



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order from the tenant for unpaid rent or utilities, a monetary order for damage to the rental unit or property, an order permitting the landlord to keep all or part of the security deposit or pet damage deposit, and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing, and the tenant was assisted by Legal Counsel. The landlord gave affirmed testimony, and the tenant's Legal Counsel was given the opportunity to question the landlord. The tenant did not testify, however the tenant's Legal Counsel and the landlord gave submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?
- Should the landlord recover the filing fee from the tenant?

Background and Evidence

The landlord testified that this fixed-term tenancy began on April 30, 2020 and reverted to a month-to-month tenancy after October 31, 2020, which ultimately ended on June 30, 2024. A copy of the tenancy agreement has been provided for this hearing showing

rent in the amount of \$1,995.00 payable on the 1st day of each month. The landlord testified that rent was increased to \$2,075.00 effective the third year of the tenancy. On April 10, 2020 the landlord collected a security deposit from the tenant in the amount of \$997.50 as well as a pet damage deposit in the amount of \$997.50, both of which are still held in trust by the landlord.

The tenant gave notice to end the tenancy on June 7, 2024 by email, without the prior consent of the landlord, effective July 1, 2024. The landlord claims 1 month of rent from the tenant.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy, but the landlord cannot find it. The parties mutually agreed to a move-out condition inspection, however the landlord was stuck in traffic so couldn't make it. The landlord did the inspection and then asked the tenant to verify everything, but the tenant didn't return. A copy of the move-out condition inspection report has been provided for this hearing, and the landlord testified that the tenant was provided a copy within the time required under the *Act*.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$5,538.49:

- \$4,215.49 for replacement of window blinds;
- \$2,179.80 for replacement of window blinds; and
- \$1,323.00 for labour to paint the rental unit.

The tenant threw away the blinds from the patio door, and has provided 2 quotes or estimates of \$4,215.49 and \$2,179.00. The higher amount is for motorized blinds, and the landlord's preference is to upgrade the blinds and charge the tenant for it. Stores don't sell venetian blinds, but only repair them, so the only option was to replace them.

When the tenant moved in the rental unit was freshly painted. The tenant stuck hooks on walls, ripping them. The landlord has not yet had the rental unit re-painted, and has provided a quote for this hearing.

The landlord was advertising the rental unit and trying to sell, but it didn't sell so the landlord re-rented effective July 15, 2024, and only lost half a month's rent. The landlord relies on the rent to pay the mortgage.

The landlord received the tenant's forwarding address in writing on July 2, 2024.

SUBMISSIONS OF THE TENANT'S LEGAL COUNSEL:

The landlord did not give 2 opportunities to the tenant to schedule the move-out condition inspection report, and therefore the landlord's right to claim against the security deposit is extinguished. The tenant asked for a move-out condition inspection and the landlord's preference was a "walk-through." The landlord received the tenant's notice to end the tenancy and the move-out condition inspection report is dated July 4, 2024, and the move-out date is June 30, 2024. With respect to the claim for unpaid rent for the tenant's failure to give sufficient notice to end the tenancy, the tenant felt intimidated due to the landlord given a notice to end the tenancy for landlord's use of property on December 27, 2023. The tenant disputed it and a hearing was held on March 21, 2024, and the notice was cancelled. The tenant moved out on June 30, 2024, but the landlord wanted the tenant to move out so the landlord could sell. The tenant said she would just leave. The landlord is estopped from claiming that the notice by the tenant was insufficient. With respect to blinds, the tenant's responsibility is to notify the landlord when repairs are required, which the tenant did. The landlord did not tell the tenant to keep them, and the landlord is trying to take advantage of the tenant. The landlord's photographs of wall scratches are not clear and show wear and tear only. The video evidence of the tenant shows that the state of the apartment is clear; nothing like what the landlord is describing, which seems to be exaggerated.

SUBMISSIONS OF THE LANDLORD:

The landlord advertised the rental unit on June 7, 2024 when the landlord received the tenant's notice to end the tenancy. At the very end, and when the landlord was not able to attend the appointment, the landlord emailed the tenant asking to do a "walk-through." The tenant said that diamond earrings were left behind and the landlord to the tenant she could return to retrieve them, which was her time to do the move-out condition inspection, but the tenant didn't take that opportunity. The landlord kept reminding the tenant of the blinds, and denies taking advantage of the tenant. The video was taken by the strata manager, who may have been under the influence, which is not uncommon; it's a very quick scan.

Analysis

Firstly, I have reviewed the tenancy agreement, and I do not accept the testimony of the landlord that the landlord did not give consent to serve the notice to end the tenancy by email. The tenancy agreement contains an email address for service for both parties. Therefore, I find that the tenant provided the landlord with a notice to end the tenancy on June 7, 2024. However, any notice given by a tenant must be given before the date rent is payable under the tenancy agreement, and must be effective at the end of the rental period, which in this case is monthly. The notice to end the tenancy could not

therefore be effective until July 31, 2024. The landlord testified that only half a month's rent was lost, which is \$1,037.50, because the landlord re-rented for July 15, 2024. Therefore, I find that the landlord has established a claim of \$1,037.50.

In order to be successful in a claim for damage or loss as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

Also, the law states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at move-in and move-out. The landlord testified that the move-in condition inspection report could not be located, so there is nothing to compare the condition at move-in and move-out.

I agree with Legal Counsel for the tenant that the landlord's right to claim against the security deposit and pet damage deposit is extinguished because the landlord did not offer the tenant at least 2 opportunities to schedule the move-out condition inspection. The *Residential Tenancy Act* states:

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The regulations state:

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

In this case, there is no evidence that the landlord has provided the tenant with a second opportunity to participate in the move-out condition inspection in the approved form. It is not sufficient for a landlord to complete the report and then invite the tenant to return to confirm the report; the parties must both participate, unless the tenant has abandoned the rental unit, which is not the case.

Although the landlord's right to claim against the security deposit or pet damage deposit is extinguished, the landlord's right to claim damages is not extinguished, but the landlord must return the security deposit and pet damage deposit. Further, a pet damage deposit must only be claimed for damages caused by a pet. There is no evidence that the landlord claims damages caused by a pet.

With respect to the damages claimed, the landlord testified that the preference is to upgrade the blinds and charge the tenant for it. The evidence shows that the tenant notified the landlord that the blinds were not working, but there is no evidence that the landlord made any repairs, which would be the landlord's responsibility. That is not mitigation. Also, any award for damages is meant to put the landlord in the same position as the landlord would be if no damage or loss existed. I find that the landlord has failed to satisfy elements 2, 3 or 4 in the test for damages, nor am I satisfied that the blinds had not already outlived their useful life.

I am also not satisfied that the landlord has established that any damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement with respect to painting. The landlord testified that the rental unit had been freshly painted prior to the beginning of the tenancy, but there is no evidence to support that. The tenancy lasted for over 4 years, and the useful life of interior painting is 4 years. Any award for damages is meant to put the landlord in the same position as the landlord would be if no damage or loss existed, and to provide the landlord with new paint when the landlord would not have a newly painted suite at the end of the tenancy would unjustly enrich the landlord.

A landlord is required to return a security deposit and/or pet damage deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must compensate the tenant double the amount(s). The landlord testified that the landlord received the tenant's forwarding address in writing on July 2, 2024 and made this application on July 17, 2024, which is within the 15 days. However, having found that the landlord's right to claim against the deposits for damages is extinguished, the landlord ought to have returned both deposits to the tenant. Since the landlord has not

done so, the landlord must repay double the amounts to the tenant, or \$997.50 + \$997.50 = \$1,995.00, and doubled amounts to \$3,990.00.

Since the landlord has been partially successful with the application, the landlord is also entitled to recover the \$100.00 filing fee from the tenant.

Having found that the landlord has established a claim of \$1,037.50 for unpaid rent and \$100.00 for recovery of the filing fee, I set off the amount of \$1,137.50 from the doubled security deposit and pet damage deposit, for a total of \$2,852.50. I grant a monetary order in favour of the tenant as against the landlord in that amount. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,852.50.

This order is final and binding and may be enforced.

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

Dated: October 07, 2024

Residential Tenancy Branch