



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on September 14, 2020. They seek an order to recover money lost for unpaid rent, damages, and compensation for other money owed by the tenant. Additionally, they applied for the cost of the hearing fee.

The matter proceeded by way of a hearing on January 5, 2021 pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

At the start of the hearing, the both parties confirmed they received the evidence prepared by the other in advance of the hearing. The hearing proceeded on this basis.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damages, or other money owed, pursuant to section 67 of the *Act*?

Is the landlord entitled to apply the security deposit against any amounts owing, pursuant to section 72 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms therein. Both the landlord and three separate tenants signed the agreement in August 2019. Tenants 1 and 2 signed the agreement on August 31, [2019] and August 3, 2019 – these tenants are the respondents in this hearing. The third tenant (“Tenant 3”) signed the agreement on August 6, 2019. An addendum with 19 separate items accompanies the agreement and was duly signed by each tenant.

The tenancy started on September 1, 2019 for a fixed term ending on August 31, 2020. The agreement provides that the tenants must vacate the unit at the end of the tenancy – with the reason provided by the landlord that “lease ends”. Each of the three tenants and the landlord initialled the provided space to acknowledge this term of the agreement.

The rent agreement sets out the rent amount of \$2,400 rent payable on the 1st day of each month. Each of the three tenants paid their equal part of \$800 each. The utility amounts for hydro, water and heat were not included in the base rent amount.

The agreement shows the three tenants paid a security deposit of \$1,200, payable by July 10, 2019. A notation on the agreement shows: “group pmt of all 3 tenants (\$400 each x3)”.

The two tenants named as respondents here moved out in spring 2020: Tenant 1 on March 20; Tenant 2 on April 30. Tenant 3 remained in the unit until they moved out on August 31, 2020. The landlord provided in the hearing that Tenant 3 paid their portion of rent (\$800) while staying up until August 31. Tenant 3 used their damage deposit portion (\$400) toward the damages at the end of their stay.

The landlord completed their *Monetary Order Worksheet* on September 1, 2020 as follows:

#	item	\$
1	rent amounts owing	6,400.00
2	utility amounts owing	406.10
3.1	carpet cleaning	399.00
3.2	carpet installation	968.18
3.3	removal/disposal furniture	350.00
3.4	cleaning	250.00
3.5	keys	47.01
3.6	lightbulbs	26.28
Total		8,846.57

With the parties' oral testimony, and reference to their documents, the submissions from both parties on each item listed are:

1. rent amounts owing

The landlord calculated \$1600 per month; this is the contribution to the rental total from the tenants here. This is accumulated for each of the months of May, June, July and August, for the landlord's claimed total of \$6,400. This is the amount through to the end of the fixed-term tenancy agreement. Tenant 3, who remained in the unit, paid their portion of the rent (\$800) for May through to August.

Tenant 1 provided an affidavit in this matter, with attached exhibits. They provided that they moved out on March 20, 2020. They returned to move out their remaining belongings on April 18, 2020, and on this date, they gave their key back to Tenant 3.

An attached exhibit shows the tenant's email on April 20 to the landlord giving notice to cancel the rental agreement and advising the landlord to keep their portion of the security deposit toward May 2020 rent. The landlord responded to the tenant to advise they could sublet, this for the remaining 4 months; if not, they "will be responsible for [their] portion of rent for the remaining term." The landlord also recommended government benefits that includes the "Canada Emergency Relief Benefit."

The landlord followed with another email dated April 29 wherein they stated: "you never notified me about your move out plans and I only found out from [Tenant 2] that you left without notifying me."

Tenant 2 provided an affidavit in this matter. The single attached exhibit shows they sent the landlord an email on April 30, 2020 to state "I'm officially out." And: "Also same as [Tenant 1], I request to terminate the lease." They provide that they provided their key to Tenant 3 on April 30, the same date.

Tenant 1 and Tenant 2 included detail that the previous tenancy agreement from September 1, 2018 to August 31, 2019 had the requirement for rent at \$2,250 per month. Tenant 1 provided a copy of their initial tenancy application that shows this amount. In their version of events, the landlord forced them to sign a follow-up agreement for 2019 – 2020 (the agreement in question here) with the higher rent rate of \$2,400. To each of them, this represents a significant rent increase that is beyond that allowed by the law. They each provided in their affidavit that this was a 6.67 % increase.

2. compensation for utility amounts owing

The landlord provided this portion of their claim is \$406.10 for utilities owing “until April 30, 2020.” This is an amount that is pro-rated for hydro and water, calculated to the amount of \$203.05 each per tenant.

They provided a copy of a BC Hydro bill dated April 16, 2020 showing the total due \$494.46. A water bill dated March 31, 2020 for the amount of \$445.59.

The landlord initially set out bill amounts owing from three tenants on April 27, 2020.

The landlord sent a request email to the all three tenants on May 6, 2020 requesting payment of the utilities. On May 11 the landlord sent an email to Tenant 2 setting out the calculation of the amount owing in terms of days. This comes to the amount of \$203.05 each for Tenant 1 and Tenant 2.

The tenants presented that it is not clear how the landlord calculated the bills between all tenants, whether between 6 parties or 4 parties. They also present the utilities should be shared among themselves (with 3 tenants in the unit) and the tenants downstairs (also 3 tenants). In the Tenant 1 affidavit, they state: “the utility bills for the whole of [the property] was divided by [the landlord] in some fashion and I believe that the [rental] Unit was charged 60% and the Downstairs was charged 40% given the unit had a dishwasher and the Downstairs did not.” Further: “The [landlord] only showed us some of the utility bills not all of them at [their] discretion.”

3. rental unit damages and cleaning

The landlord presented receipts to show their payments for each of the listed items 3.1 through to 3.6. The finer points for some of these damages or necessary cleaning are shown in the photos they submit. The landlord presented a copy of the Condition Inspection Report they completed with the Tenant 3, who signed off their agreement for the landlord to keep their portion of the security deposit for: carpet shampoo cost; utilities past due; 2 keys; disposal fee of bed, mattress, box, side table; lock set; and light bulb. The security deposit portion belonging to Tenant 3 was \$400 as shown on the tenancy agreement copy.

The tenants presented that they found the unit “not in good condition” at the start of their 2018 tenancy. Tenant 1 described various details in their affidavit with consideration to the age of the structure. This included smoke burns in the carpets, stains throughout, and missing

lightbulbs. They also provided photos of the state of the unit on their initial move in. These pictures are dated. The tenants provided various submissions on each of the points here:

- A carpet stain in Tenant 1's bedroom is shown in the detail of one photo provided by the landlord wherein they note the carpet needed replacement. This need for replacement was evident after steam cleaning throughout the whole unit. In the hearing, the tenants presented that the stain could have been spot-cleaned and that it was "stained previously."
- Tenant 3 left their pieces of furniture behind when moving out of the unit. Tenant 1 and their father moved out all of their belongings upon their departure at the end of April. Tenant 2 also removed all of their own belongings. All items remaining belonged to Tenant 3.
- The tenants deposed that around twelve lightbulbs were missing when they moved in initially in 2018. One photo provided by Tenant 1 shows a chandelier-like ceiling lamp with one single bulb lit.

Analysis

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

1. rent amounts owing

The *Act* section 45(2) provides that a tenant may end a fixed term tenancy by giving notice effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

The evidence here is each tenant advised the landlord they were ending the tenancy. They did so by email, with Tenant 1 advising the landlord on April 20, 2020: "I'm giving you notice that I'm cancelling the rental agreement". Tenant 2 advised the landlord on April 30, 2020: "I'm officially out . . . I request to terminate the lease."

By a strict application of section 45(2), the tenants are not permitted to end the tenancy in this manner. It is months in advance of the end of the fixed-term tenancy. The landlord advised the tenants of this and encouraged them to sublet to other tenants or seek assistance for payments. For this reason, the tenants are obligated to pay their portions of the rent amounts owing through to the end of the tenancy.

The tenants raised the issue of the rent increase from the previous tenancy agreement to this one. They gave the percentage rate of 6.67%. I find the rent increase is unlawful from the start of the second tenancy agreement. The *Residential Tenancy Policy Guidelines* #30 gives a statement of the policy intent of the legislation. It prescribes what is reasonable in occurrence where a landlord chooses to raise the rent from one fixed-term tenancy to the next. This is the same requirements for timing and notice of a rent increase as set out in section 42 in the *Act*.

I accept the statement of Tenant 1, as set out in their affidavit, and I find there was not three full months' notice of the increase in the approved form. They also provided proof that the prior monthly rent was \$2,250 as provided on their initial application form, and their record of payments, with no evidence from the landlord to the contrary.

I find proper notice and timing were not afforded to the tenants here in advance of their signing the subsequent agreement for \$2,400 per month rent. By section 62 of the *Act*, I so reduce the full rent amount for the entirety of this tenancy agreement to \$2,250. This makes a reduction of \$150 for three tenants, making it \$50 reduced for each tenant.

The landlord claimed \$2,400 per month for the remaining months of the tenancy for their claim total of \$6,400. Reducing the total rent to \$2,250 means each of the three tenants would pay

\$750 each per month, making Tenant 1 and Tenant 2 here combined paying \$1,500 per month. This total is \$6,000 for the four remaining months.

Further, I reduce the amount owing by each of these two tenants (at \$50 each per month) by \$100 per month retroactively for the eight months they already paid from the start of the new tenancy agreement from September 1, 2019. This amount of \$800 is subtracted from the amount owing to the landlord for May 2020 through to August 2020.

I so award the amount of \$5,200 to the landlord for rent amounts owing to the end of the fixed-term tenancy agreement from the tenants here. In summary, the reason for the compensation is due to a breach of the *Act* governing fixed-term tenancy agreements. The amount of the compensation factors in the landlord's unlawful rent increase from the previous tenancy agreement the next.

2. compensation for utility amounts owing

I find as fact that, in addition to the utility amount being split three ways within the tenants' own unit, the utility amounts were split with the other unit downstairs. I find the tenant's evidence reliable on this point – they have knowledge there were three other tenants in the downstairs unit. Their knowledge of the division of amounts however is stated in their affidavit to be a "belief". This shows the tenant was not clear on the details of what payment divisions were in play. I find the utility payment plan from the tenants' own unit should be explicit in the tenancy agreement; however, they are not presented thus.

The landlord did not provide evidence to show the history of bill payments throughout the tenancy. This would greatly assist in establishing the pro-rated share within the unit, as a means of verifying the amount they are claiming. The tenant presented that the landlord was selective in what bill amounts they would present and when. While the tenant presents no direct evidence of this, I weigh this statement against the fact there is no explicit clear explanation of the regular utility amount arrangement.

The tenants here have called the landlord's calculation into question, and present it is unclear how many people are being allocated payment portions. Minus sufficient evidence from the landlord to show the explanation clearly, the value of the loss to the landlord here is not established.

For these reasons, the landlord's claim for utility amounts owing is dismissed.

3. rental unit damages and cleaning

The *Act* section 37(2) requires a tenant, when vacating a rental unit, to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord keys and other means of access.

Tenant 1 included photos as exhibits in their affidavit. These dated photos lend credence to their point that the carpets were in a worn and unclean state at the start of their tenancy in September 2018. The number of photos and details captured outweigh the evidence of the landlord that shows one single stain. For this reason, I find the landlord has not shown that any damage results from a breach by the tenants of the agreement or the *Act*. The landlord's dual claim for carpet cleaning, and subsequent carpet replacement, is dismissed.

I find the Tenant 1 photos show light bulbs missing as at the start of the tenancy. There is no compensation for replacement of light bulbs here and this portion of the landlord's claim is dismissed. The landlord did not provide substantive evidence of missing lightbulbs or any that otherwise required replacement.

The Condition Inspection Report shows Tenant 3 authorized the landlord to use their \$400 portion of the security deposit. I find this covers the amount for furniture removal at \$350. In addition, this security deposit amount covers the claimed cost for lock replacement, for which the landlord paid \$47.01. By the end of the tenancy, Tenant 3 was in possession of the rental unit keys. The tenants here are thus not responsible for any other payment toward these items.

The landlord provided a receipt showing they paid the amount of \$250 for the cleaning of the suite. Their notation on the copy paper is "kitchen and bathroom and floors cleaning of the suite." The state of the unit at the end of tenancy is shown in the landlord's photos that show the kitchen in an unclean state.

This is also set out in the Condition Inspection Report completed by the landlord and agreed to by Tenant 3 at the tail end of the tenancy. The kitchen cabinets are full of various items and the garbage is left behind. I find what these pictures show does not meet the standard of "reasonably clean." As such, the landlord has established this is the responsibility of the tenants.

The *Residential Tenancy Policy Guideline #13* sets out that co-tenants are jointly and severally responsible for meeting the terms of a tenancy agreement. The definition of "tenant" in section

1 of the *Act* provides: “tenant” includes . . . (b) when the context requires, a former or prospective tenant.”

Thus stated, here Tenant 1 and Tenant 2 are jointly and severally liable for debts and unfulfilled obligations related to this tenancy. In this case, this is the amount of cleaning for the unit – as established by the landlord in their evidence – here claimed by the landlord. The landlord shall recover the amount of \$250 for cleaning costs from the tenants.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$5,450. After setting off the remaining security deposit amount of \$800, there is a balance of \$4,650. I am authorizing the landlord to keep the security deposit amount and award the balance of \$4,650 as compensation for rent amounts and cleaning costs.

Because the landlord was successful in their claim, I add the cost of the \$100 Application filing fee to them in this award.

Conclusion

I order the tenants to pay to the landlord the amount of \$4,750. I grant the landlord a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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: February 4, 2021

Residential Tenancy Branch