Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding J. D. NELSON & ASSOC. LTD.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Compensation for damage caused by the tenants, their pets or their guests;
- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed;
- Recovery of the filing fee; and
- Authorization to withhold the security deposit.

The hearing was convened by telephone conference call and was attended by the Tenants, a support person for the Tenants, and an agent for the Landlord (the Agent), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As a result, I confirmed service of these documents as explained below.

The Agent stated that they only had one forwarding address from B.G. and as a result, that address was used to serve both B.G. and A.T. with the Landlord's documentary evidence and the Notice of Dispute Resolution Proceeding Package. The Agent stated that the Notice of Dispute Resolution Proceeding Package, including a copy of the Landlord's documentary evidence, the Application, and the Notice of Hearing, was sent individually to each of the Tenants by registered mail on June 26, 2020, at the forwarding address provided by B.G. on the move-out condition inspection report, and provided me with the registered mail tracking numbers, which have been recorded on

the cover page of this decision. The Agent stated that copies were also posted to the door on June 27, 2020.

Although the Tenant B.G. acknowledged receiving the Notice of Dispute Resolution Proceeding Package, including a copy of the Landlord's documentary evidence, the Application, and the Notice of Hearing, from their door on June 27, 2020, the same date the Agent states that it was posted, they denied receipt of the Registered Mail and A.T. denied receipt of both the Registered Mail and the Package posted to B.G.'s door. A.T., B.G., and their support person all provided affirmed testimony that A.T. did not reside at the same address as B.G. at the time the Notice of Dispute Resolution Proceeding Packages were posted and mailed to B.G.'s address and B.G. stated that as they did not know where A.T. was living, the documents could not be given to them.

As B.G. confirmed receipt of the Notice of Dispute Resolution Proceeding Package and the Landlord's documentary evidence on June 27, 2020, I find that they were served in accordance with the Act and the Rules of Procedure on this date. However, the Canada Post Website shows that the Registered mail sent to A.T. was returned as unclaimed and A.T. denied receipt of both the Registered mail and the package posted to B.G.'s door.

I am satisfied that the forwarding address provided by B.G. for themselves on the move-out condition inspection report does not apply to A.T. as A.T. never moved to or resided at that forwarding address. As a result, I find that B.G.'s forwarding address does not qualify as a valid address for service for A.T. under the Act. Further to this, Canada Post confirmed that the registered mail sent to A.T. at this address was never picked up and B.G. provided affirmed testimony that the package for A.T. that was posted to their door was never delivered to A.T. as they did not know where they lived.

Based on the above, I am satisfied that A.T. was not served with the Notice of Dispute Resolution Proceeding Package and the Landlord's documentary evidence as required by the Act and the Rules of Procedure, and I find that it would therefore be unfair and a breach of the Act, the Rules of Procedure, and the principles of natural justice to proceed against A.T. at the hearing as A.T. did not have a full opportunity to know the case against them.

As B.G. acknowledged service and tenants are jointly and severally liable under the Act, the hearing therefore proceeded only against B.G., who was properly served. With B.G.'s consent, A.T. remained at the hearing to provide testimony as a witness but not as a party to the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

B.G. stated that they sent the Landlord their documentary evidence by courier on October 7, 2020, and that it was delivered the same day. Proof of service and delivery was submitted by B.G. in the form of an invoice from the courier.

Although the agent for the Landlord acknowledged receipt, they stated that they have not yet had time to consider this evidence or respond to it as they were out of town until October 16, 2020.

Rule 3.15 of the Rules of Procedure states that respondent evidence to be considered at the hearing must be served on the Applicant and received by the Residential Tenancy Branch (the Branch) not less than 7 days before the hearing. I am satisfied by B.G.'s affirmed testimony and the documentary evidence they submitted, that their evidence in response to the Landlord's Application was sent by mail to the Landlord, or their agent, on October 7, 2020. As B.G. submitted proof that it was sent as set out above, and confirmation that it was delivered and signed for on October 7, 2020, at 12:57 P.M., I am satisfied that B.G. complied with Rule 3.15 of the Rules of Procedure and that the documentary evidence was therefore served on the Landlord as required.

Although the Agent stated that they were out of town until October 16, 2020, no proof of this absence was submitted for my review. Further to this, the hearing related to the Landlord's Application, and I therefore find that it was incumbent upon them, the Landlord, or another agent for the Landlord, to make arrangements to accept and consider documentary evidence served by the Tenant on the Landlord in relation to the Landlord's Application within the timelines set out under the Rules of Procedure. I find that their failure to do so does not entitle them to an extension of any service deadlines or to the exclusion of documentary evidence served on the Landlord by the Tenant as required but not considered by them in a timely manner.

Despite the above, as this was a hearing for the Landlord's Application, I offered the Agent the option to adjourn the hearing and reconvene the matter at a later date, so that they could more fully consider the Tenant's documentary evidence. However, I advised the parties that I would not allow for the submission of additional documentary evidence, other than new and relevant evidence as set out under rule 3.17 of the Rules of Procedure, as the timelines for service of evidence had passed. The Agent declined as they wished to proceed with the hearing of the matter as scheduled.

As a result, the hearing proceeded as scheduled based on the documentary evidence before me from both parties and the testimony provided during the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage caused by the Tenants, their pets or their guests?

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord authorized to withhold the security deposit?

Background and Evidence

The written tenancy agreement in the documentary evidence before me, signed by the Tenants on June 28, 2019, and an agent for the Landlord on August 14, 2019, states that the one year fixed term tenancy agreement with an end date of June 30, 2020, commenced on July 1, 2019. The tenancy agreement states that rent in the amount of $1,850.00 is due on the first day of each month. Conflicting information about the amount of the security deposit due was provided in the written tenancy agreement, as $925.00 was originally noted but was crossed out and $800.00 was written in by hand.

During the hearing the parties agreed that only $800.00 had been paid as a security deposit, none of which has been returned to the Tenants, and that no pet damage deposit was paid. The parties also agreed that a move-in condition inspection was completed as required and that copies of the condition inspection were provided as set out in the regulations.

The parties were in agreement that the Tenants vacated the rental unit on or before June 1, 2020, without notice, and that the Landlord first became aware the Tenant's had vacated on June 9, 2020, when they responded to an email sent to them by the Agent on June 8, 2020, regarding the state of the yard. The Agent stated that a first offer for a move-out condition inspection was then sent to the Tenants by email on June 9, 2020, for an inspection at 11:00 A.M. the following day, June 10, 2020. The Agent stated that neither Tenant appeared for this inspection, and as a result, an offer for a second inspection was sent by email on June 10, 2020, for an inspection the following day, June 11, 2020, at 11:00 A.M. The Agent stated that when the Tenants failed to attend, the move-out condition inspection was completed in their absence in accordance with section 35(5) of the Act.

The Tenants did not dispute failing to attend either inspection but argued that they did not see the emails in time to attend. Both the Agent and B.G. confirmed that B.G. met with an agent for the Landlord on June 12, 2020, to go over the move-out condition inspection report, at which point B.G. signed the report indicating that it accurately reflected the condition of the rental unit and provided their forwarding address in writing. Despite the above, both B.G. and A.T. disputed that the condition of the rental unit at the end of the tenancy was as shown in the move-out condition inspection report.

During the hearing the Agent stated that the rental unit was not left reasonably clean and undamaged at the end of the tenancy, except for reasonable wear and tear, as required by the Act, resulting in $657.72 in interior and appliance cleaning costs, $441.27 in exterior cleaning, yard maintenance, and junk removal costs, $120.00 for repairs to a heat register, and $682.50 for other repairs and painting to the rental unit and exterior deck. Although no evidence was presented about when the interior of the rental unit was last painted, the Agent stated that the deck was last painted two years ago. The Agent also sought $1,850.00 in unpaid rent for June 2020, as the Tenant's failed to pay rent for June or give proper notice to end their tenancy, which they were not entitled under the Act to end until June 30, 2020, in any event. The Tenants agreed that this amount of rent was owed for June. Finally, the Agent also sought $705.92 in unpaid garbage, sewer, and water bills.

Although B.G. stated that they returned to the rental unit on approximately June 12, 2020, to do some cleaning, and to remove items left behind, including a freezer, they acknowledged that the rental unit was not left reasonably clean at the end of the tenancy. Although they acknowledged leaving some items behind, such as a television, they stated that they were advised that these items would be donated to

charity and therefore believe that they should not be responsible for the cost of their disposal. They also argued that several items left behind were actually possessions left at the rental unit by the previous occupants and therefore not their responsibility to dispose of. The Agent disagreed, stating that the Tenants were responsible to remove all items not provided to them as part of their tenancy agreement.

The Tenants argued that the rental unit was in very poor condition at the start of their tenancy and that the Landlord had failed to do required maintenance throughout their tenancy, which is why they left. As a result, the Tenant stated that they are not responsible for any of the repair costs sought by the Landlord, which they argued were either not actually incurred by them or grossly inflated. The Agent denied that the rental unit poor condition at the start of the tenancy or that the Landlord had failed to complete required maintenance and repairs and pointed to the move-in condition inspection report. The Agent also stated that no complaints regarding the state of the rental unit or request for repairs were received during the tenancy. The Tenant also denied that they were responsible for the $705.92 in unpaid utilities sought, as they though this was included in rent.

In support of their position, the Tenant submitted a 5 page written submission, copies of email correspondence, proof of email money transfers, a BC Assessment report for a house other than the rental unit, a BC Assessment report for the rental unit, and an aerial photograph of the rental unit/property. In support of their position the Landlord submitted written submissions, copies of letters to the Tenants, copies of email correspondence with the Tenants, the move-in/out condition inspection report, invoices for costs incurred, including a self authored invoice, a portion of which is illegible, photographs, copies of utility bills, and a monetary order worksheet.

Analysis

Section 38 (1) of the Act states that except as provided in subsection (3) or (4) (a), of the Act, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit

Based on the documentary evidence and testimony before me for consideration, I am satisfied that the tenancy ended on June 1, 2020, the date that the Tenants vacated the

rental unit , and that the Tenant B.G. provided their forwarding address to the Landlord in writing on June 12, 2020.

Although the Tenants failed to attend the move-out condition inspection, I find that the Landlord extinguished their right to claim against the security deposit first pursuant to section 36(2)(a) of the Act and Policy Guideline section C, subsection 8, by failing to offer two opportunities for the inspection as required by the Act in the manner stipulated by the regulations, as there is no evidence before me that the Landlord or their agent used the approved #RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection form as required. However, I find that there is no material affect to the Landlord's extinguishment under section 36 of the Act, as I find that the Landlord filed their Application seeking retention of the security deposit within the timeline set out under section 38(1) of the Act, and the Landlord sought more than compensation for damage to the rental unit in the Application.

Section 21 of the regulation states that in dispute resolution proceedings, a condition inspection report 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. Although the Tenants have now appeared and argued that the move-out condition inspection report is inaccurate, B.G. signed the move-out condition inspection report on June 12, 2020, and selected the box indicating that they acknowledged that the state of the rental unit was as shown in the move-out condition inspection report. I do not find that their testimony or written submissions stating that the move-out condition inspection report is inaccurate constitutes a preponderance of evidence to the contrary. If B.G. was unsure if the move-out condition inspection report accurately depicted the state of the rental unit at the end of the tenancy or disagreed with statements made in the move-out condition inspection report, they should not have indicated that it was accurate. They also had the option on the move- out condition inspection report to indicate that they disagreed with Landlord's assessment of the condition of the rental unit as described in the report, but did not do this. As a result, I accept that the move-out condition inspection report accurately reflects the state of the rental unit on the date it was completed, June 11, 2020.

Despite the above, there is an email in the documentary evidence before me from the Tenant B.G. to the Agent indicating that after the condition inspection was completed and signed, the Tenants attended the rental unit to do some cleaning and to pick up some items that were left behind, including a freezer. As there are no emails from the Agent before me in response to the Tenant's email, indicating that this is not the case, I accept as fact that this occurred.

Section 37(2) of the Act states 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. Policy Guideline 1 also states that where generally tenants who live in a single-family dwelling are responsible for routine yard maintenance.

Although there is some evidence before me that the Tenants returned to the rental unit on June 12, 2020, to complete some amount of cleaning, B.G. acknowledged that the rental unit was not left reasonably clean at the end of the tenancy. Although the Tenants questioned the Landlord's claim for $657.72 in interior and appliance cleaning costs, their dispute of this amount appears only to have been based on their personal opinion that it should not have taken this long or cost this much to clean the rental unit, which I do not find sufficient. If the Tenants had wished to avoid having the rental unit cleaned by the Landlord or persons the Landlord hired for this purpose, at their expense, they should have left the rental unit reasonably clean at the end of the tenancy as required by the Act and Policy Guideline 1, which they did not do. I am satisfied that the Tenant breached section 37(2) of the Act by failing to leave the interior of the rental premises reasonably clean at the end of the tenancy, that the Landlord suffered a loss of $657.72 as a result, and that the Landlord mitigated their loss by having the rental unit cleaned at a reasonably economic rate. I therefore grant the Landlord's claim for $657.72 in interior cleaning costs.

Although I am satisfied that the Tenants returned to the rental unit on June 12, 2020, to remove some items left behind, including a freezer, I am not satisfied that the items removed constitute the entirety or items remaining on the premises which either belonged to the Tenants or were their responsibility to remove at the end of the tenancy. Based on the move-out condition inspection report, the photographs submitted by the Landlord, and the other corroborating documentary evidence submitted by the Landlord, I am satisfied on a balance of probabilities, that the Tenant breached section 37(2) of the Act by failing to leave the rental premises, including the yard and exterior portions of the rental unit, reasonably clean at the end of the tenancy, necessitating $441.27 in cleaning, yard maintenance, and junk removal costs, and that the Landlord mitigated their loss by having the yard cleaned and the remaining items removed at a reasonably economic rate. As a result, I grant the Landlord the $441.27 sought for yard maintenance, yard cleaning, and junk removal costs.

Although the Tenant argued that they believed water and sewer costs were included in rent, the tenancy agreement clearly states that water costs are the responsibility of the Tenants and sewer costs are not indicated as included in the cost of rent. Further to

this, section 19 of the Tenancy agreement states that the cost of all utilities including but not limited to gas, electricity, water, sewer, garbage removal, cable, and telephone shall be in addition to rent and the responsibility of the Tenants. Based on the above, I am satisfied that the Tenant was responsible for the cost of all utility charges accrued during the course of the tenancy and as I am satisfied by the Agent and the documentary evidence before me that $705.92 in sewer, garbage and water bills remain unpaid by the Tenants, I therefore grant the Landlord's request for recovery of this amount.

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Based on the written tenancy agreement I find that rent in the amount of $1,850.00 was due on the first day of each month.

There was agreement between the parties that proper notice to end the tenancy under the Act was not given by the Tenants, as there was confusion between them about who was to give notice, and that as a result, the Landlord did not become aware that the Tenants had vacated the rental unit until approximately June 8, 2020. There was also agreement that no rent for June 2020, was paid. The earliest date that the Tenants could have lawfully ended their tenancy under section 45(2) of the Act and in accordance with their fixed-term tenancy agreement, was June 30, 2020, and only by giving proper written notice to do so on or before May 30, 2020. As the Tenant's did not give proper notice to end their tenancy, did not pay rent in the amount of $1,850.00 on June 1, 2020, as required by their tenancy agreement, and did not provide any evidence to satisfy me that they had a right under the Act to withhold June 2020 rent, I therefore find that the Landlord is entitled to the $1,850.00 in rent claimed for June 2020.

Although the Landlord sought $120.00 for re-installation of a heat register, the Tenants denied damaging a heat register and damage to the heat register is not listed in the move-out condition inspection report. As a result, I am not satisfied that this was damaged during the tenancy and I therefore dismiss the Landlord's claim for reimbursement of this cost without leave to reply.

The Landlord also sought $682.50 in repair and painting costs. However, this quote includes the repainting of an entire exterior deck and the majority of the rental unit. Although the Agent stated that the deck was re-painted two years ago, no documentary or other evidence was submitted in support of this statement and no evidence was submitted regarding when the rental unit itself was last painted. Further to this, the

tenancy lasted just under one year, and Policy Guideline 40 states that the useful life of interior paint is 4 years and the useful life of exterior paint is 8 years. The Tenants disputed that they are responsible for painting costs, damage to the deck, or the damage claimed by the Landlord. While I am satisfied by the documentary evidence before me from the Landlord, including photographs and the condition inspection reports, that the Tenants caused some damage to the rental unit over the course of the tenancy, I am not satisfied that all of the costs sought by the Landlord for damage to the rental unit as set out above are related to damage caused to the rental unit over the course of the tenancy, as some pre-existing damage to the rental unit, including walls and trim, was noted on the move-in condition inspection, and some amount of reasonable wear and tear can be expected.

As no proof of when the deck and interior of the rental unit were last painted, I am also not satisfied that either the interior paint or the exterior pant on the deck are not already past their useful life. As a result, I award the Landlord only $341.25 for this portion of their claim, 50% of the repair and painting costs sought.

As the Landlord was successful in the majority of their claims, I also award them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the $800.00 security deposit towards the above noted amounts owed. Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary Order in the amount of $3,296.16 for the balance owed, and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **$23,296.16**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. The tenant is cautioned that costs of such enforcement are recoverable from them by the Landlord.

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 18, 2020

Residential Tenancy Branch