Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, to retain the security deposit, compensation for damage or loss under the Act and damage to the rental unit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on October 24, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail. The landlord used the rental unit address, as she obtained a copy of a Canada Post Confirmation of Change of Address (Mail Forwarding) for the rental unit address which showed the tenant was having her mail forwarded. A copy of this document was supplied as evidence.

The registered mail sent to the tenant at the rental unit address was accepted by the tenant on November 26, 2013. A copy of the Acknowledgement of Receipt of the registered mail, with the same tracking number of the receipt issued on October 24, 2013, was supplied as evidence. The tenant signed, accepting the mail and her signature is displayed on the acknowledgement.

On December 13, 2103 the landlord mailed an amended application and evidence to the tenant, to the rental unit address. That mail was returned to the landlord.

Section 71(2) of the Act provides:

> *(2) In addition to the authority under subsection (1), the director may make any of the following orders:*
>
> > *(a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];*

> *(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;*
> *(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.*

Therefore, as the tenant did accept the mail that had been redirected from the rental unit address and, as the landlord had evidence that the mail was being redirected, I find that the tenant was sufficiently served with the Notice of hearing documents sent to her on October 24, 2013. Further, I find that the tenant was sufficiently served with the amended application and evidence, effective December 18, 2013; the 5th day after mailing. A party may not avoid service by failing to claim registered mail.

Preliminary Matters

There was evidence before me that the landlord had submitted 9 photographs; however those photographs were not before me. The landlord was allowed to describe each photograph and I relied upon her oral testimony in relation to those photographs.

Issue(s) to be Decided

The fixed term tenancy commenced on November 1, 2012; the term ended on October 31, 2013 at which point the tenant was required to vacate the unit. Rent was $1,250.00 per month, due on the 1st day of each month. A security deposit in the sum of $625.00 and a key deposit in the sum of $100.00 were paid. A copy of the tenancy agreement was supplied as evidence.

A move-in condition inspection report was completed; a copy was supplied as evidence.

Clause D of the tenancy agreement indicated:

> *A re-rental fee of $625.00 shall be applied if this agreement is terminated prior to the end of the tern and the tenant is responsible for payment of the rent and associated costs until such time that another suitable tenant is found.*

A copy of a tenancy addendum submitted as evidence included a list of items that had been left in the unit for the tenant's use; including an armoire/entertainment centre; two lamps; a cherry coloured kitchen trolley; and a white wicker set of 2 chairs and a small table.

The landlord has made the following claim for compensation:

October rent	$1,250.00
Re-rent fee	625.00
Hydro August to October 2013	$115.10
Remote entry fob	50.00

Replace lock (lock smith cost only)	76.97
Replace furniture	385.00
Repair damage to exterior of entry door	80.00
TOTAL	$2,581.64

The landlord withdrew portions of the claim that had been included on the application for dispute resolution.

On September 10, 2013 the tenant sent the landlord an email indicating she was planning on vacating the unit in mid-October; before the end of the fixed term. The landlord responded on the next day and told the tenant she would be responsible for rent and hydro until the end of the tenancy. The landlord said she would attempt to locate a new occupant and that she would advertise as soon as she could. The landlord also asked the tenant for some pictures of the unit; which the tenant supplied.

The landlord began advertising immediately, using internet sites. She said she would have begun advertising at any rate, as the tenancy was ending on October 31, 2013 and was not going to be renewed. The tenant vacated the unit without further notice; the landlord found the unit empty on October 1, 2013. The tenant had sent the landlord a September 12, 2013 email asking if she could vacate by October 1, 2013. The landlord had replied that would be fine if she could locate a new occupant for the end of September, but failing that, the tenant would continue to be responsible for rent owed.

On October 1, 2013 the landlord sent the tenant an email indicating she had found the rental unit empty; that no keys or remotes had been returned and that furniture was missing from the unit. The tenant was warned a locksmith would be needed if she did not return the keys and that this could have an impact on cost as the unit is part of a strata development. The landlord asked that the keys and remote be slid under the door.

The landlord submitted a copy of the tenant's October 2013 rent cheque which was stamped by the financial institution as cancelled; payment had been stopped.

The tenant responded by email that the landlord should not threaten her, that the landlord was greedy, that she could take the tenant to court and that the tenant did not "*give a r*ts *ss.*" A copy of the email was supplied as evidence.

On October 2, 2013 the tenant emailed indicating she would return the keys and place them in the mailbox; she then sent a message indicating she could not get to the unit. Then the tenant indicated she would mail the keys and remote; the landlord provided an address. On October 4, 2013 the tenant asked the landlord if she had received the items she mailed; the landlord replied that she had not. On October 10, 2013 the strata manager emailed the tenant asking for the key and remote as a significant expense could be incurred if they were not; the tenant did not respond.

The landlord stated that the re-rent fee was a penalty for breach of the tenancy agreement.

The landlord provided copies of the hydro bills issued August 10 to October 31, 2013 totalling $115.10. The tenancy agreement did not include hydro costs. The bills indicate the charge was for the unit.

The landlord provided a copy of the strata ledger which indicated a $50.00 fee imposed on October 29, 2013 for a garage remote, to replace the remote the tenant failed to return.

The landlord spoke to a locksmith and was told they would charge $76.97 to re-key the unit. The landlord decided to purchase a new lockset and supplied an October 10, 2013 receipt in the sum of $149.00. The landlord thought it was fair to charge the tenant for the cost of re-keying only vs. a new lock set.

The landlord found items of furniture missing after the tenant had vacated. On July 22, 2013 the tenant told the landlord she had taken the TV stand (armoire) and placed it in the locker. On August 8, 2013 the landlord emailed the tenant saying the stand was not in the locker; the tenant replied that it should be in “the next two stalls” and that she had no idea where it was now; the tenant told the landlord someone must have thought it was free and taken it.

The landlord had photographs the tenant had taken of the unit which showed several of the items that were then missing after the tenant vacated. The landlord provided several estimates for replacement costs taken from the internet. She said it was difficult to find identical items and that she has provided a low estimate of the value of these items that were no more than 5 years old.

The exterior door to the unit was damaged; the landlord suspects the tenant caused this when moving furniture out of the unit. The landlord obtained a repair estimate from the strata; they would charge her $80.00 for the 2 hours they believe it would take to repair the door.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of the tenant, who was served with Notice of this hearing, I find that the landlord is entitled to compensation as claimed for repairs and replacement of items. The landlord has proven, on the balance of probabilities, that the tenant did not pay

October 2013 rent. The tenant vacated the unit in breach of section 45 of the Act; she could not give notice for a date that was prior to the end of the fixed term. By the time the landlord had possession of the unit she did not have sufficient time to locate a new occupant for the month of October.

The balance of the items claimed were verified by invoices and estimates received. The tenant failed to return the keys and entry fob; and did not pay the hydro costs for the last 2 months of the tenancy. I found the estimate of the cost of furniture items was reasonable. Further, it appears the tenant placed the landlord's armoire outside in a parking stall, rather than a secure locker and that the armoire was then stolen. I find this was negligent on the part of the tenant

I accepted the landlord's undisputed testimony that the tenant damaged the entry door and find the estimate for repair was reasonable.

In relation to the claim for liquidated damages, I have considered Residential Tenancy Branch policy which suggests that liquidated damages must be a genuine pre-estimate of the loss at the time the contract is entered into; otherwise the clause may be found to constitute a penalty and, as a result, be found unenforceable.

Policy suggests that an arbitrator should determine if a clause is a penalty clause or a liquidated damages clause by considering whether the sum is a penalty. The sum can be found to be a penalty if it is extravagant in comparison to the greatest loss that could follow a breach. Policy also suggests that generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

As the landlord described the clause as an intended penalty, I find that the claim for the re-rent fee is dismissed.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
October rent	$1,250.00	$1,250.00
Re-rent fee	625.00	0
Hydro August to October 2013	$115.10	115.10
Remote entry fob	50.00	50.00
Replace lock (lock smith cost only)	76.97	76.96
Replace furniture	385.00	385.00
Repair damage to exterior of entry door	80.00	80.00
TOTAL	$2,581.64	$1,957.06

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the $50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $725.00**,** in partial satisfaction of the monetary claim.

Therefore the landlord has established a monetary claim, in the amount of $2,007.06, which is comprised of damage or loss and damage and $50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of $1,282.06**.** In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation as claimed with the exception of the re-rent fee.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: February 04, 2014

Residential Tenancy Branch