Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, LRSD, FFL / 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 seeks the following:

- A Monetary Order for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement, under section 67 of the Act;
- Authorization to retain all or a portion of the Tenant's security deposit under section 38 of the Act;
- To recover cost of the filing fee for their Application from the Tenant under section 72 of the Act.

The Tenant seeks the following:

- A Monetary Order for loss under the Act, Regulation, or tenancy agreement, under section 67 of the Act;
- 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 the Tenant 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.

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 Proceeding Package (the Materials) for the other's Application. The Landlord also acknowledged receipt of the Tenant's evidence relating to both Applications.

Based on their testimonies I find that each party was served with the Materials as required under section 89 of the Act, and that the Landlord was served with the Tenant's evidence in accordance with section 88 of the Act.

The Landlord confirmed they had not served their evidence to the Tenant. I find the Landlord was provided with clear instructions to serve their evidence in both the email from the Residential Tenancy Branch containing the materials for their Application, and in the *Respondents Instructions* provided to them by the Tenant following their Application.

Given the above, I excluded the Landlord's evidence on the grounds of procedural fairness since the Tenant did not have an opportunity to review it ahead of the hearing, and I did not deem it appropriate to adjourn this matter to allow for service of the Landlord's evidence.

Preliminary Issue – Particulars of the Landlord's Claim

Rule of Procedure 2.5 states that to the extent possible, the applicant should submit a detailed calculation of any monetary claim being made. Further, when a party is involved in a dispute resolution, the applicant must ensure that the respondent was informed of the claims being made against them to ensure they have a fair opportunity to respond.

The particulars of the Landlord's Application reference loss of rental income. The Landlord indicated during the hearing they also sought to recover amounts for cleaning and locksmith costs from the Tenant which were not outlined in their Application.

Whilst the Landlord's evidence makes reference to these additional claims, the Tenant was not provided with this evidence. Given this, I find the Tenant could not have reasonably anticipated the issues of cleaning and locksmith costs would be brought up at the hearing. Therefore, these issues were not addressed at the hearing and I will only

render a decision on the matter of loss of rental income in respect of the Landlord's monetary claim.

Issues to be Decided

- Is the Landlord entitled to the requested Monetary Order?
- Is the Landlord entitled to retain all or part of the Tenant's security deposit?
- Is the Tenant entitled to the requested Monetary Order?
- It the Tenant entitled to the return of all or a part of their security deposit?
- Are either party entitled to recover the cost of the filing fees for their respective Applications?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written evidence admitted to consideration 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 began on May 1, 2024 for a fixed term ending October 31, 2024 and was set to continue on a month-to-month basis after that.
- A security deposit of $1,600.00 was paid by the Tenant which the Landlord still holds.
- The Tenant vacated the rental unit on June 27, 2024.
- The rental unit is a one-bedroom, one-bathroom fully furnished apartment suite in Richmond.
- Rent was $3,200.00 per month due on the first day of the month under the tenancy agreement.
- There is a written tenancy agreement, a copy of which was entered into evidence.

The Landlord's Application

The Landlord testified as follows. The Tenant advised them by email on May 24, 2024 they would be vacating the rental unit on June 27, 2024. The Tenant had made previous complaints about the condition of the mattress in the rental unit and the Landlord had

advised the Tenant they could purchase their own mattress if they wished, but disputed the notion there were any issues with it.

After advertising the rental unit online, the Landlord was able to find a new tenant, but only on a short-term basis for the months of July and August 2024. The Landlord also received reduced rent of $3,000.00 per month for these months. Per the Landlord, the rental unit is still advertised at $2,800.00 per month and remains vacant.

The Landlord calculated their total loss of rental income at $7,200.00 as they received $400.00 per month below the rent under the tenancy agreement for July and August 2024, and losses of $3,200.00 for September and October 2024, though the Landlord only seeks $6,000.00 in compensation for loss of rental income from the Tenant.

In their testimony, the Tenant did not dispute the rental unit was advertised at a fair price, but argued the Landlord had not established they suffered a financial loss and were under the assumption the tenant who occupied the rental unit for July and August 2024 would have stayed beyond these months.

The Tenant took the position that they were entitled to end the tenancy on June 27, 2024 for two reasons. Firstly, they notified the Landlord on May 10, 2024 that the inclusion of a bed under the tenancy agreement was a material term and as the mattress was soiled and the box spring had mildew on, the Landlord had breached this term. As the Landlord did not remedy the situation by May 24, 2024, they were therefore able to end the tenancy. Other issues were raised in the May 10, 2024 correspondence which were either resolved by the Landlord or relatively minor, per the Tenant.

Secondly, the Tenant stated that as the Landlord did not provide them with copies of the strata bylaws and rules, and a notice of tenant's responsibilities within two weeks of the tenancy commencing, they were able to end the tenancy under section 146 of the *Strata Property Act* (the SPA), which was also set out in their email of May 24, 2024.

The Tenant testified they advertised the rental unit online for the Landlord, who indicated to the Tenant they were out of town at the time. Further, their postings online generated "leads" which indicated telephone calls were made to the Landlord regarding the rental unit.

The Tenant's Application

The Tenant seeks compensation of $1,575.95 from the Landlord on the basis that the bed in the rental unit was soiled rendering it, and the bedroom, unusable for the duration of the tenancy.

The Tenant testified the dirt on the mattress had not been apparent during their viewing of the rental unit prior to signing the tenancy agreement and that they had to sleep in the living area of the rental unit instead of the bedroom, effectively making it a studio apartment. The amount sought by the Tenant is based on the difference between a one-bedroom and a studio apartment in a similar location to the rental unit.

The Tenant acknowledged the Landlord provided solutions to the issues raised with the mattress, but as they involved the Tenant getting a new mattress at their own expense, with only the possibly of the Landlord buying it off them at the end of the tenancy, these solutions were not pursued.

The Landlord took the position that the condition of the mattress was not worth ending the tenancy before fixed term, and that it was not necessary to replace the mattress, indicating the situation was akin to staying in a hotel where there was not the expectation of a brand new mattress. They stated that if asked, they would have provided a cover for the mattress.

The parties agreed that there was no condition inspection report prepared at either the start or the end of the tenancy. The Tenant provided their forwarding address in writing to the Landlord on May 24, 2024 via email. The Landlord acknowledged receipt of the correspondence on May 27, 2024.

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.

Section 7 of the Act provides the basis of claims for compensation relating to breaches of the Act or a tenancy agreement. Section 7(1) states that if a landlord or tenant does not comply with the Act, the Regulation, or the tenancy agreement, the non-complying

party must compensate the other for damage or loss that results. Section 7(2) of the Act also requires the claiming party to take reasonable steps to minimize their 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.

Landlord's claim for loss of rental income

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Tenants are obligated to pay rent to the landlord when it is due until the tenancy agreement ends. Additionally, fixed-term tenancies can not be ended unilaterally by tenants before the end of the fixed term unless specific circumstances apply.

I find the Tenant was obligated to pay rent of $3,200.00 per month to the Landlord under the tenancy agreement, which was for a fixed term set to run to October 31, 2024. The Tenant sought to end the tenancy effective June 27, 2024 before the end of the fixed term, citing two reasons relating to the Landlord's alleged breach of a material term of the tenancy agreement and breach of the SPA, which I will address in turn.

Per section 45(3) of the Act, a tenant may end a tenancy if the landlord has not corrected a breach of a material term of the tenancy agreement within a reasonable period following written notice.

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 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 on May 10, 2024 the Tenant notified the Landlord that the mattress and bed in the rental unit were “soiled and stained with various bodily fluids, food, hair, and mildew and unfit for use”. They also state that a fully furnished unit, including the bed, is a material term of the tenancy agreement. There are other issues listed in the correspondence such as a broken toilet paper holder and missing light bulbs, which the Tenant acknowledged during the hearing were either minor or had been resolved.

In the correspondence of May 10, 2024, the Tenant requests a resolution to the issues raised by May 24, 2024 and is seen to put the Landlord on notice that if this does not happen, they reserve the right to request a repair order and compensation through the Residential Tenancy Branch. The Tenant also suggests a mutual end to the tenancy, but I find there is no clear notice to the Landlord that the Tenant intends to end the tenancy if the bed and mattress are not replaced.

Based on the above, I find the Tenant was not entitled to end this tenancy effective June 27, 2024 as they did not provide adequate notice they would end the tenancy based on the condition of the bed and mattress. Further, I find the Tenant has failed to establish the condition of the bed breached a material term of the tenancy agreement, which will be discussed in more detail later in this Decision when the Tenant’s claim is addressed.

The Tenant also takes the position they were entitled to end the tenancy under section 146 of the SPA. I find I do not have authority to make a determination if this tenancy was ended under the SPA, and the application of this legislation would fall within the purview of the Civil Resolution Tribunal.

Section 2 of the Act sets out that the Act applies despite any other enactment, subject to exclusions under section 4 of the Act. Further, since section 7 of the Act provides a party must compensate the other for damage or loss resulting from non-compliance with the Act, Regulation or tenancy agreement, the question for me is if there is a breach of this legislation, not the SPA.

Based on the above, I find the Tenant was not entitled to end this tenancy under section 45(3) of the Act, or any other provisions of the Act, and that the Landlord has therefore

established the Tenant breached the Act by ending this tenancy before the end of the fixed-term.

Though the Landlord has established a claim for loss of rental income, I am not inclined to award the full $6,000.00 requested. It was undisputed the rental unit had been advertised at a reasonable price after the Tenant vacated, though I found the testimony of the Landlord on the subject of their attempts to re-rent the rental unit to be vague and lacking in detail. I find the Landlord failed to establish reasonable steps were taken to minimize the loss and I award compensation to the equivalent of one month's rent. I find on a balance of probabilities that had reasonable steps to mitigate the loss been taken, a new tenant could have been found within a relatively short period of time keeping in mind the location and character of the rental unit, and a loss of only one month's rent would be foreseeable in this case.

I therefore issue a Monetary Order to the Landlord for $3,200.00 under section 67 of the Act.

Tenant's claim for compensation

The Tenant argues the poor condition of the bed effectively turned the rental unit from a one-bedroom suite into a studio, and they seek compensation of $1,575.95 accordingly.

I find the bed and through implication, the mattress too, were included as part of this tenancy agreement. As set out in section 32(1) of the Act A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Having considered the evidence before me, particularly the photographic evidence of the Tenant, I find that whilst there is discolouration on the mattress, there is insufficient evidence to establish the bed, and the bedroom were unfit for occupation as a result of this. There is evidence of what appears to be one hair and localised patches of residue of some kind on the mattress, but this does not appear to be widespread. It is clear the bed and mattress are not new, but I find on a balance of probabilities the defects in condition were a relatively minor issue that could have been mitigated entirely through the use of a mattress cover or protector.

Given the above, I find the Tenant has failed to establish their claim and I am not inclined to award even nominal damages. The Tenant's claim is therefore dismissed without leave to reapply.

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.

I find the tenancy ended on June 27, 2024 and the Tenant provided their forwarding address on writing to the Landlord on May 24, 2024, which the Landlord acknowledged receiving on May 27, 2024. The Landlord submitted their Application on July 5, 2024. Given this, the Landlord has applied within the fifteen day timeframe set out in section 38(1) of the Act.

Though the Landlord has extinguished their right to claim against the security deposit for damages under section 24(2) of the Act by failing to prepare a condition inspection report at the start of the tenancy, they retain the right to claim for other losses such as those relating to loss of rental income, as the Landlord has done in this case.

The definition of "security deposit" set out in section 1 of the Act makes it clear the deposit is held as security for any liability or obligation of the tenant respecting the residential property. Given this, the doubling provisions of section 38(6) of the Act do not apply.

As I have made a payment order in favour of the Landlord, as outlined previously in this Decision, 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.

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 $17.35 using the Residential Tenancy Branch interest calculator using today's date.

Filing fees

As the Landlord has been at least partially 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. I dismiss the Tenant's request to recover the filing fee from the Landlord without leave to reapply.

Conclusion

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**
Loss of rental income	$3,200.00
Filing fee	$100.00
Less: security deposit, plus interest	($1,617.35)
Total	**$1,682.65**

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 24, 2024

Residential Tenancy Branch