complied with their obligation to complete and provide a copy of a final condition inspection report to the tenant, I cannot conclude that the landlord extinguished their right to claim against the security deposit.

Pursuant to section 72(2) of the Act, I authorize the landlord to retain \$479.93 from the tenant's security deposit, in full satisfaction of the previously mentioned monetary award granted to the landlord.

As the landlord has not established a right to retain the entire security deposit paid by the tenant, I find that the landlord must return the remainder of the security deposit, which is \$2,670.07, plus interest of \$63.42. (Total = \$2,733.49)

Conclusion

The landlord has established a monetary claim, in the amount of \$579.93. As previously stated, the landlord has the right to retain this amount from the tenant's security deposit, in full satisfaction of this monetary claim.

I grant the tenant a Monetary Order for \$2,733.49, which reflects the return of the remainder of the security deposit. 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.

In the event there is an outstanding Monetary Order requiring the tenant to pay money to the landlord, the Province of British Columbia Small Claims Court may determine that the two awards should be offset.

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: January 12, 2024

Residential Tenancy Branch