Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding CANADIAN NATIONAL RELOCATION LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, LRSD, FFL / MNSDS-DR, FFT

Introduction

This reconvened hearing dealt with 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 under section 67 of the Act;
- Authorization to retain the Tenant's security deposit under section 38 of the Act; and
- Authorization to recover the filing fee for this Application from the Tenant under section 72 of the Act.

The Tenant requests the following:

- A Monetary Order for the return of their security deposit under sections 38 and 67 of the Act; and
- Authorization to recover the filing fee for this Application from the Landlord under section 72 of the Act.

A previous hearing took place on July 25, 2024, which was adjourned due to time constraints and to allow for service of the Tenant's evidence. This Decision should be read in conjunction with the interim decision dated July 25, 2024 (the Interim Decision).

Preliminary Issues - Exclusion of a Witness and Relevance of Evidence

Approximately 20 minutes into the second hearing and during the Tenant's submissions a witness, UM, dialed into the hearing at the request of the. The Landlord did not

provide notice UM would be attending the hearing at any stage. I excluded UM from the hearing under rule 7.22 of the *Rules of Procedure* given it would be procedurally unfair if they were allowed to listen to the submissions of the parties before providing their testimony.

The Landlord did not call UM as a witness after they exited the hearing, though the Tenant's Agent later requested UM join the hearing once again to face cross-examination. I canvassed the Tenant's Agent as to the relevance of the evidence UM may be able to provide and deemed it unnecessary and not relevant to the issues at hand.

Rule 7.19 of the *Rules of Procedure* states that each party will be given an opportunity to present evidence related to the claim and that an arbitrator has the authority to determine the relevance, necessity, and appropriateness of evidence. Additionally, rule 7.21 of the *Rules of Procedure* states that parties are responsible for having their witnesses available for the hearing.

The Tenant's Agent requested UM rejoin the hearing after approximately two hours and thirty minutes of total hearing time had elapsed. Given this, I find the Tenant had ample opportunity to have UM attend at an earlier and more appropriate stage of proceedings should they have wished. As such, I did not permit the Tenant to call UM as a witness.

The Tenant's Agent consistently provided oral evidence during the hearing I found to be irrelevant. As such, in the interests of time, I requested they move on and when they were unwilling to do so, I moved the hearing forward to the next matter.

Service of Notice of Dispute Resolution Proceeding and Evidence

Service of the Notice of Dispute Resolution Proceeding for both Applications and the Landlord's evidence was addressed in the Interim Decision.

At the reconvened hearing, the Landlord acknowledged receipt of the Tenant's evidence. Given this, I find the Tenant's evidence was served in accordance with section 88 of the Act and admit it to consideration.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to retain all or part of the Tenant's security deposit?

- Is the Tenant entitled to a Monetary Order for the return of all or part of their security deposit?
- Are either party entitled to recover the filing fees for their respective Applications from the other?

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.

Per the copies of the written tenancy agreement provided as evidence, I find the tenancy began on May 31, 2022 for a fixed term ending March 31, 2023 and continuing on a month-to-month basis after that. Monthly rent was $11,266.50 due on the first day of the month when the tenancy began. A security deposit of $6,500.00 was taken by the Landlord. Under the tenancy agreement the Tenant, a corporation, was permitted to sublease the rental unit to a third party, UM, per paragraph 2 of the addendum. An annual rent increase took effect on January 1, 2024, taking rent to $11,660.00 per month.

The Landlord issued the Tenant with a One Month Notice to End Tenancy for Cause (the Notice) dated January 11, 2024 under section 47 of the Act. The Tenant submitted an application to the Residential Tenancy Branch on January 14, 2024 disputing the Notice. The file number for this previous application is included on the front page of this Decision for reference.

Participatory hearings dealing with the Tenant's request to cancel the Notice took place on March 7 and March 19, 2024. On April 3, 2024 an arbitrator provided their decision dismissing the Tenant's application without leave to reapply. An Order of Possession effective April 30, 2024 was issued to the Landlord.

The Landlord's position is that the cheque for rent due April 1, 2024 did not deposit as the Tenant had placed a stop on it. A 10 Day Notice to End Tenancy for Unpaid Rent dated January 12, 2024 was issued to the Tenant. The Landlord indicated to the Tenant the outstanding monies would be received for use and occupancy only.

As the rent due April 1, 2024 remains unpaid, the Landlord seeks a Monetary Order for $11,660.00.

The Tenant's Agent testified that the Landlord interfered with the quiet enjoyment of UM and their family by visiting the rental unit on two occasions, making them feel uncomfortable and unstable. One visit took place in February 2024 and the other on March 19, 2024. The visits were characterized as "interrogations" by the Tenant's Agent and included requests for information about the tenancy, a copy of the tenancy agreement, and for UM to pay rent to the Landlord directly.

As a result, the Tenant issued correspondence to the Landlord on March 19, 2024 requesting they cease their conduct. As there was no reply, the Tenant issued further correspondence to the Landlord on March 27, 2024 where they indicated the tenancy was ended with immediate effect.

The Tenant takes the position that as the Landlord was interfering with their economic relations with UM and affecting UM's quiet enjoyment, they were entitled to end the tenancy with immediate effect on March 27, 2024, therefore they do not owe the rent which would have been due to the Landlord on April 1, 2024.

The Landlord denied receiving either pieces of the correspondence dated March 19 and 27, 2024 and alleged the records of emails appearing to indicate the correspondence was sent to the Landlord's email address provided as evidence by the Tenant were fabricated and fraudulent.

It was undisputed that UM still occupies the rental unit. The Landlord indicated they entered into a tenancy agreement with UM effective May 1, 2024, as they did not want to see UM and their family displaced.

The parties agreed that there was no condition inspection report prepared at either the start or the end of the tenancy.

The Tenant's Agent testified that the Tenant's forwarding address was provided to the Landlord via email on March 19, 2024, and again by attaching to the main entrance of the Landlord's address on March 24, 2024.

The Landlord disputed receiving either of the records containing the Tenant's forwarding address and argued the email was once again fabricated, and that the photograph of the correspondence on the door of Landlord's building was taken in June 2024, not March, based on the weather seen in the image and the metadata of the photograph.

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.

Landlord's Claim for Unpaid Rent

Section 26 of the Act requires tenants to pay rent when it is due under the tenancy agreement unless they have a legal right to withhold some, or all, of the rent. A tenant's obligation to pay rent to a landlord ceases when the tenancy ends, though if a tenant continues to occupy a rental unit after the tenancy has ended the landlord may be entitled to recover compensation for overholding, per section 57(3) of the Act.

The ways a tenancy can end are set out in section 44 of the Act. I find the two ways which are of relevance in this matter are:

- By the order of an arbitrator, per section 44(1)(f) of the Act; and
- Through tenant's notice, per sections 44(1)(a)(i) and 45 of the Act.

Section 45(3) of the Act also provides that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I find this tenancy was ended through the order of an arbitrator of the Residential Tenancy Branch effective April 30, 2024, under the Notice, per the decision and Order of Possession dated April 3, 2024 and not by notice from the Tenant under section 45(3) of the Act for the Landlord failing to comply with a material term of the tenancy agreement and correct the situation after written notice, as alleged by the Tenant. My reasoning is as follows.

A material term is one so important that the most trivial breach of that term gives the other party the right to end the agreement, as confirmed in Policy Guideline 8 - *Unconscionable and Material Terms*. The Policy Guideline also confirms that it is for the person relying on the term to present evidence and arguments supporting the proposition that the term is a material term. Simply referring to a term as a material term does not make it one.

Policy Guideline 8 also provides that 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.

I find the above steps are reasonable and consistent with the provisions of section 45(3) of the Act.

The Tenant takes the position that they notified the Landlord of an alleged breach of a material term of the tenancy agreement in correspondence sent March 19, 2024. Whilst the Landlord disputed receiving the correspondence, I find this issue is moot since there are significant issues with the contents and effects of the March 19, 2024 correspondence.

Firstly, whilst the correspondence alleges the Landlord breached a material term “by instructing our tenant, [UG’s full name], that we are no longer their landlord and requiring them to pay you instead”, I find there is no clear indication as to which alleged material term of the tenancy agreement the Landlord breached by their purported misconduct. I find there is no reference to any specific term or paragraph of the tenancy agreement the Landlord is supposed to have breached, and the allegations are scant on detail and clarity.

During the hearing I find the Tenant’s Agent was also unclear on the details of the alleged material term the Landlord purportedly breach but referred to an alleged breach of UM’s quiet enjoyment. Whilst as UM’s landlord under a sublease agreement with them, the Tenant was obligated to uphold UM’s right to quiet enjoyment under section 28 of the Act, and a breach of this could amount to a breach of a material term depending on the circumstances, I find there is no reference to quiet enjoyment in the March 19, 2024 correspondence and ultimately the Tenant failed to establish the Landlord was adequately put on notice of their alleged material breach.

Secondly, in the correspondence, the Tenant seeks a remedy to the situation, namely "to reply to this email and letter by March 22, 2024 and confirm that [Tenant's name] is the tenant and confirm that you have provided us with written consent to sublease the property. Please provide confirmation that you have communicated this to [UG's name] and that you make clear that his monthly payments should be provided to us as his Landlord and not you".

I find this remedy is vague and in any case is redundant given the tenancy agreement explicitly notes the Tenant's right to sublease to UM and under the doctrine of privity of contract, there would be no basis for UM paying the Landlord while the tenancy agreement is in place since the two parties have no contractual relationship. Further, I find the deadline of March 22, 2024 is entirely unreasonable given the email would have only been deemed received on this date, the third day after it was purportedly sent, per section 44 of the *Residential Tenancy Regulation*.

Based on the above, I find the Tenant was not entitled to end this tenancy under sections 44(1)(a)(i) and 45(3) of the Act for the Landlord failing to comply with a material term of the tenancy agreement which was not corrected within a reasonable period after written notice to do so. The Tenant was not within their rights to end the tenancy with immediate effect through the correspondence dated March 27, 2024. Given this, I find the tenancy was ended under the Notice, effective April 30, 2024.

Based on the above, the Tenant was obligated to pay rent of $11,660.00 to the Landlord on April 1, 2024, which they failed to do. As an aside, since it was undisputed the Landlord did not have vacant possession of the rental unit at any stage during April 2024, the Landlord would have been able to recover the equivalent of the amount sought in unpaid rent based on overholding costs, so even if the tenancy were to have been ended as alleged by the Tenant, the outcome in terms of compensation owing to the Landlord would have been the same.

Given the above findings, I issue the Landlord a Monetary Order for $11,660.00 for unpaid rent under section 67 of the Act.

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.

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.

As previously noted in this Decision, I find the tenancy ended on April 30, 2024. The Landlord submitted their Application on May 2, 2024. Given this, the Landlord has applied within the fifteen day timeframe set out in section 38(1) of the Act. The issue of when, or if, the Tenant provided their forwarding address to the Landlord in this case is therefore of no relevance.

It was undisputed the Landlord failed to prepare a condition inspection report at either the start or the end of the tenancy. Given this, the Landlord has extinguished their right to claim against the security deposit for damages under section 24(2) of the Act, however, the Landlord retains the right to claim against the security deposit for other losses besides damage such as those relating to unpaid rent, as the Landlord has done in this case. The definition of "security deposit" provided in section 1 of the Act is clear that a security deposit is held by a landlord for any liability or obligation of a tenant, and it is therefore not held just to cover any potential damage to a rental unit.

Based on the above, I find the doubling provisions of section 38(6) of the Act do not apply in this case.

As I have made a payment order in favour of the Landlord, I authorize the Landlord to retain the Tenant's security deposit, plus interest, in partial satisfaction of the payment order under section 72(2)(b) of the Act. The Tenant's Application for the return of their security deposit is dismissed without leave to reapply.

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 $255.72 using the Residential Tenancy Branch interest calculator using today's date.

Filing Fees

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

As the Tenant was not successful in this Application, their request to recover the filing fee from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Landlord's Application is granted. The Tenant's Application is dismissed without leave to reapply.

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

Item	**Amount**
Unpaid rent	$11,660.00
Filing fee	$100.00
Less: security deposit, plus interest	($6,755.72)
Total	**$5,004.28**

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: September 19, 2024

Residential Tenancy Branch