Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL, MNRL, MNDCL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent or utilities, for a monetary Order for damage to the rental unit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on August 19, 2020 the Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch in August of 2020 were served to both Respondents. On the basis of the undisputed evidence, I find that these documents were served to the Respondents in accordance with section 89 of the *Residential Tenancy Act (Act*). As these documents were properly served to the Respondents, the hearing proceeded in their absence and the aforementioned evidence was accepted as evidence for these proceedings.

The Landlord submitted additional evidence to the Residential Tenancy Branch on October 05, 2020 and November 11, 2020. The Landlord stated that these documents were personally served to the female Respondent on November 15, 2020, who is an adult who lives with the male Respondent. On the basis of the undisputed evidence, I find that these documents were served to the female Respondent pursuant to section 88(a) of the *Act* and to the male Respondent pursuant to section 88(e) of the *Act*. As the documents were properly served to the Respondents, they were accepted as evidence for these proceedings.

The Landlord submitted additional evidence to the Residential Tenancy Branch on November 24, 2020. The Landlord stated that these documents were not served to

either Respondent. As these documents were not served to either Respondent, they were not accepted as evidence for these proceedings.

The Landlord affirmed that the Landlord would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter

Rule 4.1 of the Residential Tenancy Branch Rules of Procedure allow a party to amend their Application for Dispute Resolution by completing an Amendment to an Application for Dispute Resolution form and filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.

On November 11, 2020 the Landlord submitted a document in which the Landlord declared that that the amount of the monetary claim was being increased by $3,337.39 to cover “eviction costs”. The Landlord stated that this document was personally served to the female Respondent on November 21, 2020.

On the basis of the undisputed evidence, I find that the aforementioned document was served to the female Respondent pursuant to section 88(a) of the *Act* and to the male Respondent pursuant to section 88(e) of the *Act*. As the document was properly served to the Respondents, it was accepted as evidence for these proceedings.

The Landlord did not file an Amendment to the Application for Dispute Resolution, as is required by Rule 4.1 of the Residential Tenancy Branch Rules of Procedure.

An Amendment to the Application for Dispute Resolution is an important document, as it alerts the other party that a significant change is being made to the Application for Dispute Resolution. It is not sufficient, in my view, to inform a Respondent of a significant change to the Application for Dispute Resolution by simply serving evidence to the other party in which the other party is informed of a significant change, as it is entirely possible the other party is opting to not view evidence served to them for a variety of reasons, one of which may be they are not disputing the initial claims being made by the other party.

As the Landlord did not file an Amendment to the Application for Dispute Resolution to increase the amount of the monetary claim by $3,337.39, I will not be considering the increased monetary claim.

The Landlord retains the right to file another Application for Dispute Resolution claiming compensation for costs associated to evicting the Respondents

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to compensation for unpaid rent/utilities?

Background and Evidence

The Landlord stated that:

- the male and the female Respondent signed a tenancy agreement for the upper rental unit in this residential complex;
- that tenancy ended sometime in January of 2020;
- the Landlord and the male Respondent subsequently entered into a tenancy agreement for the lower rental unit in this residential complex;
- the Landlord and the female Respondent did not enter into a second oral or written tenancy agreement;
- the second tenancy began on February 01, 2020;
- the male Respondent agreed to pay monthly rent of $930.00 for the lower rental unit;
- the male Respondent agreed to pay rent for the lower rental unit by the first day of each month;
- the male Respondent agreed to pay 30% of the hydro and gas bills for the lower rental unit;
- the female Respondent did not agree to pay rent/utilities for the lower rental unit;
- the female Respondent moved into the lower rental unit sometime after April 11, 2020;
- on August 06, 2020 the Landlord was granted an Order of Possession for the lower rental unit; and
- the lower rental unit was vacated on August 19, 2020.

The Landlord submitted a spreadsheet that shows the male Respondent was required to pay $6,510.00 in rent for the period between February 01, 2020 and August 31, 2020, plus $536.29 in gas/hydro for the same period, which equals $7,046.29. The Landlord stated that the male Respondent only paid $5,925.00 towards these charges and the Landlord is seeking a monetary Order for the outstanding amount.

The Landlord stated that the $550.00 in claim for damages to doors relates to damage in the upper rental unit.

The Landlord is seeking $930.00 in lost revenue. In support of this claim the Landlord stated that:

- the Respondents were using cocaine in the rental unit, which is a breach of their tenancy agreement;
- because the Respondents were using cocaine in the lower rental unit he applied for an early end to the tenancy;
- subsequent to a previous hearing a Residential Tenancy Branch Arbitrator granted his application to end the tenancy early;
- the Residential Tenancy Branch Arbitrator granted the Landlord an Order of Possession for the lower rental unit on the basis of the Landlord's application to end the tenancy early;
- the Landlord was not able to re-rent the lower rental unit until September 15, 2020;
- the new occupants of the lower unit are paying rent of $900.00
- the Landlord did not collect rent for the first two weeks of September for the lower rental unit, and
- the Landlord would not have experienced that loss if the Respondents' actions had not caused the Landlord to seek an early end to the tenancy.

The Landlord submitted a copy of the decision from the aforementioned previous dispute resolution proceeding, the number of which appears on the first page of this decision. In this decision, dated August 06, 2020, the Arbitrator concluded that the tenancy should end early on the basis of reports of disturbances related to loud "fighting" and threats of violence from the male Respondent, and he granted the Landlord an Order of Possession that is effective two days after it is served upon the Respondents. The Arbitrator's decision to end the tenancy early is clearly based on his conclusion that it would be unfair to the occupant living in the upper rental unit to wait for a One Month Notice to End Tenancy for Cause to take effect.

Analysis

On the basis of the undisputed evidence, I find that the male and female Respondent entered into a tenancy agreement with the Landlord for the upper rental unit, which ended sometime in January of 2020.

On the basis of the undisputed evidence, I find that the male Respondent entered into a tenancy agreement with the Landlord for the lower rental unit, which began on February 01, 2020 and ended sometime after August 06, 2020.

Rule 2.1 of the Residential Tenancy Branch Rules of Procedure stipulates that to make a claim, a person must complete, and submit, an Application for Dispute Resolution. I find that the Landlord completed an Application for Dispute Resolution, in which the Landlord clearly declares that the claim relates to the lower rental unit.

It is clear that the Landlord wishes to claim compensation for money owed in regard to the tenancies in both the upper and lower rental units. As the terms of the two tenancies are different; the two tenancies relate to different rental units, and only the male Respondent entered into a tenancy agreement for the lower rental unit, I find that the two tenancies cannot be considered at the same proceedings. As the Landlord has clearly declared that this Application for Dispute Resolution relates to the lower rental unit, the issues in dispute at these proceedings will be limited to the tenancy agreement that relates to the lower rental unit.

As the Application for Dispute Resolution does not declare that the Landlord is claiming compensation for losses related to the tenancy in the upper rental unit, which was governed by the first tenancy agreement, that tenancy will not be considered at these proceedings. Any claims that the Landlord has made that relate to the upper rental unit are dismissed, with leave to reapply. This includes the Landlord's claim for unpaid rent/utilities from the upper rental unit and the claim for damaged doors in the upper portion of the residential complex.

As there is no evidence to show that the female Respondent entered into a tenancy agreement with the Landlord for the lower rental unit, I find that she should not have been named as a Respondent in this Application for Dispute Resolution. I therefore dismiss the Landlord's application for a monetary Order naming the female Respondent.

On the basis of the undisputed evidence, I find that the male Respondent was required to pay $7,046.29 in rent/utilities for the period between February 01, 2020 and August 31, 2020 and that he has only paid $5,925.00 towards these charges. I therefore find that the male Respondent must pay the Landlord the outstanding amount of $1,121.29.

Section 67 of the *Act* authorizes me to award compensation to a landlord if the landlord suffers a loss as a result of a tenant breaching the *Act* or the tenancy agreement. Often compensation for "lost revenue" is granted to a landlord if a tenant ends a tenancy without proper notice or if a landlord is not able to re-rent a unit after the tenant vacates due to the condition of the rental unit at the end of the tenancy. I am not aware of any instances where a landlord has been granted compensation for lost revenue because

the Landlord opted to end the tenancy and then was unable to re-rent the unit for the following month.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

I find that if the Landlord had served the Respondent with a One Month Notice to End Tenancy for Cause in July of 2020 which ended the tenancy on August 31, 2020, it would have been entirely possible that the Respondent would have vacated the rental unit at the end of August and the Landlord would have had sufficient time to find a new tenant for September 01, 2020. I find that the Landlord did not take reasonable steps to mitigate the lost revenue experienced in September and I therefore dismiss the claim for lost revenue.

My finding that the Landlord did not take reasonable steps to mitigate the lost revenue by serving a One Month Notice to End Tenancy for Cause in July of 2020 is, in my view, not inconsistent with the first Arbitrator's decision that it would be unfair to the occupant living in the upper rental unit to wait for a One Month Notice to End Tenancy for Cause to take effect. I interpret the first Arbitrator's decision to mean that it would be unfair to the upper occupant to wait until a One Month Notice to End Tenancy for Cause to end tenancy was served in August of 2020, which would effectively not end the tenancy until the end of September of 2020, which is an unreasonable delay given the circumstances.

I find that the Landlord's Application for Dispute Resolution has some merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $1,221.29, which includes $1,121.29 in outstanding rent/utilities and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for $1,221.29. In the event the male Respondent does not voluntarily comply with this Order, it may be served on the male Respondent, 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 *Act*.

Dated: December 08, 2020

Residential Tenancy Branch