



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCL-S, MNRL-S, FFL, MNSDB-DR, 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 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 an Application for Dispute Resolution.

The tenant filed an Application for Dispute Resolution in which the tenant applied for the return of double her security deposit and to recover the fee for filing an Application for Dispute Resolution.

The landlord stated that on July 19, 2023, the landlord's Dispute Resolution Package and the evidence the landlord submitted to the Residential Tenancy Branch on July 14, 2023 were sent to the tenant, via registered mail. The tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The tenant stated that on November 24, 2023, the tenant's Dispute Resolution Package and the evidence the tenant submitted to the Residential Tenancy Branch in November of 2023 were sent to the landlord, via registered mail. The landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

In December of 2023, the landlord submitted additional evidence to the Residential Tenancy Branch. The landlord stated that this evidence was sent to the tenant in

December of 2023, via registered mail, although he cannot recall the exact date of service.. The tenant stated that this evidence was delivered to her service address but it was misplaced by her father and, as such, she has not seen that evidence.

I find that the landlord's second evidence package was properly served to the tenant and it was, therefore, accepted as evidence for these proceedings. A tenant has an obligation to ensure evidence is properly secured.

In December of 2023, the tenant submitted additional evidence to the Residential Tenancy Branch. The tenant stated that this evidence was sent to the landlord on December 28, 2023, via registered mail. The landlord initially stated that he received notice of this registered mail on January 02, 2024 or January 03, 2024. He subsequently stated that he received notice of this registered mail on January 05, 2023. He stated that he has been too busy to pick up that registered mail.

I find that the tenant's second evidence package was properly served to the landlord and it was, therefore, accepted as evidence for these proceedings. A landlord cannot avoid service of documents by simply opting to not pick them up from the post office.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All documentary evidence accepted as evidence for these proceedings has been reviewed, although it is only referenced in this decision if it is directly relevant to my decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to compensation for unpaid rent/utilities?

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 July 01, 2021
- rent was due by the first day of each month;

- the rent was increased to \$969.00 per month, effective January 01, 2022;
- the tenant paid a security deposit of \$475.00 and a pet damage deposit of \$475.00;
- the rental unit was vacated on June 29, 2023;
- the tenant provided the landlord with a forwarding address, by email, on June 30, 2023;
- a condition inspection report was not completed at the beginning of the tenancy;
- a condition inspection report was not completed at the end of the tenancy; and
- the landlord did not schedule a time for a condition inspection report to be completed at the start or the end of the tenancy.

The tenant stated that the security and pet damage deposits were paid on June 30, 2021. The landlord does not recall when they were paid.

The tenant stated that on June 29, 2023, she attached her forwarding address to the railing outside of the upper rental unit. The tenant stated that the occupant of the upper rental unit is not an agent for the landlord.

The landlord and the tenant agree that the landlord was granted an Order of Possession for the rental unit, dated June 15, 2023, and that this Order was served to the tenant on June 15, 2023.

The landlord and the tenant agree that the tenant filed an Application for Review Consideration of the decision to grant the landlord an Order of Possession, which was dismissed on June 29, 2023. The tenant stated that she did not receive notice that her Application for Review Consideration had been dismissed until June 29, 2023.

The landlord is seeking compensation, in the amount of \$270.00, for overholding rent for the period between June 21, 2023 and June 30, 2023. The landlord and the tenant agree rent has been paid, in full, for June of 2023. The landlord is seeking compensation for rent for the last 9 days of June because the tenant did not vacate the unit on the basis of the Order of Possession which was served to her on June 15, 2023.

The landlord is seeking compensation for removing abandoned personal items from the rear yard that was used solely by the tenant. The landlord submitted photographs of items left in the yard, which he stated were taken on July 14, 2023.

The tenant stated that the landlord's photographs fairly represent the items left in the rear yard at the end of the tenancy. She stated that some of those items may have

been left by her but some of them were left in the yard by the person who occupied the rental unit before her.

The tenant stated that she submitted photographs of the items that were in the rear yard at the start of the tenancy. She stated these photographs were taken on June 29, 2021 and they show that a large amount of personal property was in the yard at the start of the tenancy.

The tenant provided numbers of the photographs that allegedly show that items were in the yard at the start of the tenancy, however those numbered photographs are not pictures of items left in the rear yard. A list of photographs, provided by the tenant indicate photographs 51 to 57 are of the back yard, however the photographs 51 to 57 are of the interior of the rental unit. Although one can see the back yard through a window in photographs 53 and 57, they do not show items left behind.

After the hearing concluded I was able to find three photographs of the back yard, which appear to have been taken on June 29, 2021. They are labelled Backyard_1, Backyard_7, and Backyard_6 in the tenant's evidence.

The landlord stated that he has seen the tenant's photographs of the rear yard. He stated that some of the items left in the yard at the end of the tenancy, such as the BBQ, cannot be seen in the tenant's photographs. He acknowledged that some of the items left in the yard at the end of the tenancy could have been in the yard at the start of the tenancy.

The landlord submitted a copy of an e-transfer, in the amount of \$900.00, which was paid to a third party for disposing of personal items left on the property and for mowing the lawn. The landlord estimates that \$200.00 of this fee was for moving the lawn and \$700.00 was for removing personal property.

The landlord is seeking compensation for mowing the lawn in the rear yard. The landlord and the tenant agree that the tenant was responsible for mowing the rear lawn during the tenancy.

The landlord submits that the rear lawn was very long at the end of the tenancy. The tenant agreed that the lawn required mowing at the end of the tenancy.

The landlord submitted photographs of the lawn, which were taken on July 14, 2023.

The landlord is seeking \$30.00 for the tenant's portion of a gas bill. The landlord and the tenant agree that the tenant was to pay 30% of the gas charges incurred during the tenancy. The landlord submitted a copy of a gas bill, in the amount of \$80.17. The landlord stated that the tenant owes \$30.00 for her portion of this bill, which she has not paid. The tenant agrees that she is responsible for paying 30% of this bill, which she has not paid.

The landlord is seeking \$30.00 for the tenant's portion of a hydro bill. The landlord and the tenant agree that the tenant was to pay 30% of the hydro charges incurred during the tenancy.

The landlord stated that he submitted a copy of a hydro bill, in the amount of \$188.72. The landlord stated that the tenant owes \$30.00 for her portion of this bill, which she has not paid.

The tenant stated that she has not received a copy of a hydro bill for \$188.72. I was unable to find this bill in the evidence submitted by the landlord. I was able to find a "BC Hydro Bill Calculation" in the amount of \$188.72, however this does not appear to be a document been created by BC Hydro.

Analysis – Landlord's Application for Dispute Resolution

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.

A landlord is entitled to compensation for rent if rent is not paid for periods which the tenant occupied the rental unit. On the basis of the undisputed evidence, I find that the tenant paid rent, in full, for June of 2023. As the tenant paid rent, in full for June of 2023, I cannot conclude that the landlord is entitled to additional rent for that month.

A landlord is entitled to compensation for lost revenue if the landlord is unable to collect rent for a period of time due to the tenant breaching the Act. As there is no evidence that the landlord suffered a loss of revenue for June of 2023, I cannot conclude that the landlord is entitled to additional rent for that month.

I therefore dismiss the landlord's application for compensation for overholding rent for the period between June 21, 2023 and June 30, 2023, without leave to reapply.

I find there was some garbage or other personal items in the rear yard when this tenancy began. In reaching this conclusion I was influenced by:

- the absence of a condition inspection report which was completed at the start of the tenancy, which would establish there was nothing in the yard at the start of the tenancy;
- the tenant's testimony that personal items were in the yard when her tenancy began;
- the photograph labelled Backyard_1, which clearly shows some items were on the property at the start of the tenancy; and
- the landlord's testimony that some of the items left in the yard at the end of the tenancy could have been in the yard at the start of the tenancy.

On the basis of the photographs taken in July of 2023, I find that the landlord submitted sufficient evidence to show that a significant amount of personal property was left in the rear yard at the end of the tenancy. In reaching this conclusion I was influenced, in part, by the tenant's acknowledgment that at least some of the personal property seen in the photographs belonged to her. I therefore find that the tenant breached section 37(2) of the Act when she did not move all of her personal property from the yard.

It is difficult, if not impossible, for me to ascertain how much of the property left in the back yard belonged to the tenant and how much was left by a previous occupant. When I compare the photographs of the property in the yard at the start of the tenancy with the photographs of the property left in the rear yard at the end of the tenancy, I find it reasonable to conclude that at least half of the property in the yard at the end of the

tenancy. I therefore find that the tenant is obligated to pay for 50% of the cost of removing personal items from the back yard.

On the basis of the e-transfer submitted in evidence and the landlord's estimate that he paid \$700.00 for having personal items removed from the property, I find that the landlord is entitled to compensation of \$350.00, which is 50% of this cost.

On the basis of the undisputed evidence, I find that the tenant agreed she would mow the rear lawn during the tenancy. On the basis of the photographs of the lawn taken on July 14, 2023, I find that the tenant breached this term of the agreement when she did not leave the lawn reasonably short when the tenancy ended. The photographs show the lawn was very high when the photograph was taken, which was approximately two weeks after the tenancy ended. I find it highly unlikely the lawn grew significantly during the first two weeks in July, given the time of year. I therefore find that the landlord is entitled to recover the cost of mowing the lawn, which was \$200.00.

On the basis of the undisputed evidence, I find that the tenant was required to pay 30% of the gas charges incurred during the tenancy and that she has not paid her portion of the gas bill, in the amount of \$80.17. I therefore find that the tenant must pay 30% of this bill, which is \$24.05.

I find that the landlord has submitted insufficient evidence to establish that hydro costs of \$188.72 were incurred during this tenancy. Although the landlord submitted a "BC Hydro Bill Calculation" in the amount of \$188.72, this document does not appear to have been created by BC Hydro and no hydro bills were submitted which establish those costs were incurred. As the landlord has submitted insufficient evidence to establish that \$188.72 in hydro costs which incurred during the tenancy, I find that the landlord has failed to establish that the tenant owes 30% of \$188.72. I therefore dismiss the landlord's claim for hydro costs, without leave to reapply.

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

Analysis – Tenant's Application for Dispute Resolution

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.

Even if I accepted the tenant's testimony that she attached her forwarding address to the railing outside of the upper rental unit on June 29, 2023, I find that this does not constitute proper service of a forwarding address to the landlord. There is no evidence that the landlord lived in the upper unit; that he does business from the upper unit; or that the occupant of the upper rental unit is an agent for the landlord. I therefore cannot conclude that this forwarding address was served to the landlord in accordance with section 88 of the Act.

On the basis of the undisputed evidence, I find that the tenant provided the landlord with a forwarding address, via email, on June 30, 2023.

As this tenancy ended prior to June 30, 2023 and the forwarding address was received on June 30, 2023, I find that the landlord had until July 15, 2023 to file an Application for Dispute Resolution seeking to keep the tenant's security/pet damage deposit.

As the landlord filed the Application for Dispute Resolution seeking to keep the tenant's security/pet damage deposit on July 14, 2023 I find that he filed the application within the 15 day deadline established by the Act.

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 the penalty imposed by section 38(6) of the Act. I therefore dismiss the tenant's application to recover double the security deposit.

Sections 24 and 36 of the Act prevent a landlord from claiming against a security deposit or a pet damage deposit, or both, for damage to residential property if the landlord does not provide the tenant at least two opportunities to participate in an inspection of the unit at the start and end of the tenancy; if the landlord does not complete a condition inspection report at the start and end of the tenancy; and if the landlord does not provide the tenant with copies of the reports. These sections are not relevant in these circumstances, as the landlord has filed an application for compensation for unpaid rent and utilities, as well as for damage to the property. A

landlord may file a claim against the security/pet damage deposit for unpaid rent/utilities even if the condition inspection requirements are not met.

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

Conclusion

The landlord has established a monetary claim, in the amount of \$674.05, which includes \$350.00 for removing personal items from the property; \$200.00 for mowing the lawn; \$24.05 for gas charges; and \$100.00 in compensation for the fee paid to file an Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the landlord to retain \$674.05 from the tenant's security/pet damage deposit, in full satisfaction of this monetary claim.

The tenant has established a monetary claim, in the amount of \$387.42, which includes \$275.95 for the return of the remainder of her security/pet damage deposit; interest of \$11.47 on those deposits; and \$100.00 in compensation for the fee paid to file an Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for \$387.42. 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: January 10, 2024

Residential Tenancy Branch