



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord served the tenant with the landlord's application for dispute resolution via registered mail. I find that the tenant was served in accordance with section 89 of the *Act*.

Preliminary Issue – Evidence

Rule 3.10.5 of the Rules of Procedure states:

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain

access to the evidence. Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

The landlord testified that she served the tenant with all photographic evidence on a usb stick and all other documents were printed out and served with the landlord's application for dispute resolution. The landlord testified that she did not confirm with tenant that the tenant was able to view the evidence contained on the usb stick.

The tenant testified that only the landlord's application for dispute resolution was printed out and that the only other item in the registered mail package was a usb stick that she was not able to view.

During the hearing it became clear that the landlord was not prepared for this hearing, did not know basic elements of her claim and seemed confused as to what she was seeking. The landlord referred to items not uploaded to the dispute management site and could not locate items that were uploaded to the dispute management site. The tenant's testimony in contrast was calm and clear. I find the landlord has not proved, on a balance of probabilities, that any of her evidence was printed out. I find that the landlord breached Rule 3.10.5 of the Rules of Procedure by failing to enquire as to the tenant's ability to view the evidence on the usb stick. The landlord's evidence is therefore excluded from consideration.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This periodic tenancy began on December 1, 2019 and ended on March 31, 2020. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A security deposit of \$800.00 was paid by the tenant to the landlord. A written tenancy agreement was submitted for this application.

Both parties agree that the tenant gave the landlord her forwarding address in writing on March 30, 2020. The landlord filed this application for dispute resolution on April 14, 2020.

Loss of rental income/unpaid rent

Both parties agree that the tenant gave the landlord her notice to end tenancy on March 4, 2020, effective March 31, 2020. The notice was entered into evidence. The tenant testified that she ended the tenancy early because the landlord came to the subject rental property screaming and yelling at the tenant because the tenant's daughter told the landlord that the tenant will move one day. The tenant testified that the police were called, and they informed her that the landlord has a history and that the tenant should move herself and her children away from the landlord as soon as possible.

The landlord's application for dispute resolution claims \$800.00 in unpaid rent. In the hearing the landlord testified that she was seeking \$2,400.00 in unpaid rent, then changed her mind and testified that she was seeking \$1,600.00 in unpaid rent for April 2020. The landlord testified that new tenants moved in on April 15, 2020 but did not pay rent for April because they helped the landlord repair the damages caused by the tenant.

Cleaning

The landlord testified that the subject rental property was filthy with vomit on the walls. The landlord testified that she hired a cleaner for \$1,000.00 to clean the subject rental property. No receipt(s) were admitted into evidence.

The tenant testified that she cleaned the subject rental property when she moved out and that it was in the same condition on move in as move out.

Fridge Repairs

The landlord testified that the tenant broke three selves and one drawer in the fridge and that is cost \$150.00 to replace the broken items. The tenant testified that she did not damage the shelves and drawer. No receipt(s) were admitted into evidence.

Lightbulbs/Smoke detector/ Cleaning supplies

The landlord testified that the tenant removed the bathroom lightbulbs and the smoke detector from the subject rental property when she moved out. The landlord testified that she had to purchase cleaning materials to clean the subject rental property. The landlord testified that she is seeking \$131.66 for the above items. No receipt(s) were admitted into evidence.

The tenant testified that she did not take the lightbulbs and smoke detector. The tenant testified that the subject rental property was clean when she moved out.

Painting

The landlord testified that the tenant left paint splatters on the walls of the subject rental property and that the entire property now needs to be repainted. The landlord testified that the bathroom door was kicked in by the tenant. The landlord testified that she is seeking \$4,000.00 for painting and door repair. No receipt(s) were admitted into evidence.

The tenant testified that she did not splatter the walls with paint or damage the door and that the property was in the same condition on move in as move out.

Analysis

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:

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) 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 that the tenant provided the landlord notice to end the tenancy in writing on March 4, 2020.

Section 45 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 date before the day in the month that rent is payable under the tenancy agreement.

This issue is expanded upon in Policy Guideline #5 which explains that, where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

In this case, contrary to section 45 of the *Act*, less than one month's written notice was provided to the landlord to end the tenancy. The earliest date the tenant was permitted to end the tenancy was April 30, 2020.

Section 4.2 of the Rules of Procedure state that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I decline to amend the landlord's application to claim an increased amount of loss of rent because the change was not reasonably anticipated by the tenant. In the hearing, the landlord was not even certain of what amount she was claiming.

I find that the landlord is entitled to a monetary award of \$800.00 because the tenant gave less than one month's notice to end tenancy. I find that the tenant has not proved, on a balance of probabilities, that the landlord breached the tenancy agreement or was unsafe to be around.

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find the landlord has not proved, on a balance of probabilities, any of her monetary claims for damage to the property as the tenant has disputed all of them and no other evidence to clarify the issues was admitted into evidence. In addition, the landlord has not proved the value of her alleged loss as no documents were admitted into evidence for consideration.

As the landlord was mostly unsuccessful in her claim, I decline to award the landlord the recovery of the filing fee, pursuant to section 72 of the *Act*.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$800.00.

Conclusion

The landlord is entitled to retain the tenant's security deposit in the amount of \$800.00.

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: August 20, 2020

Residential Tenancy Branch