DECISION

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

The Tenants file their own application seeking the following relief under the *Act*:

- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72.

J.S. attended as the Landlord. The Landlord was joined by his son, S.S., who spoke on his behalf and translated as needed. P.C. and L.S. attended as the Tenants.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Applications and Evidence

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

1) Is the Landlord entitled to a monetary order compensating for loss or other money owed?
2) Is the Landlord entitled to retain the security deposit or should it be returned to the Tenants?
3) Is either side entitled to their filing fee?

Evidence and Analysis

General Background

The parties confirmed the following details with respect to the tenancy:

- The Tenants moved into the rental unit on October 15, 2023.
- The Tenants surrendered the keys to the rental unit on November 30, 2023.
- Rent of $1,300.00 was due on the first day of each month.
- A security deposit of $650.00 was paid by the Tenants.

I have not been provided with a copy of the tenancy agreement. There was some dispute on whether there was a written tenancy agreement, which is not material to this dispute. Both parties confirm that the tenancy was on a monthly periodic term

1) Is the Landlord entitled to a monetary order compensating for loss or other money owed?

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Landlord's Claim

The Landlord, in his application, claims $1,300.00 describes his monetary claim as follows:

> Tenants moved out without a 30 day notice. Landlord was not informed by the tenants and did not hand over the key. No 30 day notice was provided. Landlord is claiming for rent for the period of 30 day notice to end the tenancy.

During the hearing, the Landlord's son began to make submissions with respect to a laundry machine that was allegedly damaged by the Tenants.

I advised the Landlord and his son of Rule 2.2 of the Rules of Procedure, which limits the claim to what is specifically stated in the application. In this instance, the application is unambiguous and does nor pertain to any alleged damage to the washing machine.

I enquired whether the Landlord had filed an amendment to the application. The Landlord's son says none was filed, believing that submitting evidence on the laundry machine was sufficient.

To be clear, Rule 2.2 protects the right of respondents, in this case the Tenants, to have notice of an applicant's claim. Indeed, this is a fundamental right to ensuring a procedurally fair process.

The issue of the laundry machine is not set out in the application and is not properly before me in the Landlord's application. Given this, I make no comments or findings on that point.

Tenants' Notice to Vacate

A tenant may end a tenancy by giving notice to their landlord pursuant to s. 45 of the *Act*. In the case of periodic tenancies, the effective date of the tenant's notice cannot be earlier than one month after the date the landlord receives the notice and is on a day before rent is due under the tenancy agreement. In this case, that would mean notice to vacate on November 30, 2024 would need to be given no later than October 31, 2024.

Further, a tenant's notice must comply with the formal requirements set out under s. 52 of the *Act*.

In this instance, the Landlord's son advises that the Tenants did not provide a written notice that they would be vacating the rental unit. I am told by the son that the rental unit was not re-rented until February 2024. The Landlord seeks a month's rent in lost renal income due to their being insufficient notice.

The Tenants testify that they had a troubled relationship with the Landlord, all of which led to a series of arguments that began after they confronted the Landlord and/or his wife on October 28, 2023 regarding alleged breaches to the Tenants' right to quiet enjoyment of their rental unit.

The Tenants say that on November 1, 2023 and argument took place in which the Landlord asked the Tenants to leave. I am told by the Tenants that they told the Landlord they would move out at the end of November 2023. I am told this communicated again on November 2, 2023 when L.S. paid rent to the Landlord. L.S. testified that the Landlord said he would return the security deposit when the Tenants moved out on November 30, 2023.

I enquired with the Tenants whether they provided written notice that they would be vacating. P.C. testified that they were unaware of the requirement to provide written notice, saying they did so via registered mail sent on November 20, 2023.

I am told by the Tenants that on November 15, 2023 the Landlord's son entered the rental unit and that the Landlord texted the Tenants that he believed they were moving out on that date. It was argued that the Landlord understood they would be leaving on November 30, 2023.

I note that on the Landlord's application, he lists that the tenancy ended on November 14, 2023, even though it was confirmed to me at the hearing that the Tenants surrendered their key, thereby surrendering possession, of the rental unit on November 30, 2023. I find the tenancy ended on November 30, 2023, which is when the Landlord took back possession of the rental unit.

Section 52 of the *Act* sets out the form and content requirements for a notice to end tenancy. In the case when a tenant issues a notice to end tenancy, the notice must be in writing, must be signed and dated by the tenant, and must state the address for the rental unit, and state the correct effective date of the notice.

I accept that the Tenants did not know they were obliged to do so and further accept that the Landlord likely was aware that the Tenants would be leaving in November 2023. In addition to the information on the Landlord's application noted above, I further note that it was filed on November 28, 2023, which is before the keys were surrendered and the tenancy ended.

Despite this, I cannot find that the Tenants complied with the requirement expected of all tenants under s. 45 of the *Act* to issue a notice to end tenancy that complies with s. 52 of the *Act*. In this instance, there is no dispute that the Tenants failed to provide written notice for ending the tenancy. This constitutes a clear breach of their obligations under the *Act* when seeking to end the tenancy.

I have considered the possibility that there was some how an agreement between the parties that the tenancy would end on November 30, 2023, thus comprising some form of settlement and preventing the Landlord from advancing the present claim. I find that there was none.

To be clear, I put the question to the Landlord's son, who specifically denies there being any sort of understanding that the Tenants could vacate without providing notice. I would further note that an agreement requires certainty on its terms, which in this case would mean certainty on when the tenancy would end. The conversation regarding the Landlord's belief the tenancy ended on November 15, 2023 would support that there was no consensus on when the tenancy would end if there was an agreement.

I have also considered whether the doctrine estoppel applies to the present circumstances in a general sense. Estoppel arises when the conduct of one party would reasonably lead the other party to conclude, when viewed from their perspective, that they could rely upon a representation waiving or varying their right.

I have been provided with audio recordings of a conversation I am told took place on November 2, 2023. However, the recording is not in English and I have been provided no translation verifying its contents such that I cannot rely upon the audio recording.

Looking at the Landlord's conduct generally, there is no reason to believe that the Landlord somehow represented that he would forego his right to receive written notice from the Tenants. The Tenants cannot unilaterally cause the Landlord to forego his right to written notice by mere fact that they, at first instance, gave notice in conversations they would be leaving. That's not how s. 45 works and is in clear breach of the process it sets out.

All of this turns on the admitted fact that the Tenants did not know they had to give written notice, correcting the issue as they did in late November 2023. In my view, the Tenants unfamiliarity on their obligations under s. 45 of the *Act* is no excuse.

I find that the Landlord has established that the Tenants breached the notice requirements set by s. 45 of the *Act*. I further find that the Landlord was deprived of a clear month's written notice, thus comprising his ability to advertise the rental unit for rent on December 1, 2023. I further find that the Landlord did not re-rent the rental unit until February 2024, meaning the Landlord lost one month in rental income had the Tenants given notice properly. I find that mitigation is not a relevant factor here as the Tenants' failed to give proper notice one month before the effective date of the end of the tenancy.

I grant the Landlord his monetary claim for $1,300.00 in rental income on the basis that the Tenants gave improper notice.

2) Is the Landlord entitled to retain the security deposit or should it be returned to the Tenants?

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address in writing, whichever is later, either repay a tenant their deposits or make a claim against the deposits with the Residential Tenancy Branch. A landlord may not claim against the deposit if the application is made outside of the 15-day window established by s. 38.

Under s. 38(6) of the *Act*, should a landlord fail to return the deposits or fail to file a claim within the 15-day window, or that their right to claim against the deposits has been extinguished, then they must return double the deposits to the tenant.

As noted above, the Landlord filed his application on November 28, 2023, which was before the tenancy ended on November 30, 2023. I find that the Landlord filed his application in compliance with the 15-day deadline imposed by s. 38(1) of the *Act*.

I note that I have considered the application of ss. 24 and 36 of the *Act*, both of which extinguish the rights of landlords and tenants to the deposit should they fail to adhere to

their respective obligations under ss. 23 and 35 as they relate to the condition inspection. I find that extinguishment is not a factor here.

As it relates to the Landlord, ss. 24 and 36 of the *Act*, even if they are engaged, would merely compromise his right to retain the security deposit against damage to the rental unit caused by the Tenants. It does not compromise the Landlord's right to claim against the security deposit, as was done here, for other compensation outside of damage to the rental unit.

I, therefore, direct under s. 72(2) of the *Act* that the Landlord retain the security deposit and interest on the security deposit, totalling $657.46 ($650.00 + $7.46), in partial satisfaction of his monetary claim.

As a result, I dismiss the Tenants' claim for the double return of their security deposit without leave to reapply.

3) Is either side entitled to their filing fee?

The Landlord was successful on his application. Given this, I grant the Landlord his $100.00 filing fee and order under s. 72(1) of the *Act* that the Tenants pay his filing fee.

As the Tenants were unsuccessful, I dismiss their claim for their filing fee, without leave to reapply.

Conclusion

I grant the Landlord $1,300.00 on his monetary claim for lost rental income.

I direct that the Landlord retain the security deposit and interest, totalling $657.46, in partial satisfaction of his monetary claim.

I dismiss the Tenants' claim for the double return of their security deposit, without leave to reapply.

I grant the Landlord his $100.00 filing fee, which shall be paid by the Tenants.

I dismiss the Tenants' claim for their filing fee, without leave to reapply.

In total, I order that the Tenants pay **$742.54** ($1,300.00 + $100.00 - $657.46) to the Landlord.

It is the Landlord's obligation to serve the monetary order on the Tenants. Should the Tenants fail to comply with the monetary order, it may be enforced by the Landlord at the BC Provincial 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: April 8, 2024

Residential Tenancy Branch