Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF – Landlord's application
MNDC MNSD FF – Tenants' application

Introduction

This hearing was scheduled to hear matters pertaining to cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed her application on February 16, 2016 seeking a $2,800.00 monetary order for: money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee.

The Tenants filed their application on March 23, 2016 seeking an $8,438.16 monetary order for: money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; the return of their security deposit; and to recover the cost of the filing fee.

Each party confirmed receipt of the other's application, notice of hearing documents, and documentary evidence. No issues regarding service or receipt of each other's evidence were raised. As such I considered the submissions from both parties as evidence for this proceeding.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to monetary compensation for loss of rent; damage to the rental unit; and cleaning costs?
2. Have the Tenants proven entitlement to monetary compensation for emotional distress; airfare; pest control; and the cost of translation of documents for this proceeding?
3. How should the security deposit be disbursed?

Background and Evidence

The parties entered into a six month fixed term tenancy agreement which began on April 15, 2014. On March 11, 2014 the Tenants paid $800.00 as the security deposit.

A move in inspection report form was completed and signed by both parties on April 14, 2014.

On April 12, 2015 the parties entered into a subsequent fixed term tenancy agreement which began on April 15, 2015 and was set to expire on April 14, 2016. Rent was payable on or before the fifteenth of each month in the amount of $1,600.00.

The rental unit was described as being an apartment condo located on the third floor of a four story building.

On April 15, 2015 the female Tenant sent an email to the Landlord which stated as follows:

> *[male Tenant's name] situation is getting worse because of breaking of new job opportunity in [neighbouring city's name]. So if you move in this place, We will leave out soon! I hope you can understand our situation.*
>
> [Reproduced as written excluding male Tenant's name and city name]

The Landlord testified that was the first time the Tenants tried to end their subsequent lease. She stated the female Tenant had told her that the male Tenant had some problems with his visa situation due to his changing jobs.

The Landlord submitted that on December 10 or 11, 2015 she received another email from the Tenants and that time the Tenants indicated they wanted to end their tenancy, before the end of the lease, due to difficulty with mice or rats in their rental unit.

The Landlord asserted the first time she was told about the rodent issue was on August 29, 2015 when the Tenants had sent her an email informing her there had been a problem with mice (rodents) in their unit. She submitted evidence that the strata council arranged for a pest control company to attend and treat the unit on September 4, 2015. The Landlord asserted that she contacted the Tenants twice after the pest control company had attended the unit and each time the Tenant told her the issue had been resolved. On October 1, 2015 the Tenant sent the Landlord another six postdated rent cheques. The Landlord noted that there was no mention of rodents when those cheques were received and she was never told that the rodent issue had returned.

On January 4, 2016 the Landlord received an envelope from the Tenants which included the Tenants' notice to end tenancy. That notice to end tenancy was dated December 11, 2015 and indicated the Tenants would be ending their tenancy effective January 11, 2016.

The Tenants vacated the unit by January 11, 2016. On February 7, 2016 the Tenants provided the Landlord with their forwarding address via email.

The Tenants attempted to schedule the move out inspection to be completed on January 12, 2016; however, the Landlord was not available at that time. The Landlord testified she responded saying she would like to schedule the move out inspection on January 14, 2016 and that the Tenants refused to attend on that date. The Tenants did not respond with alternative dates and later mailed the rental unit keys back to the Landlord. The Landlord submitted she re-rented the rental unit effective February 15, 2016.

The Landlord now seeks monetary compensation of $2,454.22 which is comprised of: $1,600.00 for the loss of rent from January 15, 2016 to February 14, 2016; $250.00 for costs incurred to clean the rental unit and carpets; $454.22 to replace the kitchen garburator as per receipts submitted into evidence ($210.00 labour + $244.22 parts); and $150.00 for the strata move out fee (no receipts provided).

The Landlord withdrew her claims for $400.00 for damaged tile replacement. She stated that she was unable to purchase tiles that matched the broken ones and therefore, does not have receipts to prove that claim. The Landlord acknowledged that she had made a clerical error when listing the security deposit as being $1,600 on her application for Dispute Resolution. She confirmed the Tenants' security deposit amount was $800.00.

The Tenants disputed all of the items claimed by the Landlord arguing they had cleaned the rental unit. The Tenants stated they had receipts to prove they cleaned the rental unit; however, they did not submit them into evidence.

The Tenants submitted a counter claim of $8,438.16 comprised of $5,000.00 for emotional distress caused due to living in a unit that had rodents; $2,366.83 for airfare back to Canada to attend and address this dispute; $71.33 as per receipts provided to purchase rodent control products; $800.00 for the return of their security deposit; and $200.00 for the cost to translate documents for evidence.

The receipts submitted into the Tenants' evidence for rodent control products were dated August 8, 2015; August 9, 2015; August 19, 2015; and August 29, 2015.

The Tenants placed a lot of emphasis on arguing that they did not receive a copy of their second or subsequent tenancy agreement until September 26, 2016. The Tenants asserted they were not aware of the terms of the second agreement they signed and then questioned why some of the documents had been changed in handwriting.

The Tenants stated that despite the fact they sought assistance from the Residential Tenancy Branch when they first found the rodents in June 2015, they did not file an application for Dispute Resolution sooner because: (1) they did not know they had to file an application; and (2) because they were distressed due to lack of sleep after finding out there were rodents in their rental unit. The Tenants' written submission referenced exhibits which they confirmed were not submitted to the Residential Tenancy Branch with their evidence.

The Landlord disputed the Tenants' submissions and argued the Tenants were provided a copy of the second agreement the day after it was signed. The Landlord confirmed that some of the dates were listed in handwriting on the second agreement because she simply copied the first agreement and blanked out the dates to insert the new dates for the subsequent agreement. She noted how the signatures were different from the first and second agreement which proves there was a second copy/contract signed.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

After careful consideration of the foregoing; relevant evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

I favored the evidence of the Landlord, who stated in part, (1) they provided the Tenants with a copy of the second agreement the day after they signed it; and (2) that the Tenants' visa and recent change in employment may have impacted the Tenants' decision to end the tenancy early. I favored the Landlord's submissions over the evidence of the Tenants who stated: (1) they never received a copy of that second agreement until September 26, 2016; (2) the Tenants did not know the length of or end date of the second tenancy agreement; and (3) the Tenants ended the tenancy due to the presence of rodents. I favored the evidence of the Landlord over the Tenants, in part, because the Landlord's evidence was forthright, credible and supported by documentary evidence which included, in part, email conversations between the two parties. The Landlord readily acknowledged how they had copied the first tenancy agreement in order to keep the same terms and that she hand wrote the new dates into the second copy prior to having the Tenants sign it; and that there had been rodents in

the unit that were taken care of by the pest control company hired by the strata company.

> In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:
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> > *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Tenants' explanations of why they ended their tenancy early and why they did not file an application for Dispute Resolution sooner, even after they spoke to the Residential Tenancy Branch (RTB) employees to be improbable. After consideration of the totality of the evidence before me I find that the Landlord's explanations regarding the disputed occurrences or events to be plausible given the circumstances presented to me during the hearing.

Landlord's application

Section 45 (2) of the Act stipulates that a tenant may end a fixed term 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 not earlier than the date specified in the tenancy agreement as the end of the tenancy.

Based on the above, I find the Tenants breached section 45(2) of the *Act,* when they ended their fixed term tenancy on January 11, 2016, over 3 months prior to the end of the fixed term of April 14, 2016. I accept the Landlord's submission that the Landlord suffered a loss of rent of $1,600.00 for the period of January 15, 2016 to February 14, 2016 due to the Tenants' breach. In addition, I find the Landlord mitigated their loss by re-renting the unit effective February 15, 2016. Accordingly, I grant the Landlord compensation for loss of rent in the amount of **$1,600.00**, pursuant to section 67 of the *Act.*

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I accept the Landlord's submission that the Tenants left the rental unit requiring cleaning at the end of their tenancy in breach of section 37 of the *Act*. The Landlord's submission was supported by documentary evidence which included an invoice dated January 15, 2016 for cleaning of the rental unit and carpets in the amount of $250.00. It is reasonable to conclude that the Landlord would not have incurred that cost had the

Tenants properly cleaned the rental unit. Accordingly, I grant the Landlord's claim for cleaning costs in the amount of **$250.00**, pursuant to section 67 of the *Act.*

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, such as appliances, it is necessary to reduce the replacement cost by the depreciation of the original item.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In regards to the Landlord's claim of $454.22 ($210.00 + $244.22) for replacement of the garburator, in absence of a copy of the condition inspection report form and in absence of evidence as to the age of the broken garburator, I conclude the Landlord submitted insufficient evidence to prove their claim to replace the garburator. As such, I dismiss the claim for $454.22, without leave to reapply.

Regarding the claim of $150.00 for a move out fee, in absence of an invoice and/or receipt from the strata corporation I conclude the Landlord failed to submit sufficient proof she was charged a move out fee by the strata corporation and failed to prove that she had paid such a fee. Accordingly, I dismiss the $150.00 claim, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has partially succeeded with their application; therefore, I award recovery of the **$100.00** filing fee, pursuant to section 72(1) of the Act.

As per the aforementioned, the Landlord has been awarded monetary compensation in the total amount of **$1,950.00** ($1,600.00 + $250.00 + $100.00).

Tenants' application

The dispute resolution process allows an Applicant to claim for compensation or loss resulting from a breach of the *Act;* pursuant to sections 7 and 67 of the *Act.* Residential Tenancy Policy Guideline 16 states that an arbitrator may also award compensation for aggravated damages which may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application. An arbitrator does not have the authority to award punitive damages.

I find there was insufficient evidence before me to prove the Tenants suffered aggravated damages or a loss due to the Landlord's deliberate actions or through the Landlord's negligence. In addition, there was insufficient evidence before me to prove the Tenants informed the Landlord of the presence of rodents in the rental unit, or the return of rodents to the rental unit, after June 2015 and prior to August 30, 2015. Furthermore, the evidence suggests the Tenants did not inform the Landlord of the rodents until after the Tenants purchased the materials to treat or ward off the rodents, without agreement from the Landlord that the Tenants would be reimbursed for such purchases.

There was however, sufficient evidence to prove the Landlord took appropriate actions to mitigate the presence of rodents immediately upon being notified of the return of or presence of rodents in the rental unit; as supported by the emails submitted into evidence that were sent between the parties dated September 1, 2015. Accordingly, I dismiss the Tenants' claims for emotional distress and amounts for rodent control products, without leave to reapply.

The *Act* provides an arbitrator the authority to award filing fees as costs relating to filing an application for Dispute Resolution. Costs incurred due to language translation fees or air fare costs to come to Canada are not costs denominated or named by the *Residential Tenancy Act;* therefore, an arbitrator has no authority to award such costs*.* The parties were reminded that this hearing was scheduled to be heard via teleconference and in English. As such, this hearing could have been attended from anywhere in the world where there was telephone service. The burden to prepare evidence in English falls upon the person submitting that evidence. Accordingly, the Tenants' claims for air fare and translation costs are dismissed, without leave to reapply.

Regarding the disbursement of the security deposit, section 16 of the Regulations stipulates that the landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.

In this case the Tenants requested the Landlord conduct the move out inspection on January 11, 2016, with short notice. The Landlord was not available on that date and offered to conduct the inspection on January 14, 2016; the end date of the monthly rent payments. The Tenants simply refused to attend the inspection on January 14, 2016 and refused to negotiate a different date when they could attend or when they could have an agent attend on their behalf; which I find to be in breach of section 16 of the Regulations*.*

Therefore, as I have favored the Landlord's submission that they had provided the Tenants with a copy of the second lease; the Landlords filed their application for Dispute Resolution within 15 days of receipt of the Tenants' forwarding address; the Landlords filed seeking a claim for loss of rent; and I have found the Tenants to be in breach of section 16 of the Regulation*;* I conclude the Landlord has not extinguished her right to file a claim against the security deposit. Accordingly, I dismiss the Tenants' request for

the return if the security deposit as it will be offset against the Landlord's monetary award as listed below.

The Tenants were not successful with their application as it was dismissed in its entirety. Accordingly, I declined to award recovery of their filing fee.

Monetary Order
I find that the Landlord's monetary award meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the $800.00 deposit since March 11, 2014.

Landlord's monetary award	$1,950.00
LESS: Security Deposit $800.00 + Interest 0.00	-800.00
Offset amount due to the Landlord	**$1,150.00**

The Tenants are hereby ordered to pay the Landlord the offset amount of $1,150.00 forthwith.

In the event the Tenants do not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **$1,150.00** which may be enforced through Small Claims Court upon service to the Tenants.

Conclusion

The Landlord was partially successful with her application and was awarded $1,950.00 monetary compensation that was offset against the Tenants' security deposit leaving a balance owed to the Landlord of $1,150.00. The Tenants' application was dismissed in its entirety.

This decision is final, legally binding, and 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 01, 2016

Residential Tenancy Branch