Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNSDB-DR, MNETC, FFT, FFL

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 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 the return of double the security deposit, for compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use of Property, and to recover the fee for filing an Application for Dispute Resolution. The tenant amended the tenant's Application for Dispute Resolution to include a claim for compensation because the landlord did not use the unit for the reason stated on the Two Month Notice to End Tenancy for Landlord's Use of Property.

On September 21, 2023, the landlord submitted evidence to the Residential Tenancy Branch. GM stated that this evidence was sent to the forwarding address provided by the tenant with the Application for Dispute Resolution, via registered mail, on September 21, 2023. GM stated that these documents were not claimed by CC and they were returned to the sender. The landlord submitted Canada Post documentation that corroborates this testimony. I find that these documents were served to the tenant in accordance with section 89 of the Residential Tenancy Act (Act).

GM stated that the aforementioned documents were sent to the tenant, via email, on September 21, 2023. CC acknowledged receiving these documents in September or

October of 2023. As these documents were received by the tenant, the evidence was accepted as evidence for these proceedings.

On January 23, 2024, the landlord submitted evidence to the Residential Tenancy Branch. GM stated that this evidence was sent to the tenant, via email, on January 23, 2024. CC stated this evidence was received and he has had sufficient time to consider it. As the tenant received the evidence and has had sufficient time to consider it, it was accepted as evidence for these proceedings.

On January 24, 2024, the landlord submitted evidence to the Residential Tenancy Branch. GM stated that this evidence was sent to the tenant, via email, on January 24, 2024. CC stated this evidence was received and he has had sufficient time to consider it. As the tenant received the evidence and has had sufficient time to consider it, it was accepted as evidence for these proceedings.

On January 25, 2024, the landlord submitted evidence to the Residential Tenancy Branch. GM stated that this evidence was sent to the tenant, via email, on January 25, 2024. CC stated this evidence was received and he has had sufficient time to consider it. As the tenant received the evidence and has had sufficient time to consider it, it was accepted as evidence for these proceedings.

On December 22, 2023, the tenant submitted evidence to the Residential Tenancy Branch. CC stated that this evidence was sent to the landlord, via email, on, or about, December 22, 2023. The landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On January 09, 2024, the tenant submitted evidence to the Residential Tenancy Branch. CC stated that this evidence was sent to the landlord, via email, on, or about, January 09, 2024. The landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On January 21, 2024, the tenant submitted evidence to the Residential Tenancy Branch. CC stated that this evidence was sent to the landlord, via email, on, or about, January 21, 2024. The landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On January 28, 2024, the tenant submitted evidence to the Residential Tenancy Branch. CC stated that this evidence was sent to the landlord, via email, on, or about, January 28, 2024. GM stated that this evidence was not received.

The tenant submitted no evidence to establish that the evidence package of January 28, 2024 was sent to the landlord. In the absence of evidence, such as a copy of the email sent, to refute GM's testimony that the evidence was not received, I find that the tenant has failed to establish that the evidence package of January 28, 2024 was received by the landlord. As the tenant has failed to meet the burden of proving this evidence was served, it was not accepted as evidence for these proceedings.

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.

Preliminary Matter #1

CC joined the teleconference a few minutes after the scheduled start of the hearing and, as such, missed a few of the introductory remarks. Those issues were summarized for the tenant prior to proceeding with the hearing.

Preliminary Matter #2

On January 18, 2024, the tenant filed an Amendment to the Application for Dispute Resolution, in which the tenant added a claim for $900.00 in compensation because the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property and a claim for $10,800.00 because the landlord did not use the unit for the reason cited on the Two Month Notice to End Tenancy for Landlord's Use of Property.

CC stated that this Amendment was served to the landlord, via email, on January 21, 2024. The landlord acknowledged receipt of the Amendment.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. I find that the tenant's

added claim for $10,800.00 because the landlord did not use the unit for the reason cited on the Two Month Notice to End Tenancy for Landlord's Use of Property is not sufficiently related to the primary issues in dispute at these proceedings, which are whether the security deposit should be returned to the tenant or retained by the landlord as compensation for damage to the unit.

As the claim for compensation of $10,800.00 is not sufficiently related to the primary issues, I determined that the matter should be severed from these proceedings, pursuant to Rule 2.3 of the Residential Tenancy Branch Rules of Procedure. The tenant retains the right to file another Application for Dispute Resolution in regard to this claim.

In the tenant's Application for Dispute Resolution the tenant declared that the tenant is seeking compensation of $900.00 because the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property. Regardless of the information provided in the Amendment, I find that the landlord knew, or should have known, that this would be a matter to be considered at these proceedings as it was included on the original hearing documents served to the landlord. That claim for $900.00 was, therefore, considered at these proceedings.

I acknowledge that the claim for $900.00 could also have been severed from these proceedings, pursuant to Rule 2.3 of the Residential Tenancy Branch Rules of Procedure, as it was also not sufficiently related to the primary issues in dispute. In the interests of efficiency and expedience, however, I did not sever the claim for $900.00, as I concluded I would be able to address this matter reasonably quickly, without the need for an adjournment or the need for the tenant to file another Application for Dispute Resolution.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?
Should the security deposit by retained by the landlord or returned to the tenant?
Is the tenant entitled to compensation for being served with a One Month Notice to End Tenancy for Cause?

Background and Evidence

GM stated that the tenancy began in September of 2020. CC stated that it began on May 01, 2021. The tenant submitted a copy of a tenancy agreement which indicates the tenancy began on May 01, 2021.

The landlord and the tenant agree that rent was due by the first day of the month and that rent, at the end of the tenancy, was $900.00 per month.

GM stated that a pet damage deposit of $250.00 was paid on May 01, 2021 and a security deposit of $450.00 was paid on the same date. CC stated that a pet damage deposit of $450.00 was paid on May 01, 2021 and a security deposit of $450.00 was paid on the same date.

The parties agree the security/pet damage deposit has not been returned to the tenant and the landlord does not yet have written authority to retain it.

CC stated that this tenancy ended on August 30, 2023 and GM stated that it ended on September 01, 2023.

CC stated that he provided a forwarding address to the landlord, via email, sometime in September of 2023. GM stated that the address was received, via email, in early September of 2023.

The landlord and the tenant agree that the landlord did not schedule a time to complete a condition inspection report prior to the start of the tenancy and that a condition inspection report was not completed at the start of the tenancy.

The landlord and the tenant agree that a final condition inspection was completed on September 08, 2023, after the tenancy ended. The tenant signed this final report without indicating whether he agreed or disagreed with the content of the report.

The landlord is seeking compensation, in the amount of $1,064.78, for replacing carpet in the rental unit. The landlord and the tenant agree that the carpet was stained at the end of the tenancy.

The tenant submitted photographs of the carpet, which he contends were taken just after the start of the tenancy. The landlord submitted photographs, which the landlord contends were taken after the tenancy ended.

GM stated that the carpet in the unit was approximately 15 years old at the end of the tenancy. CC stated that he estimates the carpet was over 20 years old at the end of the tenancy.

The landlord is seeking compensation of $250.00 for repairing drywall in the rental unit. GM stated the drywall needed to be repaired, particularly on the wall where the tenant had mounted a television. The landlord submitted a photograph of this wall, which shows there are an excessive number of holes in the wall. The landlord submitted other photographs to show the drywall was damaged in various locations.

CC stated that the drywall was damaged in various locations at the start of the tenancy. In support of this submission, the tenant submitted photographs which he contends were taken on just after the start of the tenancy. CC acknowledges that he did not submit any evidence that establishes the wall where he mounted a television was damaged at the start of the tenancy.

The landlord submitted an invoice that shows the landlord paid $250.00 to repair the drywall and to paint.

The landlord is seeking compensation of $37.64 for repairing a screen on the living room window. The landlord and the tenant agree that the screen was damaged at the end of the tenancy. CC stated that the screen was damaged at the start of the tenancy, which the landlord denies.

The landlord is seeking compensation of $200.00 for cleaning the rental unit. The landlord submitted photographs which GM stated were taken at the end of the tenancy to show additional cleaning was required at the end of the tenancy. The tenant submitted photographs which CC stated were taken at the end of the tenancy to show the unit was left in reasonably clean condition.

GM stated that the landlord spent approximately 16 hours cleaning the unit after it was vacated.

The landlord and the tenant agree that in 2023 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, which was the subject of a different dispute resolution proceeding. The parties agree that a different Residential Tenancy Branch Arbitrator upheld that Two Month Notice to End Tenancy for Landlord's Use of Property and the landlord was granted an Order of Possession for the unit.

The landlord and the tenant agree that the tenant was not provided with the equivalent of one month's free rent as a result of being served with that Two Month Notice to End Tenancy for Landlord's Use of Property. GM stated that the landlord now understands the tenant is entitled to compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use of Property.

Analysis

Regardless of when this tenancy began, I find that the parties entered into a tenancy agreement that required the tenant to pay monthly rent by the first day of each month.

Although a copy of the tenancy agreement was submitted in evidence by the tenant, the portion of the agreement which declares the amount of the security deposit/pet damage deposit to be paid was not legible on the copy submitted.

The only documentary evidence I have regarding the security/pet damage deposit, is an undated, unsigned document, which declares, in part, that there will be an "additional $500 to be added at the beginning of the tenancy as a pet damage deposit". As this document does not support the tenant's submission that a $450.00 pet damage deposit was paid, nor does it support the landlord's submission that a $250.00 pet damage deposit was paid, I have placed no weight on the document.

On the basis of the evidence before me, I find that the tenant paid at least a security deposit of $450.00 and a pet damage deposit of $250.00. I find that the tenant has submitted insufficient evidence to support his testimony that he paid a pet damage deposit of $450.00 and I therefore cannot conclude that a pet damage deposit of $450.00 was paid.

On the basis of the evidence before me, I find that this tenancy ended on August 30, 2023 or September 01, 2023. The precise end date is not relevant to this decision.

On the basis of the undisputed evidence, I find that the tenant provided a forwarding address sometime in September of 2023, after the tenancy ended.

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 plus interest or file an Application for Dispute Resolution claiming against the deposits. As the landlord filed an Application for Dispute Resolution claiming against the deposits on September 14, 2023, and the landlord did not receive a forwarding address until on, or after, September 01, 2023, I find that the landlord claimed against the security deposit within the legislated time period.

Sections 23(1) and 23(3) of the Act stipulates that 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 and that the landlord must offer the tenant at least 2 opportunities to participate in the inspection. On the basis of the undisputed evidence, I find that the unit was not jointly inspected prior to the start of the tenancy and the landlord did not schedule a time for such an inspection.

Section 23(4) of the Act stipulates that the landlord must complete a condition inspection report at the start of the tenancy. On the basis of the undisputed evidence, I find that the landlord did not comply with this requirement.

Section 24(2) stipulates that 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 does not comply with section 23 (3) or 23(4) of the Act.

As I have concluded that the Landlord failed to comply with section 35(2) of the *Act*, I find that the Landlord’s right to claim against the security deposit and pet damage deposit for damage is extinguished.

In circumstances such as these, where the landlord’s right to claim against the security deposit has been extinguished, pursuant to section 36(2) of the *Act,* the landlord does not have the right to file an Application for Dispute Resolution claiming against the deposits for damage to the unit and the only option remaining open to the landlord is to return the security deposit and/or pet damage deposit 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. As the evidence shows the deposits have not yet been returned to the tenant, I find that the landlord has not complied with section 38(1) of 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 did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the pet damage deposit and security deposit to the tenant.

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 stipulates that a tenant must leave a unit reasonably clean and undamaged, expect for normal wear and tear, at the end of the tenancy.

I find that the tenant failed to comply with section 37(2) of the Act when he did not leave the carpet reasonably clean at the end of the tenancy. I find that the photographs submitted by the tenant establish that the carpets were somewhat stained at the start of the tenancy. On the photographs submitted by the landlord, I find that the carpets were significantly more stained at the end of the tenancy and, as such, the tenant should have cleaned or replaced them.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and <u>not</u> based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. As the landlord acknowledges that the carpet had exceeded its life expectancy by the end of this tenancy, I find that the landlord is not entitled to compensation for replacing it. I therefore dismiss the claim for replacing the carpet.

On the basis of the photographs submitted by the tenant, I find that there was some relatively minor damage to the walls and ceiling when the tenancy began. On the basis of the photographs submitted by the landlord, I find that the walls were in significantly worse condition when the tenancy ended. I therefore find that the tenant failed to comply with section 37(2) of the Act when he did not repair the wall damage that occurred during the tenancy. As such, I find the landlord is entitled to compensation for those repairs.

On the basis of the invoice submitted by the landlord, I find that the landlord paid $250.00 to repair the drywall and to repaint the unit. Although the invoice does not establish the cost of painting and the cost of repairs, I find it reasonable to conclude that the landlord paid approximately $150.00 to repair the drywall. I therefore find the landlord is entitled to compensation of $150.00 for drywall repairs.

I find the landlord has failed to establish that he is entitled to compensation for repainting the unit after the drywall repairs were completed. In reaching this conclusion, I was heavily influenced by the tenant's photographs which clearly show the unit was not newly painted when the tenancy began. I therefore find it reasonable to conclude that the paint in the unit had exceed its life expectancy of 4 years, and that the landlord would have needed to repaint the unit even if drywall repairs were not needed.

I find that the landlord has failed to meet the burden of proving the screen on the living room window was in good condition at the start of the tenancy. As there is no evidence, such as a condition inspection report, to corroborate the landlord's submission that the screen was in good condition at the start of the tenancy or that refutes the tenant's submission that it was damaged at the start of the tenancy, I find the landlord has failed to establish it was damaged during the tenancy. I therefore dismiss the claim for repairing the window screen.

After viewing the photographs submitted in evidence by the parties, I find that the rental unit was not left in reasonably clean condition at the end of the tenancy. Specifically, significantly cleaning was required under the refrigerator and beside the stove, and

some garbage needed removing from the exterior of the property. While I accept, on the basis of the photographs submitted by the tenant, that other areas were left in reasonably clean condition, I find the landlord is entitled to compensation for cleaning those areas not left in reasonably clean condition.

Although the landlord submits they spent approximately 16 hours cleaning the unit, I find that amount of time was not needed to render the unit reasonably clean. Based on the photogrpahs submitted, I find it would have taken the landlord approximately 8 hours to render the unit reasonably clean, and I grant the landlord compensation of $200.00 for that time.

On the basis of the undisputed evidence, I find that the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property in 2023 and the tenancy ended on the basis of that Notice.

Section 51(1) of the Act stipulates that a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the parties agree the tenant did not receive the equivalent of one month's rent, as is required by section 51(1) of the Act, I grant the tenant that compensation, in the amount of $900.00.

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

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

Conclusion

The landlord has established a monetary claim, in the amount of $450.00 which includes $150.00 for drywall repairs, $200.00 for cleaning, and $100.00 compensation for the fee paid to file an Application for Dispute Resolution.

The tenant has established a monetary claim of $2,400.00, which includes double the security deposit and pet damage deposit, which is $1,400.00 ($700.00 X 2), $900.00

compensation pursuant to section 51(1) of the Act, and $100.00 compensation for the fee paid to file an Application for Dispute Resolution.

After offsetting the two awards, I grant the tenant a Monetary Order for $1,950.00. 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: February 07, 2024

Residential Tenancy Branch