Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL, MNDL, MNDCL-S, FFL / MNRT, MNDCT, MNSD, FFT

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Landlord requests the following:

- A Monetary Order for unpaid rent and utilities under sections 26 and 67 of the Act;
- A Monetary Order for damage to the rental unit under section 67 of the Act;
- A Monetary Order for loss or other money owed under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement, under section 67 of the Act; and
- To recover cost of the filing fee for their Application from the Tenants under section 72 of the Act.

The Tenants request the following:

- A Monetary Order for the cost of emergency repairs under sections 33 and 67 of the Act;
- A Monetary Order for loss or other money owed under the Act, Regulation, or tenancy agreement, pursuant to section 67;
- A Monetary Order for the return their security deposit under sections 38 and 67
- of the Act; and
- To recover the filing fee for their Application from the Landlord under section 72 of the Act.

The Landlord and two of the Tenants attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Service of Notice of Dispute Resolution Proceeding and Evidence

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) for the other's Application. Based on their testimonies I find that each party was served with the Materials as required under section 89 of the Act.

The Landlord testified they served their evidence originally submitted with their Application to the Tenants along with the Materials. Further evidence was sent to the Tenants via email on April 29, 2024. The Tenants acknowledged receipt of all of the Landlord's evidence and raised no issues with service. Based on the Tenants' testimony, per section 88 of the Act I find the Landlord's evidence was sufficiently served to the Tenants.

The Tenants testified they served their evidence to the Landlord via mail on May 6, 2024, which is 7 days before the hearing, and submitted a Canada Post receipt as proof of service. The delivery service chosen by the Tenants was not registered mail and while a search of the tracking number of the Canada Post website confirms the package was delivered on May 7, 2024, there is no signature available, nor is there any information as to who, if anyone, received the package. The Landlord testified they had not received the Tenant's evidence.

Rule 2.5 of the *Rules of Procedure* sets out that to the extent possible, an applicant's evidence should be submitted at the same time as the application. Rule 3.11 states evidence must be served as soon as reasonably possible and that if a party unreasonably delays service of evidence, the arbitrator may refuse to consider the evidence. Rules 3.14 and 3.15 sets out that an applicant's evidence must be received by the respondent not less than 14 days before the hearing and a respondent's evidence must be received by the applicant lot less than 7 days before a hearing.

Based on the above, I find the Tenants served their evidence outside of the timeframes provided by the *Rules of Procedure*. I find there was insufficient evidence to indicate the Landlord received the Tenants' evidence, though it would have been deemed received on May 11, 2024, the fifth day after mailing, per section 90 of the Act, which was only

two days before the hearing, which I found would have been insufficient time for review given the volume of the Tenants' evidence.

I also note some of the documents submitted as part of the Tenants' evidence date back to 2020. Given this, I find there has also been an unreasonable delay in service of evidence on the Tenants' part in addition to the breach of timelines of service as set out above. Therefore, the Tenants' evidence was excluded from consideration.

Preliminary Issues

Request for Adjournment

The Landlord requested the hearing be adjourned as they felt unwell and had a cough. The Tenants objected to the request for adjournment.

Having considered the criteria for granting an adjournment set out in Rule 7.9 of the *Rules of Procedure*, particularly the possible prejudice to the parties and if adjournment is required to provide a fair opportunity for a party to be heard, I declined the request, though I was mindful of the Landlord's ability to speak and be heard during the hearing, which lasted approximately 2 hours and 25 minutes, and I detected no detriment to the Landlord in this regard, and I find they were able to participate fully for the entirety of the hearing.

Dismissal of Claims

The Landlord requested compensation relating to damage to the rental unit and for other monetary loss. The description of the claims appears to focus on carpets, flooring, cleaning and blinds, but the amount of compensation requested was $1.00 for both claims. The Landlord did not amend their Application ahead of the hearing.

During the hearing, the Landlord indicated they seek $13,978.86 in respect of the above-mentioned claims and had submitted an "invoice" for this amount into evidence on April 29, 2024. A Monetary Order Worksheet was not provided and The Tenants confirmed they did not understand the nature of the Landlord's claims against them for damages and other loss.

Section 59(2)(b) of the Act states that an application must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Rule 3.7 of the *Rules of Procedure* also states that evidence must be organized, clear and legible.

I found it was not clear from the Landlord's submissions, which evidence corresponded to each claim, and there appeared to be receipts submitted into evidence which did not match to the "invoice" document. Given this, and as the Tenants confirmed they did not understand the Landlord's claim against them, under my authority set out in section 59(5)(c) of the Act, and in the interests of procedural fairness, I dismiss the Landlord's claims for damage to the rental unit and for loss or other money owed, with leave to reapply.

As stated earlier in this Decision, I excluded the Tenants' evidence from consideration. The Tenants requested to withdraw their Application as a result. Given both parties' claims contained breaches of the Act and *Rules of Procedure*, in the interest of procedural fairness, I allowed the Tenants' Application to be withdrawn and allow them leave to reapply, though I dismiss without leave to reapply the Tenants' request to recover the filing fee for their Application from the Landlord.

Leave to reapply is not an extension of any applicable deadline for either party.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the Landlord entitled to retain the Tenants' security deposit?
- Is the Landlord entitled to recover the filing fee from the Tenants?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy commenced on July 1, 2016.
- The tenancy ended on January 3, 2024, through the mutual agreement of the parties in writing.
- Rent was $2,808.00 per month, due on the first day of the month when the tenancy ended.
- A security deposit of $1,250.00 was paid by the Tenants which the Landlord still holds.

- There is a written tenancy agreement, a copy of which was entered into evidence.

The Landlord testified as follows. The Tenants agreed to pay for the annual water bill for the rental unit, per the tenancy agreement. I was referred to a paragraph in the tenancy agreement which reads "…annual fix utility bill […] is at tenant charge." (sic).

The Landlord stated they asked the Tenants to pay the water bill which is issued annually by the municipality, but they never did, despite several "invoices". Copies of the annual water bills dated from 2016 to 2023 were entered into evidence. The Landlord seeks a total of $3,951.82 in unpaid water bills, plus $1,644.25 in late payment charges for a total of $5,596.07.

The Landlord also seeks $17,262.00 in unpaid rent and late payment charges which date back to July 2018. The tenancy agreement which commenced July 1, 2016 provided for rent of $2,500.00 per month. The parties then signed a new tenancy agreement effective July 1, 2017 whereby rent was $2,700.00 per month.

The Landlord served a Notice of Rent Increase, effective July 1, 2018 increasing rent by 4% per the Regulation, taking rent to $2,808.00 per month. The Tenants disputed both rent increases which had taken effect by that point in the tenancy, but their application was dismissed without leave to reapply. A copy of the decision for the previous file was submitted into evidence and the file number is listed on the front page of this Decision for reference.

The Landlord served the Tenants with further Notices of Rent Increase every year by attaching to the door of the rental unit, taking rent to $3,165.00 per month as of January 1, 2024, per the Landlord's summary of rent payments entered into evidence. The Tenants continued to pay $2,808.00 per month throughout the tenancy and did not adhere to the rent increases. Copies of two Notices of Rent Increase were submitted into evidence by the Landlord, effective July 1, 2018 and September 1, 2022.

As the Tenants did not pay rent due December 1, 2023 and January 1, 2024, the Landlord seeks two months' full rent for these months also.

I asked the Landlord why they did not take any action regarding the alleged unpaid rent and utilities until after the tenancy ended, for exampled by issuing a 10 Day Notice to End Tenancy for Unpaid rent, or submitting an application to the Residential Tenancy Branch for a Monetary Order. The Landlord stated they did not want to make a claim

against the Tenants and indicated they were trying to maintain a good relationship, though demands for payment were made via email. Though the Landlord stated they submitted copies of the alleged demands into evidence, they were unable to direct my attention to these documents and I was unable to locate any in the Landlord's evidence.

The Tenants testified as follows. They paid for the utilities such as cable and they were never sent any documents from the municipality showing the water bill for the rental unit.

They acknowledged they disputed the rent increases taking rent from $2,500.00 to $2,700.00 from July 1, 2017 and then from $2,700.00 to $2,808.00 from July 1, 2018 and that their application was dismissed without leave to reapply, though stated the latter rent increase was obtained by fraud.

The Tenants confirmed they paid $2,808.00 per month in rent throughout the tenancy and disputed ever receiving a Notice of Rent Increase after 2018, though stated the Landlord would email them asking for a higher amount each year.

The Tenants testified they never got any correspondence from the Landlord asking for unpaid rent throughout the entirety of the tenancy and argued they paid the last month of the tenancy in advance in 2016, so withheld the payment due December 1, 2023. They had told the Landlord the rental unit was ready to hand over at the end of December 2023, and had emailed notice to end the tenancy, but the Landlord requested a mutual agreement to end tenancy effective January 3, 2024.

In response to the Tenants' testimony, the Landlord disputed the notion they received the last month of rent in 2016, and the Tenants had paid the twelfth and last month of the fixed term in advance by cheque only.

The parties agreed that the forwarding address in writing for one of the Tenants, ZDS, was provided to the Landlord on January 3, 2024 in-person when the mutual agreement to end tenancy was signed. The Landlord stated they asked the other two Tenants for their address via email after January 3, 2024, but this was not provided.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means

that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Unpaid Rent and Utilities

A tenancy agreement can provide that a tenant is responsible for paying utilities to the landlord, or that the tenant must put utilities in their own name. The Landlord seeks to recover $5,596.07 relating to water bills dating back to 2016 from the Tenants, and relies on a term of the tenancy agreement referenced in the previous section of this Decision.

I find there are two key issues with the Landlord's claim. Firstly, I find the term in the tenancy agreement relied upon by the Landlord is vague and unclear. I find it does not clearly set out the Tenants are responsible for paying water bills for the rental unit. I find the phrase "annual fix utility bill" to be nebulous and does not clearly communicate to the Tenants exactly what they are responsible for, indeed the Tenants seemed to be of the understanding they had met their obligations under this term by paying for cable and other utilities for the rental unit.

Given the above, I find the term the Landlord seeks to rely on is unenforceable under section 6(3) of the Act as it is not expressed in a manner that clearly communicates the rights and obligations under it.

Secondly, the Landlord seeks to claim payments purportedly due under the term dating back to the start of the tenancy in July 2016. Whilst the Landlord testified they had demanded payment from the Tenants during the tenancy, this was disputed by the Tenants and I found no corroborating evidence to support the Landlord's position.

Based on this, I find on a balance of probabilities that Landlord has failed to establish they made clear demands to the Tenants for payment of the water bills, nor did they clearly communicate they intended to rely on this term, until the Application was made shortly after the tenancy ended. Given this, I find the equitable principle of estoppel applies here. Section 91 of the Act sets out that common law applies, except as modified or varied under the Act.

Estoppel, simply put, is a legal principle whereby a party is prevented from relying on a term or right if it would be unfair for them to do so, when previous conduct indicates they do not intend on relying on that term or right. In this case, I find the Landlord has failed to assert their alleged right under the tenancy agreement for the Tenants to pay the

annual water bills for the entirety of the tenancy, a period of around seven and a half years. Therefore, I find the Landlord is estopped from relying on this term and I dismiss the claim for unpaid utilities without leave to reapply.

I find similar issues with the Landlord's claim for unpaid rent. The Landlord claims unpaid rent dating back to July 1, 2018 and alleges they served Notice of Rent Increases each year since then, which the Tenants allegedly did not comply with. Again, I found insufficient evidence to corroborate the Landlord's testimony, which was disputed by the Tenants, that they requested the full amount of rent due under the rent increases. This is a period of around six years where I find the Landlord failed to indicate, either expressly or implicitly, that they intended to rely on the rent increase purportedly served to the Tenants so the Landlord is estopped from doing so.

There are two more fatal issues with the Landlord's claim for unpaid rent. I find the Landlord failed to establish they served the Notices of Rent Increase to the Tenants, beyond that effective July 1, 2018. Only one Notice of Rent Increase after this date was submitted into evidence which appears to take rent from $2,881.00 to $2,924.22 effective September 1, 2022 and no proof of service documents were provided. The Tenants disputed ever receiving the notices which I find to be credible, given the above.

The second issue is that the amount on the rent increase from 2022 is inconsistent with the calculations submitted into evidence by the Landlord, where they are seen to claim rent was $2,998.00 per month from July 1, 2022, which brings into question the amounts claimed by the Landlord.

Given the above, I find the Landlord has failed to establish they served the Notice of Rent Increases as alleged to the Tenants and that they can rely on these for their claim for unpaid rent against the Tenants. Accordingly, I find that monthly rent from July 1, 2018 was $2,808.00 until the end of the tenancy. It was undisputed this amount was paid throughout the tenancy by the Tenants, with the exception of the last month and three days of the tenancy, which ended January 3, 2024.

Whilst the Tenants argued they had already paid the last month's rent at the start of the tenancy, this was disputed by the Landlord. I find the Tenants' argument to carry little weight and to be implausible. Based on the tenancy agreement submitted into evidence, it appears the parties agreed for the last month of the initial fixed term, i.e. June 2017, to be paid in advance for an amount of $2,500.00 and it does not seem at all logical for this to be held back for a further seven or so years.

Given the above, I find the tenants were obligated under the tenancy agreement, and section 26 of the Act, to pay rent of $2,808.00 due on December 1, 2023 and failed to do so. I therefore grant the Landlord a Monetary Order for this amount accordingly, plus $271.74 for the period January 1, 2024 to January 3, 2024 when the tenancy ended, per the mutual agreement, and with it, the Tenants' obligation to pay rent. The amount of $271.74 was calculated based on a *per diem* rate of $90.58 ($2,808.00 ÷ 31) for three days. Under section 67 of the Act I issue the Landlord a Monetary Order for $3,079.74.

Security Deposit

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within fifteen days of the tenancy ending and receiving the tenant's forwarding address in writing, which ever is later.

Nothing before me indicated the Tenants extinguished their right to the return of the security deposit by failing to participate in an inspection of the rental unit after being given two opportunities to do so, per sections 24 and 36 of the Act.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

It was undisputed the tenancy ended on January 3, 2024 through a mutual agreement of the parties in writing. It was also undisputed that the forwarding address for one of the Tenants was provided to the Landlord on the mutual agreement to end tenancy, and the Landlord confirmed receipt on the same day, January 3, 2024.

As the Tenants are jointly and severally responsible for meeting terms under a tenancy, there is no requirement for the Landlord to have all three Tenants' forwarding addressed before returning the security deposit. This means the Landlord would have had to either return the security deposit to the Tenants or make an application for dispute resolution claiming against the security deposit by January 18, 2024.

As the Landlord submitted their Application on January 19, 2024, I find the Landlord has failed to comply with section 38(1) of the Act. The Landlord must therefore return double the security deposit to the Tenants, per section 38(6) of the Act.

Per section 4 of the Regulation, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated as $37.16 using the Residential Tenancy Branch interest calculator using today's date. The interest applies only to the original deposit and is not doubled.

As I have made a payment order in favour of the Landlord under section 67 of the Act, as stated earlier in this Decision, I authorize the Landlord to retain the Tenants' security deposit in partial satisfaction of the payment order under section 72(2)(b) of the Act.

Filing Fee

As the Landlord has been partially successful in their Application, I order the Tenants to pay the Landlord the amount of $100.00 in respect of the filing fee in accordance with section 72 of the Act.

Conclusion

The Landlord's Application is granted in part.

The Landlord is issued a Monetary Order for unpaid rent. A copy of the Monetary Order is attached to this Decision and must be served on the Tenants. It is the Landlord's obligation to serve the Monetary Order on the Tenants. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	**Amount**
Unpaid rent	$3,079.74
Filing fee	$100.00
Less: security deposit, plus interest	($1,287.16)
Less: double security deposit	($1,250.00)
Total	**$642.58**

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: May 15, 2024