DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution (Application) under the *Residential Tenancy Act* (Act) for:

- recovery of unpaid or lost rent;
- authorization to retain all or a portion of the Tenant's security and pet damage deposits; and
- authorization to recover the filing fee for this application from the Tenant.

This hearing also dealt with the Tenant's Application and Amendment under the Act for:

- compensation for monetary loss or other money owed;
- the return of double the amount of their security and pet damage deposits; and
- authorization to recover the filing fee for this application from the Landlord.

Previous hearings were held in relation to these Applications on January 11, 2024, and May 7, 2024. Interim Decisions were issued on these same dates. For the sake of brevity, I will not repeat here the matters covered in the Interim Decisions. As a result, they must be read in conjunction with this Decision.

Service of Evidence

The parties acknowledged receipt of the documentary evidence before me from one another, except for two videos submitted by the Tenant, which the Landlord denied receiving. The Tenant stated that they were emailed to the Landlord in June of 2023. However, the Landlord stated that all tenants were advised in June that this email was no longer valid for them, and that in any event, they never agreed to service by email. Although the Tenant later received an Order for Substituted Service allowing them to serve the Landlord by email, this was not until August 1, 2023. The Tenant acknowledged that they did not re-serve this evidence on the Landlord in accordance with the Order for Substituted Service after it was received.

Based on the above, I was not satisfied that the Landlord received the videos, or that the email address used to send them was a valid address for service on the Landlord under the Act and regulations at the time they were sent. As a result, I did not find them properly served on the Landlord and they were excluded from consideration.

Preliminary Matters

Matter #1

At the hearing on January 11, 2024, agents for the Tenant A.A. and K.C. attended the hearing to request an adjournment on behalf of the Tenant's lawyer A.E. A.E. did not attend the hearing. The agents stated that the Tenant's lawyer A.E. was occupied on an urgent matter and could not attend, so they were asked to attend on their behalf and request an adjournment.

The Agents stated that the adjournment should be granted as the Tenant is not at fault for their lawyer's inability to attend due to unforeseen and urgent circumstances. However, the agents were either unaware of the exact nature of the alleged unforeseen urgent circumstances of A.E., or unwilling or unable to disclose them, as no details were provided about these circumstances when explicitly asked, stating only that they were tied up on another matter. As a result, I was unable to determine the degree to which A.E.'s actions or neglect contributed to their need for an adjournment, or whether the circumstances surrounding their lack of attendance were indeed unforeseen and urgent.

Further to this, while rule 6.7 of the Residential Tenancy Branch Rules of Procedure (Rules) states that parties may be represented or assisted at a hearing, representation and assistance is not a requirement, as the dispute resolution process is designed for unrepresented parties. As the Tenant and two agents acting on their behalf were present, I was not satisfied that an adjournment was required for the Tenant to have a fair opportunity to be heard.

As a result of the above, the request for adjournment was denied and the hearing proceeded as scheduled.

Matter #2

With the consent of the parties, the Application(s) were amended to reflect the Landlord's legal name pursuant to rule 7.12 of the Rules.

Matter #3

At the hearing on May 7, 2024, the Landlord acknowledged receipt of the Amendment from the Tenant in December of 2023. The Tenant's Application was amended accordingly to add a $29,000.00 claim for compensation for monetary loss or other money owed and increase the claim for return of the security and pet damage deposits from $1,200.00 to $2,400.00.

Matter #4

At the outset of each hearing the parties were advised of my expectations for appropriate conduct, which included instructions not to interrupt one another. They were also advised of the potential consequences for failing to comply with these expectations

and instructions, such as being muted or removed from the teleconference. Despite this, the Landlord repeatedly interrupted the Tenant and the Tenant's lawyer at the hearing on June 4, 2024. I advised the Landlord that they could either stop interrupting and let the hearing proceed, or be muted, but their behaviour continued. I advised the Landlord that they would be muted while the Tenant and their lawyer presented their evidence and submissions, but before I could do so in the teleconferencing system, the Landlord angrily hung up.

Although the teleconference remained open and unlocked for the duration of the 50-minute hearing to allow the Landlord or an agent acting on their behalf to call-back in, they did not do so. Pursuant to rule 7.3 of the Rules, the hearing proceeded as scheduled despite the absence of the Landlord or an agent acting on their behalf.

Issues to be Decided

Is the Landlord entitled to recovery of unpaid or lost rent?

Is the Tenant entitled to compensation for monetary loss or other money owed?

Are the parties entitled to recover their respective filing fees?

Is the Landlord entitled to retain all or a portion of the Tenant's security and pet damage deposits? If not, is the Tenant entitled to their return or double their amounts?

Background and Evidence

I have reviewed all evidence accepted for consideration, including testimony, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this fixed term tenancy began on November 1, 2022, with a monthly rent of $1,200.00, due on the first day of the month, with a security deposit in the amount of $600.00 and a pet damage deposit in the amount of $600.00. The end date for the fixed term was set as November 1, 2023.

The parties agreed that the Tenant rented a room in a detached home, where common areas such as the yard, living room, kitchen, and bathrooms were shared with other tenants of the home. The other tenants each rented rooms separately from the Landlord under separate tenancy agreements. The Landlord did not reside at the property.

Although the parties agreed that the Tenant vacated the rental unit near the end of June 2023, they disagreed about why. The Landlord argued that the Tenant abandoned the rental unit after failing to give proper notice to end their tenancy. The Tenant and their lawyer argued that the Tenant was bullied and forced out of the rental unit prematurely by the Landlord. Although the Tenant argued that a Two Month Notice and a One Month Notice were also served on them by the Landlord, the Landlord disagreed. The Landlord denied serving a One Month Notice at all, and stated that the Two Month Notice given

to the Tenant was just an “example” and a “mistake”. They also argued that it was withdrawn by them because the effective date was incorrect. However, they acknowledged that at no point did the Tenant explicitly state or indicate that they agreed with its withdrawal. Although the parties agreed that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) had also been served, the Tenant acknowledged receipt of only the first page, thus arguing that it was invalid and not the reason for the end of the tenancy.

All three of the above noted notices to end tenancy were disputed by the Tenant with the Branch. However, when the parties appeared at the hearing on June 20, 2023, the Tenant had already vacated the rental unit. As a result, the Arbitrator dismissed the Tenant’s claims regarding cancellation of these notices without leave to reapply, stating that the Tenant had voluntarily vacated the rental unit.

Despite the above, the parties agreed that the property was sold to new owners, who wanted the property vacated so that they or their close family members could occupy it. While the Landlord argued that the Two Month Notice before me was sent by “mistake” and just an “example”, it is on the approved Branch form. It is signed and dated by the Landlord on May 18, 2023, contains the address for the rental unit, and has an effective date of August 1, 2023. It also states that the notice is being served because the property has been sold, all conditions for sale of the property have been satisfied or waived, and the purchasers have requested in writing that the Two Month Notice be served because they or their close family members intend in good faith to occupy the rental unit. No information for the purchasers is set out on the Two Month Notice.

A copy of the Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession form was submitted for my consideration. It states that the Landlord and the purchasers entered into a contract on May 10, 2023, all conditions for sale of the property have been satisfied or waived, and the purchasers are requesting that the Landlord serve a Two Month Notice effective November 1, 2023, as they or their close family members intend in good faith to occupy the property.

The Landlord stated that at the time the Two Month Notice was provided to the Tenant, it was believed that all tenants at the property had month to month tenancies. They stated that shortly thereafter they realized that the Tenant had a fixed term tenancy until November 1, 2023, and they attempted unsuccessfully to negotiate a mutual agreement with the Tenant to end the tenancy on August 1, 2023, so as not to delay the sale of the property. The Landlord stated that when an agreement could not be reached, they assumed that the notice was invalid as it had an incorrect effective date. Ultimately the possession date for the sale was moved to November 1, 2023, the end date for the Tenant’s fixed term and the earliest date upon which the tenancy could be ended via a Two Month Notice.

The Tenant and their lawyer argued that the Tenant believed that the effective date on the Two Month Notice trumped the end date for their fixed term, and did not know that the effective date was automatically corrected under the Act. They also denied ever

agreeing that the Two Month Notice could be withdrawn by the Landlord. The Tenant and their lawyer argued that after the Landlords attempts to have them vacate the rental unit early failed, they began bullying, harassing, and intimidating the Tenant to such a degree that the tenancy became untenable for them. The Tenant accused the Landlord of activities including but not limited to sending them texts late at night, disturbing them intentionally with noise, making lude and inappropriate comments to and about them, and having their guest's make lude and inappropriate comments to and about the Tenant.

As a result of the above, the Tenant and their lawyer argued that the Tenant had no choice but to end the tenancy early and vacate. The Tenant stated that rent at their new place is $600.00 more per month, and therefore sought recovery of $3,000.00 from the Landlord, the amount they believe they have lost over the balance of their fixed term by having to vacate early. They also sought $16,000.00 in aggravated damages and $5,000.00 in nominal damages due to the intangible damages and losses suffered due to:

- mental agony;
- numerous vexatious notices to end tenancy;
- harassment by the Landlord and the Landlord's friends;
- numerous entries to common areas without notice; and
- forcing them out of the rental unit early.

Further to the above, the Tenant also sought a $200.00 per month rent reduction over a period of 7 months, stating that the Landlord refused to take adequate and expedient action regarding rodent and bed bug infestations. The Tenant characterized this experience as living in constant fear of a bed bug infestation and stated that they had to live out of bags for months.

The Landlord denied the allegations made against them by the Tenant and the Tenant's lawyer. The Landlord also sought recovery of lost rent over the balance of the Tenant's fixed term, stating that the room could not be re-rented after the Tenant's early departure due to the purchaser's pending occupation of the home. The Tenant's lawyer argued that the Landlord should not be entitled to such compensation, as the tenancy was already being ended by the Two Month Notice. They also argued that the Tenant is entitled to one months rent under section 51(1) of the Act, as this was not received and the Tenant was served with a Two Month Notice. The Landlord agreed that no compensation was provided to the Tenant under section 51(1) of the Act as they believed the Two Month Notice to have been withdrawn and the Tenant unlawfully ended their fixed term tenancy early.

The Landlord also sought recovery of $156.00 in outstanding utilities. Although the parties agreed that the Tenant was responsible for paying for their utility usage, the Tenant stated that these amounts are no longer owed as they were paid the first week of June via etransfer. The Landlord denied receipt of this etransfer.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party bearing the burden of proof must provide sufficient evidence over and above their testimony and submissions to establish their claim. In this case, the parties bear the burden of proof on a balance of probabilities in relation to their own claims.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations, or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results. It also states that the party claiming the loss must do whatever is reasonable to minimize the damage or loss.

To be awarded compensation, the applicant must therefore prove on a balance of probabilities:

- that the respondent failed to comply with the Act, regulation, or tenancy agreement;
- that loss or damage resulted from this failure to comply;
- the amount of or value of the damage or loss suffered; and
- that the applicant acted reasonably to minimize that damage or loss.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Is the Landlord entitled to recovery of unpaid or lost rent?

I accept the following agreed upon things as fact:

- this was a fixed term tenancy with an end date of November 1, 2023;
- the Tenant vacated the rental unit on or about June 20, 2023;
- the last rent paid by the Tenant to the Landlord was in June of 2023;
- rent in the amount of $1,200.00 was due on the first day of each month.

As set out in Guideline 30, neither a landlord nor a tenant may end a fixed term tenancy during the fixed term unless:

- they have cause under section 45(3), 46, or 47 of the Act to end the tenancy;
- they mutually agree to end the tenancy early under section 44(1)(c) of the Act; or
- the Tenant has grounds under section 45.1 of the Act to end the tenancy for family violence or long-term care.

As there is no evidence before me that the tenancy ended under section 45.1 of the Act, I find that it did not. While the parties disputed the ultimate reason for the end of the tenancy, I am satisfied that the Tenant ended their fixed term tenancy early, and without lawful cause to do so. Although various notices to end tenancy were served on the Tenant, which the Tenant appears to have disputed on time, they vacated the rental unit

on or before the hearing set for June 20, 2024, regarding the validity and enforceability of these notices to end tenancy. As a result, I find that the tenancy ended when the Tenant chose to vacate the rental unit.

While the Tenant argued that they were bullied and forced into doing so, they have failed to satisfy me that this is the case. The little corroboratory evidence submitted by the Tenant for my consideration in relation to these allegations, such as copies of communications between them, a police report, a text message, and several photographs fall significantly short of establishing these very serious claims.

While the police report establishes a noise complaint on one occasion, it also indicates that the Landlord was cooperative and that when police returned a second time that same night at the Tenant's insistence, the Landlord was found not to be making an unreasonable amount of noise. Although a text message to them from the Landlord was also submitted with a time stamp of 1:44 a.m., it contains only two lines of gibberish and two innocuous images. One is an image of a piano and one is a photograph of an unknown woman. While I appreciate that the Tenant may have been disturbed by the late hour of this message, I find nothing harassing or inherently inappropriate in nature about it. In addition to this, it appears to have occurred on only one occasion, just like the noise complaint.

While the Tenant submitted three photographs of the Landlord and other persons outside, these photographs satisfy me only that the Landlord was on the common property. They do not corroborate in any real or tangible way the allegations made by the Tenant regarding the behaviour of the Landlord and their guests while at the property. Finally, in reviewing the communications exchanged between the parties via text and email, I find nothing harassing, bullying or inappropriate in nature about what is said by the Landlord. In fact, the Landlord's written communications with the Tenant appear to me to be polite and respectful.

With regards to the Tenant's claims that the Landlord was attempting to circumvent the Act by way of a mutual agreement to end the tenancy, I disagree. Parties are entitled to enter into mutual agreements to end a tenancy. I find the Landlord's attempts to do so merely an exercise of this right.

As a result of the above, I do not accept the Tenant's claims that they were bullied and forced out of the rental unit by the Landlord. Regardless, even if I were satisfied of these claims, which I am not, the Tenant would have been required to end their tenancy under section 45(3) *[Tenant's notice: breach of a material term]* as a result. There is no evidence that a breach letter that complies with the requirements set out under Guideline 8 was served on the Landlord by the Tenant. Further to this, none of the written communications before me from the Tenant meet the criteria set out under section 52 of the Act to be considered an effective notice to end tenancy. I therefore find that the Tenant could not have been determined to have lawfully ended the tenancy under section 45(2) of the Act, even if I had been satisfied of their claims against the Landlord.

While tenants with a periodic tenancy may exercise their right to end their tenancy earlier than the effective date of a Two Month Notice, provided they comply with the terms set out under section 50 of the Act, this option is not available to tenants with a fixed term. As a result, I find that no other option was lawfully available to the Tenant to unilaterally end their fixed term tenancy earlier than the end date for the fixed term, which was also the corrected effective date for the Two Month Notice.

As this was a fixed term tenancy until November 1, 2023, I find that the Tenant's only other option to lawfully end their tenancy when they did was to reach a mutual agreement with the Landlord under section 44(1)(c) of the Act. While the parties entered negotiations to that affect, no mutual agreement was ever reached. As a result, I find that the Tenant ended their own tenancy when they vacated the rental unit on or shortly before June 20, 2023.

I am satisfied as set out above that the Tenant breached both the Act and their tenancy agreement by improperly ending their fixed term tenancy early. I am also satisfied that the Landlord suffered a loss of $4,800.00 as a result. This amount represents the amount that the Tenant would have paid over the remaining balance of their fixed term, had they fulfilled their obligations under the tenancy agreement. Finally, I am satisfied that the Landlord attempted to mitigate this loss by trying to secure a mutual agreement with the Tenant, and that they were prevented from further mitigating this loss, as the rental unit could not be re-rented before the purchasers took possession. Pursuant to sections 7 and 67 of the Act, and in line with Guideline 16, I therefore grant the Landlord $4,800.00.

Although the parties agreed that the Tenant was responsible for paying utilities under their tenancy agreement, they disagreed about whether the $156.00 sought in unpaid utilities by the Landlord remained unpaid. The Tenant stated that this amount was paid to the Landlord by etransfer the first week of June. While the Landlord denied this, they bore the burden of proof in relation to this claim and no documentary or other evidence was submitted to counter the Tenant's assertion that this amount was previously paid or to satisfy me on a balance of probabilities that this amount was still owed as of the date of the hearing. As a result, I dismiss their claim for recovery of this amount without leave to reapply.

Is the Tenant entitled to compensation for monetary loss or other money owed?

Section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 of the Act 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 set out above, I am satisfied that the Tenant was served with a Two Month Notice by the Landlord under section 49(5) of the Act. I am also satisfied based on the affirmed testimony of the parties and the documentary evidence and submissions before me, that rent in the amount of $1,200.00 was due each month under the tenancy agreement.

As a result of the above, and as the parties agreed that the Tenant never received compensation from the Landlord under section 51(1) of the Act, I therefore grant the Tenant recovery of $1,200.00 from the Landlord. I make this finding regardless of why the tenancy ultimately ended, as I find that entitlement to this compensation is tied by the wording of the Act to service of the Two Month Notice, not the ending of the tenancy as a result.

I will now turn to the Tenant's claims for aggravated and nominal damages, and their claim for loss due to increased rent under their new tenancy agreement. The Tenant claimed that the Landlord caused them significant emotional distress by:

- entering the rental unit contrary to the Act;
- partying on the property;
- texting them in the middle of the night;
- making sexual and derogatory comments to and about them;
- having their friends make sexual and derogatory comments to and about them;
- issuing vexatious notices to end tenancy; and
- harassing them in general such that the tenancy became untenable.

The Tenant and their lawyer argued that these actions significantly infringed upon their right to quiet enjoyment under section 28 of the Act and caused them undue stress and hardship during an already traumatic time in their life, thereby devaluing their tenancy. The Tenant bears the burden of proof in relation to their own claims, and for the reasons set out below, I find that they have failed to satisfy me on a balance of probabilities that they are entitled to the above noted compensation sought. I have already found above that most of the Tenant's claims with regards to the Landlord's behaviour and the behaviour of their guests are unfounded.

Although the Tenant argued that the Landlord repeatedly entered the common areas of the rental unit without notice, this is explicitly denied in writing by two statements submitted on behalf of the Landlord from other occupants of the home. Further to this, as the Tenant rented only a room in a home shared by other tenants of the Landlord under separate agreements, I find that they only had exclusive use and possession of their room under their tenancy agreement. As a result, I find that the Landlord was therefore not required to give notice to enter the common areas of the shared property. and that neither the Tenant nor their guests had any reasonable expectation of privacy in these areas of the home, such as the living room and kitchen.

As a result, I dismiss the Tenant's claims for both aggravated and nominal damages without leave to reapply. I also dismiss the Tenant's claim for loss associated with their new rent amount, without leave to reapply. While I accept that the Tenant is now paying $600.00 more per month in rent, as set out above, I am satisfied that the Tenant unlawfully ended their fixed-term tenancy agreement early. As a result, they are not entitled to recoup any additional rent costs now owed by them to their new landlord.

I will now turn to the Tenant's claim for a 7-month retroactive rent reduction of $200.00 per month. The Tenant alleged that there were ongoing bed bug and mice infestations that the Landlord failed to address in a timely and adequate manner. However, the only corroboratory evidence submitted by the Tenant to support these claims were three photographs of a cat and dead mice, one email about mice, and an email to the Landlord from another Tenant that there are bed bugs. While this evidence satisfies me that there were mice and bed bugs, it does not satisfy me that that Landlord knew about this and failed to take adequate or timely action to address them as alleged by the Tenant. Based on the above, I therefore dismiss the Tenants claims for a rent reduction, without leave to reapply.

Is the Landlord entitled to retain the Tenant's security and pet damage deposits? If not, is the Tenant entitled to their return or double their amounts?

The parties agreed that:

- a $600.00 security deposit and a $600.00 pet damage deposit were paid by the tenant;
- both deposits are still held by the Landlord;
- the tenancy ended on or about June 20, 2023;
- no move-out condition inspection was scheduled or completed; and
- neither section 38(3) nor section 38(4)(a) of the Act apply.

I therefore accept the above as fact. As a result, I find that the Landlord currently holds $1,240.20 in trust for the Tenant. This amount includes the $1,200.00 in deposits originally paid, plus $40.20 in interest accrued as of today's date.

I also find that the Landlord extinguished their right to claim against the deposits for damage at the start of the tenancy under sections 24(2)(c) of the Act. The Tenant provided affirmed testimony that the Landlord did not provide them with a copy of the move-in condition inspection report as required, and the Landlord testified that they do not recall if this was done. As a result, I find it more likely than not that the Landlord did not provide the Tenant with a copy as required by section 23(5) of the Act.

Section 38(1) of the Act states that unless subsections 3 or 4(a) apply, a landlord must, within 15 days of the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, either:

- repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or
- make an application for dispute resolution claiming against the deposits.

Section 38(6) of the Act states that if a landlord does not comply with subsection 1, the landlord may not claim against the security deposit or any pet damage deposit and must pay the tenant double their amounts.

The Tenant stated that they posted their forwarding address to the door on June 27, 2023. The Landlord did not deny this and acknowledged receipt via an email dated June 30, 2023. As a result, and as there is no evidence before me that the Landlord received it on an earlier date, I deem it served on the Landlord three days later, on June 30, 2023, pursuant to section 90(c) of the Act.

The Landlord extinguished their right at the start of the tenancy to claim against the deposits for damage. Pet damage deposits can only be claimed against for pet damage as set out under sections 1 and 38(7) of the Act and Guideline 31. As a result, I find that the Landlord was required to return the full amount of the pet damage deposit to the Tenant by July 15, 2023, and was not entitled to retain it as part of their Application. As they did not return the pet damage deposit as required, I find that the Tenant is entitled to $1,220.10 under section 38(6) of the Act. This amount includes double the initial $600.00 deposit paid, plus $20.10 in accrued interest.

Despite the above, the Landlord retained the right to claim against the security deposit for things other than physical damage. As the Landlord filed such a claim on July 14, 2023, I find that they complied with section 38(1) of the Act with regards to the security deposit. The Tenant's claim for double its amount under section 38(1) of the Act is therefore dismissed without leave to reapply.

Based on the above, and pursuant to section 72(2)(b) of the Act, I find that the Landlord is entitled to retain the $620.10 security deposit and interest currently held in trust, in partial satisfaction of the above noted amounts owed to them by the Tenant.

Are the parties entitled to recover their respective filing fees?

As both parties were at least partially successful, I grant them recovery of their respective $100.00 filing fees pursuant to section 72(1) of the Act.

Conclusion

Based on the above, I find that Tenant owes the Landlord $4,279.90, and that the Landlord owes the Tenant $2,520.100. I have offset these amounts against one another. Pursuant to section 67 of the Act I therefore grant the Landlord a Monetary Order in the amount of $2,520.10. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible using a service method approved for this purpose under the Act. Should the Tenant fail to comply with this Order, it may be filed and enforced in the Small Claims Court of British Columbia if equal to or less than $35,000.00. Monetary Orders that are more than $35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

I believe that this decision has been rendered within 30 days after the close of the proceedings, in accordance with section 77(1)(d) of the Act and the *Interpretation Act* with regards to the calculation of time. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if it is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected if I have erred in my calculation of time and this decision and the associated Order were issued more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under section 9.1(1) of the Act.

Dated: July 4, 2024

Residential Tenancy Branch