Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL, 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 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 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 Tenants' security deposit under section 38 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 seek the following:

- A Monetary Order for loss under the Act, Regulation, or tenancy agreement, under section 67 of the Act;
- An order for the Landlord to return their security deposit under section 38 of the Act; and
- To recover the filing fee for their Application from the Landlord under section 72 of the Act.

Parties appeared for both the Landlord and the Tenant. 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 attending parties each confirmed receipt of the Notice of Dispute Resolution Proceeding Package (the Materials) for the other's Application and the other's evidence. Further, I find the Landlord received approval to serve MS the Materials and evidence via email, following a substituted service decision dated July 16, 2024.

Based on the evidence before me, I find that each party was served with the Materials and evidence as required under sections 88 and 89 of the Act.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent, damage to the rental unit, or other losses?
- Is the Landlord entitled to retain the Tenants' security deposit?
- Are the Tenants entitled to a Monetary Order?
- Are the Tenants entitled to an order for the return of their security deposit?
- Are either part entitled to recover 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 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 September 1, 2021 with JD and VL as tenants.
- A security deposit of $1,075.00 was paid by JD and VL to the Landlord on August 30, 2021.
- VL vacated the rental unit and a new tenancy agreement with JD and AS tenants was signed by the parties which provided a fixed term beginning February 1,

2023 and ending January 31, 2024, though the Landlord retained the security deposit.
- A further security deposit of $16.00 was paid by JD and AS to the Landlord in September 2022 when the rent was increased.
- Effective October 1, 2023, the tenant's rights under the tenancy agreement were assigned from JD and AS to JD and MS.
- JD and MS vacated the rental unit on June 30, 2024.
- When the tenancy ended, rent was $2,225.90 per month, which the Tenants paid on the last day of the month in advance.
- The Landlord still holds a security deposit totalling $1,091.00 ($1,075.00 + $16.00).
- There is a written tenancy agreement, a copy of which was entered into evidence.

The Landlord's Claims

The Landlord testified as follows. JD provided notice to end the tenancy effective June 30, 2024 in an email sent May 31, 2024 at 11:55 PM. The Landlord stated the parties did not have an agreement to serve documents to one another via email, though they acknowledged receipt of JD's notice on June 2, 2024. On June 8, 2024, MS also provided notice to end the tenancy, also effective June 30, 2024.

The Landlord takes the position that as the Tenants' notice was not compliant with section 45 of the Act, they were obligated to pay rent for July 2024 and seek a Monetary Order for $2,225.90 accordingly.

The Landlord stated that as MS did not provide notice until June 8, 2024, they were operating under the assumption MS would continue occupy the rental unit until they heard otherwise. Per the Landlord, they attempted to re-rent the rental unit from June 15, 2024 by advertising at their work and through local unions. Viewings were given to prospective tenants, but they were unable to re-rent for July 1, 2024.

The Landlord seeks to recover from the Tenants $1,091.00, which is the amount of the security deposit they hold, for damage to the rental unit. The Landlord stated the Tenants left the rental unit in an unclean state, that two lamps were broken and that a bed and a stained mattress were left behind. The Tenants also left behind side tables, which the Landlord testified may have been in the rental unit when the tenancy started, but they were unsure, but the bed and mattress was not.

The Landlord also seeks to recover the interest on the security deposit they hold from the Tenant, which they calculate to be $36.28.

The Tenant took the position that the Landlord agreed to be served via email, per the form K signed by the parties. Further, they had an extensive history of communication by email.

The Tenant indicated they were unaware of the requirement to give at least a month's notice to end a periodic tenancy, but took the position that even if their notice was late, the Landlord did not mitigate their loss by trying to find new tenants.

The Tenant acknowledged receiving notices of entry from the Landlord between June 16 and 22, 2024 but argued they made reference to both prospective tenants and purchasers so it was not clear if the Landlord was making efforts to find new tenants, or sell the rental unit.

Further, the Tenant indicated their skepticism as to whether the viewings took place, having not been present at the rental unit for them. They also found no record of the rental unit advertised online after they gave notice to end the tenancy.

The Tenant testified the rental unit was cleaned thoroughly when they vacated. Further, the bed, mattress and other furniture all belonged to the Landlord and was left in the same condition as it was at the start of the tenancy.

The Tenants' claim

The Tenants seek to recover the $12.50 fee incurred for cancelling the cheque for rent for July 2024. As the Landlord did not return it, they had to arrange for it to be cancelled with their bank.

The Tenants seek double their security deposit from the Landlord, and take the position that as the Landlord did not complete a condition inspection report at either the start or the end of the tenancy, the doubling provisions of the Act apply since the Landlord has extinguished their right to claim against the security deposit.

The Landlord did not dispute there was no condition inspection report prepared. They acknowledged receipt of the Tenants' forwarding address in writing on either July 1 or 2, 2024, after it was sent to them by JD on June 30, 2024, and took the position that as

they submitted their Application within 15 days of getting the forwarding address, they complied with the Act.

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 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 ends with the tenancy.

Section 45(1) of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find this tenancy was on a periodic basis after January 31, 2024 and that JD sought to end this tenancy effective June 30, 2024 through the email correspondence sent on May 31, 2024 at 11:55 PM.

The parties disputed whether or not there was an agreement in place to serve one another by email, which I find is moot in this case, since the Landlord did not dispute receiving the email on June 2, 2024, which is the same day it would be deemed to have

been received under section 44 of the Regulation. The Tenant had no evidence to support the notion the Landlord received their notice to end the tenancy before June 1, 2024, which I find would have been highly implausible and would have required the Landlord to have received the email within four minutes after it was sent.

Given the above, I find that the notice to end tenancy was received by the Landlord on June 2, 2024 and therefore, per the provisions of section 45(1)(a) of the Act, could not have been effective by June 30, 2024 since this is within a month of the Landlord receiving it. Per section 53 of the Act, incorrect effective dates are automatically changed to one which complies with the Act.

Based on the above, I find the Tenants were not able to end this tenancy effective June 30, 2024 and were therefore obligated to pay rent for July 2024, which it was undisputed they did not do, therefore the Tenants have breached section 26 of the Act and the Landlord has established their claim for unpaid rent.

The Landlord was required to mitigate their loss, per section 7(2) of the Act. I find on a balance of probabilities, given the timing of the Tenants' notice to end tenancy, it would have been difficult to find a new tenant to start a tenancy July 1, 2024 though based on the evidence before me I find viewings for prospective tenants took place and overall, the Landlord acted reasonably to minimize the loss of rental income. I am therefore not inclined to reduce the monetary award in favour of the Landlord.

Given the above findings, I grant the Landlord's Application for compensation for unpaid rent. I issue a Monetary Order to the Landlord for $2,225.90 under section 67 of the Act accordingly.

Landlord's claim for damage to the rental unit

It was undisputed there was no condition inspection report made either at the start or the end of the tenancy. As set out in section 21 of the Regulation, a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The Tenant disputed all allegations that the damage to the rental unit, including the furniture, was caused by them during the tenancy. Without the benefit of an inspection report or any other evidence to indicate the condition of the rental unit at the start of the tenancy, I find the Landlord has failed to establish their claims for damage.

The Landlord also failed to provide any evidence to support the amount claimed, such as receipts or invoices, and I find has advertised the rental unit with the bed, which leads me to conclude this was included as part of the tenancy, rather than being an item left behind by the Tenants.

The Landlord claimed compensation for cleaning with their claim for damage to the rental unit. Strictly speaking, a claim for cleaning is not considered damage to the rental unit, nevertheless, I find the Landlord's claim was unsupported by evidence and was disputed with equally plausible testimony from the Tenant. As such, the Landlord's claim fails.

Based on the above, I dismiss the Landlord's claim for damage and cleaning to the rental unit without leave to reapply.

Landlord's claim for interest on security deposit

Per section 4 of the Regulation, interest on security deposits held by a landlord is payable to the tenant, and is not payable by the tenant to the landlord. I found the Landlord's argument the Tenant should pay them interest on the funds the Landlord themselves were holding to be entirely without merit and inconsistent not only with the Act and Regulation, but also reason and logic. The Landlord's claim is dismissed without leave to reapply.

The Tenants' claim

As previously noted in this Decision, I find the Tenants were obligated to pay rent for July 2024 to the Landlord. As such, the loss incurred when the Tenants cancelled the rent cheque was not done through any breach of the Act, Regulation or tenancy agreement on the part of the Landlord. The Tenants' claim is 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 30, 2024 and the Tenant provided their forwarding address in writing to the Landlord also on June 30, 2024, with the Landlord acknowledging receipt on July 1 or 2, 2024. The Landlord submitted their Application on July 10, 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, they retain the right to claim for other losses such as those relating to unpaid rent, 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, not just damage. It follows that even if a landlord has extinguished their right to claim against the security deposit for damage, they may claim for other losses besides damage, provided this is done within the fifteen day timeframe set out in section 38(1) of the Act.

Based on the above, 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, as outlined previously in this Decision, I authorize the Landlord to retain the Tenants' 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 $43.52 using the Residential Tenancy Branch interest calculator using today's date. This amount was calculated based on $42.88 for the deposit paid August 30, 2021, and $0.64 for the deposit paid September 2022.

Filing fees

As the Landlord's Application was at least partially successful, I find they are entitled to recover the cost of the filing fee of $100.00 from the Tenants under section 72 of the

Act. Since the Tenants' Application was unsuccessful, I dismiss their 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 Tenants as soon as possible. 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	$2,225.90
Filing fee	$100.00
Less: security deposit, plus interest	($1,134.52)
Total	**$1,191.38**

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 27, 2024

Residential Tenancy Branch