Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act,* regulation or tenancy agreement; an order permitting the landlord to keep all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenants for the cost of the application.

The hearing did not conclude on the first scheduled date and I adjourned it to continue. My Interim Decision was provided to the parties.

Two property managers and both tenants attended the hearing on both scheduled dates, and each gave affirmed testimony. The tenants were assisted by 2 interpreters, 1 on each scheduled date, who were affirmed to well and truly interpret the hearing from the English language to the tenants' Native language and from the tenants' Native language to the English language to the best of the interpreters' skill and ability. The parties were given the opportunity to question each other and to give submissions.

During the second scheduled date, one of the tenants indicated that the interpreter's dialogue was not understandable. However, the tenant was versed enough in English to interpret for the other tenant.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for liquidated damages and the cost of a fob, keys and visitor parking pass, carpet cleaning, or were the tenants justified in ending the tenancy?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The first agent of the landlord (VS) testified that this fixed-term tenancy began on September 1, 2023 and was to expire on August 31, 2024. However, the tenants vacated the rental unit on October 14, 2023. Rent in the amount of $2,995.00 was payable on the 1st day of each month. On July 22, 2023 the landlord collected a security deposit from the tenants in the amount of $1,497.50, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium apartment, and neither property manager nor the owner reside on the property.

On September 19, 2023 the tenants gave notice to end the tenancy by email effective October 14, 2023, and a copy has been provided for this hearing, as well as other emails.

A copy of the tenancy agreement has been provided as evidence for this hearing, which indicates liquidated damages of $1,497.50. The term states: "If the tenant ends the fixed term tenancy before the end of the original term as set out in (B) above, the landlord may, at the landlord's option, treat this Tenancy Agreement as being at an end. In such event, the sum of $1,497.50 shall be paid by the tenant to the landlord as liquidated damages, and not as a penalty, to cover the administration costs of re-renting the said premises. The landlord and tenant acknowledge and agree that the payment of the said liquidated damages shall not preclude the landlord from exercising any further right of pursuing another remedy available in law or in equity, including, but not limited to, damages to the premises and damages as a result of rental income due to the tenant's breach of the terms of this agreement."

The landlord has provided a Monetary Order Worksheet setting out the following claims as against the tenants, totaling $7,791.56:

- $2,995.00 for October 1, 2023 rent;
- $1,497.50 for liquidated damages;

- $125.00 for strata charges to replace a fob and parking pass, $100.00 and $25.00 respectively;
- $8.96 for cutting 2 keys, estimated, to include taxes;
- $126.00 estimated, for carpet cleaning;
- $44.10 for an estimated hydro bill; and
- $2,995.00 for loss of rent for November, 2023.

The landlord's agent further testified that the rent cheque for October, 2023 was returned N.S.F.

The tenants initialed the liquidated damages section in the tenancy agreement and it was explained.

The tenants asked the landlord's agents to look for the parking pass and fob after the tenants vacated, but they were never found at the rental unit. An email from the strata president has been provided confirming the cost. As well, the tenants had the 2 building keys that were missing, and an estimate of $4.48, including taxes has been provided. The landlord claims $8.96 for key cutting for 2 keys.

Move-in and a move-out condition inspection reports were completed at the beginning and end of the tenancy, and a copy has been provided for this hearing. The claim for carpet cleaning is an estimate.

The claim for hydro is estimated, from September 1 to October 14, 2023. The landlord's agent could only obtain a previous invoice from the utility company, so it was estimated as well as possible. The tenants didn't sign up for an account. The hydro document averages $.98 per day for 44 days = $43.12. The claim of $44.10 is incorrect.

Advertisements were posted to re-rent from the date the tenants gave notice to end the tenancy, and copies have been provided for this hearing. The landlord had to reduce rent to get it re-rented, and someone is moving in on February 1, 2024. There was only 1 showing while the tenants were still in the rental unit, and they were told about mice. The landlords explained any information that prospective people asked. Then, if they were interested, the landlords told them about rodent problems, which had been taken care of and if they were still interested, were advised to apply. There are also silverfish in the building, and no issues have come up.

When these tenants were shown the rental unit, the landlords had no reason to think that there were any mice, or they would have been told. But there was no history and the owner had been living there, who said it had happened a year ago, or more, but was solved. The landlord has provided a copy of an email from the strata management

dated November 6, 2023 providing the landlord's agent with information regarding mouse activity, which sets out the steps taken by the strata an exterminator, and indicating that, "There has been no mice activity reported in either building for several months. The brief exceptions were due to an owner who left their patio door open for extended periods of time." The landlord's agent testified that constant preventative measures are taken all the time.

After the mice were eliminated, the landlord's agents told people there was a previous mouse problem. The landlord hired 2 pest control companies, 1 saying in a report that on October 5, 2023 there was no activity, and a copy has been provided for this hearing. The landlord's agent has been in the rental unit numerous times and checked traps, finding no activity. The landlords have no knowledge or reason to believe there are pests.

The tenants accuse the landlords, saying they couldn't get in touch with the landlords quickly, however the landlords have a landline and explained that to the tenants and were told to call. The landlord has a 24 hour emergency call number and the tenants could always get in touch. The tenants dropped by the office without an appointment expecting the landlords to be there, but the landlords are in and out of the office. The landlords received an email from the tenants on January 6, 2024 at 9:00 p.m., which the landlords read on Monday, January 8.

The tenants said they had left fobs and the visitor's pass in the rental unit, but the landlords did not locate them. Later, the tenants confirmed they forgot to return them.

The tenants did not have the carpets cleaned, and the landlords made every effort to get new tenants, having advertised at $2,995.00, then reduced to $2,790.00 and then to $2,700.00, commencing with the day the tenants' notice to end the tenancy was received. Copies of advertisements have also been provided for this hearing.

The second agent of the landlord (RS) testified that the landlord's agent was there and showed the property twice and each tenant shown was advised the people previously found a mouse in the rental unit. The landlord's agent has never found a mouse, but traps. That doesn't mean there weren't any but people didn't like the set-up of the rental unit, which is why they didn't rent.

The tenants were shown the property, liked it and signed a tenancy agreement, then went back in with the other agent of the landlord to get the condition inspection report done, which took about an hour. During that period of time there were no mice running around. None were discovered until the 6th of the month, which was 4 or 5 days later. A report states that 5 mice had been caught, which was a couple weeks after the

tenants moved in. Apparently there were 2 separate companies retained. The strata was aware; they let people in, knocked on the tenants' door but the tenants didn't let them in.

The first tenant (ZM) testified that the tenants were newcomers to Canada 3 years ago, and in BC in July, 2023, due to the tenant's husband's health, allergies and asthma. After getting the COVID vaccine, it got worse and the family doctor prescribed mediations that lead to diabetes and he had to stop using it, and started diabetes medications. Due to side effects, and in March, 2023 they had to do emergency surgery and remove his gall bladder. After going through all that, the doctor advised that cold and bad weather worsened his condition which is why the tenants moved to BC from Manitoba. The tenant's employer supported the request to move. Medical evidence has also been provided for this hearing.

Before moving to BC, the tenant got 2 months leave to go back to the tenants' home country where they found some traditional mediations, which helped.

When the tenants found this advertisement, the tenant talked to the property manager, who praised the unit and had other properties, but said this was his favorite and he used to live there; that it was clean and comfortable and modern. He referred the tenants to the other property manager (VS). After 2 days of trying to get ahold of her, she contacted the tenant and showed the rental unit. The tenants had no idea of an infestation.

The tenant has found mouse droppings, and mice were never mentioned by the landlord's agents. It is not common in the tenants' home country, and the tenants had no experience dealing with mice. The tenants talked to the landlord himself, and he knew but didn't say anything. If the tenants had any idea, they would never have visited the unit.

A rental home had to be clean, with no animals or mice which could bring the tenants back to the misery of their history or they wouldn't have rented. The landlord was asked if previous tenants had pets and he said, "No." It is not a basement or ground floor, nor is it an old house, but a unit presented as clean and luxury. The tenants expected it to be comfortable to live in. On August 31, 2023 the tenant got the keys and partially moved in, and found a mouse the same day. It happened almost all evening.

The property manager says they never found mice, but they are active in the evening. A video has been provided for this hearing. When the tenants reported that to the property managers, they provided traps only and informed the tenants that there is a sign in the building that an infestation is going on in the building. Building management

has a plan to control the infestation which does not let people seal the holes to let them in so they get caught. The landlords were using the tenant's rental unit to catch all mice in the buildings, so they don't let anyone seal the holes. The landlord cannot say there are no mice left, and the plan is not a good one. If the landlords had taken proper measures, exposure should not be in the rental unit or the building. The landlords expected the tenants to co-exist with mice for a long time, so they can catch all the mice, which makes no sense for the tenants to stay for $3,000.00 per month for rent to have mice all the time.

The tenants reported it and were told that holes could not be sealed, then gave the tenants traps and poison which caused allergic reactions. Rather than fix the problem, the landlords said it was "normal."

The tenants had no option; they could not live there. The tenant sent an email to the landlords explaining that the rental unit was not clean and was in uninhabitable condition, but the landlords didn't reply. Then the property manager (VS) responded by changing the poison to snap traps, and that was her only option. The Residential Tenancy Branch advised the tenants to first try to get an agreement from the landlords. The tenant sent another email to the property manager on September 16 asking to come to a mutual agreement to end the tenancy. After a few days, on September 19 the property manager said the tenants would have to give up the security deposit and pay full rent for October. There was no agreement so on September 19 the tenants sent the email saying that they were moving out on October 14 hoping that would be enough time for the landlord to secure a new tenant.

The landlords also said that the tenants tried to send text messages rather than calling, which is not true, with the exception of the first time about a showing. The phone number always goes to voice mail and no one is ever in the office. Due to the tenants' language barrier it is better to talk face-to-face.

The technician with the pest control company that the landlords hired, told the tenants that they were told not to seal any holes, and the landlord's agent said the same thing to the tenant, making it clear that the plan was to keep it open so the mice could be caught and not create new holes. The report does not say a hole was sealed, but that they identified one.

The second tenant (MM) testified that there is a building with a receptionist but is not the landlord's office; they don't give any receipts and a person cannot make any appointments to see someone, but go there and hope to find them or leave a voce mail.

The tenants have provided evidence that no one with allergies or asthma should be near pest poison, droppings or dander, from Canada Health. The tenants had no option; they couldn't stay there.

With respect to carpet cleaning, the landlords never explained that the tenants had to pay for that and were only there for 44 days. Also, the pest infestation is the landlord's responsibility and it makes no sense to claim carpet cleaning from the tenants.

The landlords never reported the issue to the strata, but tried to put the tenants in a situation where they had to stay.

Analysis

Where a tenant gives notice to end a month-to-month tenancy, the landlord must receive the notice before the day rent is payable under the tenancy agreement and must be effective at the end of the following period. In this case, rent was due on the 1st day of each month. The tenants gave notice to end the tenancy on September 19, 2023 after a letter dated September 9, 2023 describing the landlord's breach of a material term of the tenancy agreement. The notice is effective October 14, 2023 and contains a forwarding address of the tenants. Even if I were to find that this was a month-to-month tenancy, by giving notice to end the tenancy on September 19, 2023, the notice would not be effective until October 31, 2023.

This is not a month-to-month tenancy, but for a fixed term to expire August 31, 2024. The tenants gave notice to end the tenancy for breach of a material term of the tenancy agreement. I refer to Residential Tenancy Policy Guideline 8 – Unconscionable and Material Terms, which states, in part:

> A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.
>
> To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.
>
> The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that

one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

• that there is a problem;

• that they believe the problem is a breach of a material term of the tenancy agreement;

• that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and

• that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I accept the undisputed testimony of the tenant that the landlord's agent promised a clean, luxury and modern unit. I also accept the testimony that if the tenants had any idea, they would never have visited the unit, and specifically asked the landlord's agent about pets from previous tenancies.

I have reviewed all of the evidence of both parties, which includes a letter to the landlord's agent (VS) dated September 9, 2023 setting out the breach of the material term regarding mice in the rental unit and the health condition of the tenant. It states that the breach occurred on August 31, 2023, and that the tenant has the right to end the tenancy as soon as a safe and proper place to live is located. It also states that based on facts, the breach cannot be corrected in a short time frame. Then on September 15, 2023 the tenant sent an email to the landlord seeking a mutual agreement to end the tenancy, and the landlord's agent responded on September 18, 2023, saying that the landlord's agent would discuss it with the owner, to which the tenant replied to please respond by the end of the day. The following day, the tenant gave the notice to end the tenancy.

The tenants have also provided substantial evidence of the tenant's medical condition, as well as evidence of attempting to contact the landlord's agents, without much success since mid-July, 2023 before the tenancy began, and well after.

One of the landlord's agents testified that they answer any questions of prospective renters, however how would a person know to ask about mice? The landlord's agents testified that they had no reason to believe there were mice, but were well aware of it by the time the tenants sought a mutual agreement to end the tenancy.

In the circumstances, I find that the tenants were justified in ending the tenancy earlier than the end date of the fixed term. Therefore, I dismiss the landlord's claim for liquidated damages and loss of rental revenue.

As mentioned above, a tenant must give notice to end the tenancy before the date rent is payable, and I find that the tenants were required to pay rent for October, 2023 in the amount of **$2,995.00.**

A general rule about carpet cleaning, is that a tenant is required to do so if the tenant lived in the rental unit for a year or more, or had pets that were not kept in a cage. I agree with the tenants, that considering the tenants were only there for 44 days, and the only animals not in a cage were mice, and I dismiss the landlord's claim for carpet cleaning.

I am also satisfied in the evidence that the landlord is entitled to the strata charges for the fob of **$100.00** and parking pass of **$25.00**, as well as **$8.96** for key cutting.

I also accept the calculation given orally by the landlord's agent for an estimate of hydro charges in the amount of **$43.12.**

Since the landlord has been partially successful with the application the landlord is also entitled to recover the **$100.00** filing fee from the tenants.

The landlord holds a security deposit of $1,497.50, and I find that the landlord has made the Application for Dispute Resolution within the time required under the law. Having found that the landlord has established a claim totaling $3,272.08 ($2,995.00 + $100.00 + $25.00 + $8.96 + $43.12 + $100.00 = $3,272.08), I order the landlord to keep the $1,497.50 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlord as against the tenants for the difference of **$1,774.58.** The tenants must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the $1,497.50 security deposit, and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **$1,774.58.**

This order is final and binding and may be enforced.

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: February 14, 2024

Residential Tenancy Branch