Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD

Introduction

On June 15, 2016 a hearing was convened to consider the Landlords' Application for Dispute Resolution. The Residential Tenancy Branch Arbitrator conducting that hearing dismissed the Application, with leave to reapply, as nobody attended the hearing.

On July 11, 2016 the Landlords filed an Application for Review Consideration and a Residential Tenancy Branch Arbitrator granted the application for a new hearing, which was scheduled for September 01, 2016.

A hearing was convened on September 01, 2016 to consider the merits of the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent and utilities, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

At the hearing on September 01, 2016 the Landlord stated that on November 21, 2015 the Application for Dispute Resolution, the Notice of Hearing, and the 83 pages of evidence the Landlord submitted to the Residential Tenancy Branch were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord had previously submitted Canada Post documentation that corroborates this statement.

On April 28, 2016 the Tenant submitted 11 pages of evidence to the Residential Tenancy Branch. The Tenant did not attend the hearing to establish how this evidence was served to the Landlords. The Landlord stated that this evidence was also served to her by the Tenant and it was therefore accepted as evidence for these proceedings.

In the Tenant's written submission the Tenant declares that he has "no identification or file number" and he requested an adjournment of "whatever hearing may or not have been set up between parties". Although it is not entirely clear, I find that the Tenant may

be indicating he did not receive the Landlords' Application for Dispute Resolution, although it is not clear how he then knew that proceedings had been commenced.

In this submission the Tenant declared that he is living in New Zealand and he provided a forwarding address.

At the hearing on September 01, 2016 the Landlord stated that she did not understand that she was required to serve the Tenant with the Notice of Review Hearing, although that information was provided to her in a Review Consideration Decision dated July 13, 2016.

The hearing on September 01, 2016 was adjourned to provide the Landlords with a second opportunity to serve the Tenant with the Notice of Review Hearing. The hearing was reconvened on November 09, 2016 and was concluded on that date.

In my interim decision, dated September 02, 2016, the Landlord was advised that she must serve the Tenant with:

- the Notice of the Review Hearing for the hearing on November 09, 2016;
- another copy of the original Application for Dispute Resolution; and
- another copy of the evidence numbered 1 to 83 that she previously submitted to the Residential Tenancy Branch.

At the hearing on November 09, 2016 the Landlord stated that on September 17, 2016 she served notice of the November 09, 2016; another copy of the original Application for Dispute Resolution; and another copy of the evidence numbered 1 to 83 to the Tenant, via registered mail. She stated that she sent this evidence to the address in New Zealand that was provided to her in my interim decision of September 02, 2016.

The Landlord stated that the forwarding address provided to her in my interim decision of September 02, 2016 is the same address that was provided to her by the Tenant as evidence for these proceedings.

On October 19, 2016 the Landlord submitted Canada Post documentation to the Residential Tenancy Branch which corroborates her testimony that a package was mailed to the Tenant in New Zealand. This documentation indicates that the package was mailed on September 17, 2016 and was delivered on September 30, 2016.

On November 03, 2016 the Landlord submitted a copy of a letter, dated October 07, 2016, to the Residential Tenancy Branch. The author of this letter declared that her mother, who lives in New Zealand, received the package mailed to the Tenant's forwarding address on September 17, 2016. The author declared that the Tenant is no longer at the New Zealand address; that he has not received this package; and that they do not have a forwarding address for the Tenant.

On the basis of the undisputed evidence I find that the Tenant provided the Landlord with a forwarding address in New Zealand when he provided her with evidence for these proceedings, a copy of which was also provided to the Residential Tenancy Branch.

On the basis of the undisputed evidence I find that the Landlord served the Application for Dispute Resolution, notice of the hearing on November 09, 2016, and a copy of the 83 pages of evidence the Landlord submitted to the Residential Tenancy Branch on November 21, 2015 to the forwarding address provided to the Landlord by the Tenant. I therefore find that these documents have been served to the Tenant in accordance with section 89(1)(d) of the *Residential Tenancy Act (Act).* A party cannot avoid service by providing a forwarding address and not making reasonable arrangements to retrieve mail sent to that address.

The documents submitted by the Landlord were accepted as evidence for these proceedings and the hearing proceeded in the absence of the Tenant.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit, to compensation for unpaid rent and utilities, and to keep all or part of the security deposit?

Background and Evidence

The Landlord stated that:

- the tenancy began in September of 2014;
- the Tenant agreed to pay monthly rent of $850.00 by the first day of each month for each full month the Tenant occupied the unit;
- when this tenancy began the parties agreed that the Tenant would vacate the rental unit by June 14, 2014;
- the parties agreed that the Tenant would only have to pay $392.00 in rent for June, as he was to vacate the unit before the end of that month;
- the Tenant agreed to pay 50% of the hydro and 50% of the internet charges;
- the Tenant paid a security deposit of $850.00;
- on June 03, 2015 the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent;
- the Tenant mailed the keys to the Landlord sometime during the latter part of June of 2015; and
- she is not certain when the rental unit was vacated.

The Landlord is seeking compensation, in the amount of $792.61, for hydro charges. The Landlord submitted copies of hydro bills for the period between September 19, 2014 and June 18, 2015, which total $1,722.93. The Landlord stated that the Tenant has not paid any portion of these bills.

The Landlord is seeking compensation, in the amount of $216.07, for internet fees. The Landlord submitted copies of telephone bills for the period between September 05, 2014 and June 04, 2015. These bills list a variety of charges, including internet fees for two telephone numbers. The Landlord stated that the Tenant agreed to pay for the 50% of the internet fees for the telephone number ending with 37. The internet fees associated to that telephone number on the bills submitted total $448.00. The Landlord stated that the Tenant has not paid any portion of these bills.

The Landlord is seeking compensation, in the amount of $252.00, in rent for June of 2015. The Landlord stated that no rent was paid for June of 2015. She is not seeking the full monthly rent for June as she and the Tenant had agreed the rental unit would be vacated by June 14, 2015.

The Landlord is seeking compensation, in the amount of $62.59, for replacing a set of silverware. The Landlord stated a new set of silverware was provided with the rental unit, which had 12 table settings. She stated that over half of the silverware was missing at the end of the tenancy. The Landlord submitted a receipt to show that it cost $55.99 plus tax to replace the silverware.

The Landlord is seeking compensation, in the amount of $151.07, for a heat pump service fee. In support of this claim the Landlord stated that:

- the Tenant told another occupant of the residential complex to turn off the heat pump;
- the heat pump made a “surging” noise when it was turned back on;
- the Tenant reported the surging noise to the Landlord;
- the Landlord contacted a service company to investigate the report; and
- the service company determined that the surging noise was normal.

The Landlord submitted an invoice to show that the Landlord was charged $151.07 for a service call. This invoice indicates the service call was made in response to a concern about high hydro consumption.

The Landlord submitted a letter from the company that serviced the heat pump, in which the author of the letter declares that the service call was made in response to a concern about “extreme noise”.

The Landlord is seeking compensation, in the amount of $1,740.00, for painting the rental unit. In support of this claim the Landlord stated that:

- the rental unit was painted in June of 2014;
- the Tenant made numerous large holes in the wall for the purposes of hanging curtains; and
- the Tenant damaged the walls in several places.

The Landlord submitted a quote that shows it will cost $1,740.00 to repaint the unit. The Landlord stated that she paid that amount to paint the unit.

The Landlord submitted numerous photographs of the damaged walls.

The Landlord is seeking $800.00 for costs associated for preparing for these proceedings.

The Landlord is seeking compensation, in the amount of $3,000.00, for pain and suffering. This claim is based on the various difficulties the Landlord experienced while dealing with the Tenant during the tenancy.

Analysis

On the basis of the undisputed evidence I find that the Tenant agreed to pay 50% of hydro costs incurred during the tenancy and that he has not paid his portion of the hydro bills for the period between September 19, 2014 and June 18, 2015. 50% of these bills, which total $1,722.93, is $861.47. As the Tenant agree to pay 50% of the hydro bills I find that he is obligated to do so and I therefore find that the Landlord is entitled to the full amount of her claim for $792.61. I am unable to award the Landlord more than $792.61 for this claim, as she has not notified the Tenant of her intent to claim more than this amount.

On the basis of the undisputed evidence I find that the Tenant agreed to pay 50% of the internet fees for a telephone number ending with 37 that were incurred during the tenancy and that he has not paid his portion of those fees for the period between September 05, 2014 and June 04, 2015. 50% of the $448.00 in fees is $224.00. As the Tenant agree to pay 50% of the hydro bills I find that he is obligated to do so and I therefore find that the Landlord is entitled to the full amount of her claim for $216.07. I am unable to award the Landlord more than $216.07 for this claim, as she has not notified the Tenant of her intent to claim more than this amount.

On the basis of the undisputed evidence I find that the Tenant agreed to pay monthly rent of $850.00 for the months that he occupied the rental unit for the entire month; that he agreed to pay $392.00 in rent for June of 2015, as he was going to vacate the unit by June 14, 2015; and that he paid no rent for June of 2015. As the Tenant agreed to pay $392.00 in rent for June and he was living in the unit for a portion of June, I find that he is obligated to pay that amount. I therefore find that the Landlord is entitled to the full amount of her claim for $252.00. I am unable to award the Landlord more than $252.00 for this claim, as she has not notified the Tenant of her intent to claim more than this amount.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the

amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the full set of silverware that was provided with the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of replacing the silverware. The evidence shows that it cost $62.71 to replace the silverware so I grant the Landlord the full amount of the claim for $62.59. I am unable to award the Landlord more than $62.59 for this claim, as she has not notified the Tenant of her intent to claim more than this amount.

Section 67 of the *Act* authorizes me to order a tenant to pay money to a landlord if the landlord suffers a loss as a result of the tenant breaching the *Act*. I find there is insufficient evidence to establish that the Tenant breached the *Act* when he reported his concerns about the heat pump to the Landlord, regardless of whether those concerns related to high energy consumption or excessive noise. Tenants have an obligation to report potential problems with a rental unit and they cannot be held liable for reporting those concerns, unless it can be clearly established that the report was made with malicious intent.

As the Landlord has submitted insufficient evidence that the Tenant breached the *Act* when he reported the problem with the heat pump to the Landlord, I dismiss her claim for compensation for that service call.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the walls in the rental unit, which were, in my view, damaged beyond what is considered reasonable wear and tear.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years. The evidence shows that the living room was painted in June of 2014 and was, therefore, approximately one year old at the end of the tenancy. I therefore find that the paint in the living room has depreciated by twenty-five percent, and that the Landlord is entitled to seventy-five percent of the cost of repainting the living room, which in these circumstances is $1,305.00.

The Landlord has claimed compensation for mailing costs and other costs associated to preparing for this dispute resolution proceeding. I find that the Landlord did not need to incur these costs to participate in this proceedings and I therefore dismiss the Landlord's claim for compensation for those costs.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord's claim of $800.00 for costs associated for preparing for these proceedings.

I note that the Landlord has not applied to recover the fee for filing this Application for Dispute Resolution and I am, therefore, unable to award compensation for that fee.

Section 28 of the *Act* grants tenants the right to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*; and use of common areas for reasonable and lawful purposes, free from significant interference.

The *Act* does not grant landlord's a similar right to quiet enjoyment, presumably because the landlord has the right to end the tenancy if the tenant has significantly interfered with or unreasonably disturbed the landlord or another occupant of the residential property. As landlords do not share the same right to quiet enjoyment of the rental unit, I dismiss the Landlord's application for $3,000.00 for "pain and suffering".

Conclusion

The Landlord has established a monetary claim, in the amount of $2,628.87, which includes $792.61 for hydro; $216.07 for internet fees; $252.00 in rent for June of 2015; $62.59 for replacing the silverware; and $1,305.00 for painting. Pursuant to section 72(1) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of $850.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of $1,778.87. In the event the Tenant does not voluntarily 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.

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: November 12, 2016

Residential Tenancy Branch