Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on April 27, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Recovery of unpaid/lost rent;
- Compensation for monetary loss or other money owed;
- Retention of the Tenant's security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on January 10, 2023, and was attended by the Landlord and the Tenant. All testimony provided was affirmed. As the Tenant acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP) via email, as permitted by the order of substituted service dated June 2, 2022, and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it

was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, 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 listed in the Application and confirmed in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid/lost rent?

Is the Landlord entitled to compensation for monetary loss or other money owed for cleaning and repair costs?

Is the Landlord entitled to retention of the Tenant's security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed-term tenancy commenced on January 1, 2022, and that the tenancy agreement was set to continue on a month-to-month (periodic) basis after the expiration of the fixed term on January 1, 2023. The tenancy agreement states that rent in the amount of $2,500.00 is due on the first day of each month, that utilities are to be set-up in the Tenant's name and are not included in the cost of rent, and that a security deposit in the amount of $1,250.00 was required. At the hearing the parties agreed that these are the correct terms for the tenancy agreement, that the security deposit was paid by the Tenant, and that the full amount of the security deposit is currently held in trust by the Landlord.

Although the Landlord stated that a move-in condition inspection was completed with the Tenant at the start of the tenancy, the Tenant disagreed. In any event, the parties

agreed that no move-in condition inspection report was completed, and the Landlord stated that as they were unaware of the requirement to do so, they did not advise their agent to complete one. The parties also agreed that as of the date and time of the hearing, the Tenant had not provided the Landlord with their forwarding address in writing.

The parties agreed that the Tenant ended their fixed-term tenancy agreement early on April 30, 2022, but disagreed about whether the Tenant had grounds to do so under section 45(3) of the Act due to a breach of a material term of the tenancy agreement by the Landlord. The Landlord argued that the Tenant did not have grounds to end the tenancy under section 45(3) of the Act, as they did not breach a material term of the tenancy agreement and no breach letter was received from the Tenant. The Landlord stated that they only received a text message from the Tenant on or about April 21, 2022, stating that the Tenant plans to end their tenancy effective April 30/May 1, 2022. The Landlord stated that upon receiving the Tenant's text message, the rental unit was immediately advertised for re-rental and that showings and interviews for prospective new tenants commenced. However, the Landlord stated that ultimately the rental unit could not be re-rented until June 15, 2022, when it was re-rented to new occupants at the same monthly rental rate as that agreed to by the Tenant under their tenancy agreement, and that as a result, the Landlord lost rent for May and half of June of 2022 in the amount of $3,750.00. The Landlord argued that the Tenant was required to pay rent for the full term of their fixed-term tenancy agreement and that as they did not have grounds under the Act to end their tenancy early, the Landlord is entitled to recovery of any lost rent suffered because of the Tenant's premature ending of their tenancy agreement without cause. The Landlord stated that they acted reasonably to mitigate their loss of rent and to have the rental unit re-rented as quickly as possible at a reasonably economic rental rate.

The Tenant disagreed, stating that they should not owe the Landlord any rent for May or June of 2022 as they had just cause for ending their tenancy early. The Tenant stated that both their mental health and their work performance suffered because of stress caused by the tenancy and that overall, they were just not happy. The Tenant stated that they believed the best way to resolve these issues was to end the tenancy and move out. I asked the Tenant to point to a specific term or terms of the tenancy agreement which they believed were breached by the Landlord and which they believed were material terms of the tenancy agreement, but they stated that they could not point to a specific term under the agreement. The Tenant stated that they moved from another province and that as vacancy rates are very low in British Columbia, they simply

took what they could get in terms of a rental unit, even though the $2,500.00 per month in rent was already “way over” their budget and did not include utilities. The Tenant stated that as a result they inquired with the Landlord prior to entering into the tenancy agreement about what the average monthly utility bills were, and were advised that they were approximately $60.00 per month, which the Tenant argued was a significant underestimation.

Additionally, the Tenant argued that the Landlord repeatedly attempted to have them pay utility bills for a different residential address, and that the inconvenience suffered by them because of having to repeatedly call the utility service providers to resolve the issue, was unreasonable. They also likened the Landlord's repeated attempts to have them pay these bills to harassment, and hypothesized that these bills belonged to a different residence owned by the Landlord, and argued that the Landlord never took steps to resolve the issue or provide them with a proper utility bill for the rental unit address. Finally, the Tenant also argued that the heater in the rental unit continued to make ticking noises, even after it had reached temperature, which impacted their sleep as they are a light sleeper, that the dishwasher beeped, and that the Landlord never took appropriate steps to deal with either of these issues. Overall, the Tenant was displeased with the cost of utilities that were not covered under their tenancy agreement by their rent, the utility billing address issues, and the Landlord's response to their complaints regarding utilities, the heater, and the dishwasher.

Although the Tenant acknowledged that they did not send the Landlord a breach letter as required, as they were not aware of the requirement to do so, they argued that the written communications between them, when taken together, should be sufficient.

The Landlord denied the Tenant’s allegations that they did not deal appropriately with the discrepancy in the utility service address, stating that the developer for the rental unit, which was newly constructed shortly before the start of the tenancy, had made an error when reporting the billing address to the utility service providers. The Landlord stated that they acted reasonably to have this corrected once the Tenant made them aware of the issue, however, it took time because the utility service providers needed to attend the property and to verify the meter readings before correcting the error. The Landlord also reiterated that it was the Tenant's responsibility under the tenancy agreement to put the utilities in their own name, which they never did, and stated that they reminded the Tenant of this requirement in March of 2022.

The Landlord stated that the rental unit was not left undamaged and reasonably clean at the end of the tenancy as required, necessitating cleaning at a cost of $150.00 and painting and repairs at a cost of $360.00. As a result, the Landlord sought recovery of these costs from the Tenant. The Tenant argued that they should not be responsible for these costs as they left the rental unit reasonably clean at the end of the tenancy and cleaner than it was at the start. The Tenant stated that they also did not damage the rental unit and that the damage allegedly caused must either have pre existed the start of the tenancy or been caused after they ended their tenancy and before the landlord inspected the rental unit. The Tenant stated that despite repeated requests by them to schedule a move-out condition inspection or a video inspection, the Landlord made no efforts to do so and did not inspect the rental unit for some time after they had ended the tenancy and vacated the rental unit.

While the Landlord agreed that a move-out condition inspection was not scheduled and neither an inspection nor report were completed with the Tenant, as they were unaware of the requirement to do so, they had the rental unit inspected by their family member as soon as possible after the end of the tenancy. The Landlord stated that they did not simply make up the damage and cleaning claims, and that the Tenant was aggressive, so their family member, who is a woman, did not feel comfortable going to inspect the rental unit with the Tenant by themselves. The Tenant denied the allegations that they were aggressive.

Both parties submitted documentary evidence for my review and consideration including but not limited to copies of the tenancy agreement, photographs and video(s), copies of written correspondence between them including transcripts of WhatsApp communications, WhatsApp voice notes, utility bills, and a painting and repair quote.

Analysis

Based on the documentary evidence before me and the affirmed testimony of the parties, I am satisfied that a tenancy to which the Act applies existed between the parties which was ended by the Tenant on April 30, 2022. I am also satisfied of the following:

- that the Tenant was subject to a fixed-term tenancy agreement with an end date of January 1, 2023, at the time they ended their tenancy;
- that rent under the tenancy agreement was $2,500.00 per month;
- that a security deposit in the amount of $1,250.00 is currently retained in trust by the Landlord;

- that move-in and move-out condition inspection reports were not completed; and
- that as of the date of the hearing, January 10, 2023, the Tenant has not provided their forwarding address in writing to the Landlord.

Section 26 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. Section 45 of the Act sets out how a tenancy may be unilaterally ended by a tenant. With regards to fixed-term tenancy agreements it states that a tenant may end their fixed-term tenancy either by giving the Landlord one month's notice, in the prescribed form, that their tenancy is ending on a date not earlier than the end date for the fixed-term, or earlier than the end date for the fixed-term for breach of a material term of the tenancy agreement, provided they have given the landlord written notice of the breach, notice that the breach is a material term of the tenancy agreement, notice that they will end their tenancy if the breach is not corrected within a reasonable deadline, AND the landlord has failed to correct the breach. Further to this, section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations, or the tenancy agreement, the non-complying party must compensate the other for damage or loss that result, provided the party claiming the loss has acted reasonably to minimize the damage or loss.

Although the Tenant argued at the hearing that they had grounds to end their fixed-term tenancy early for breach of a material term of the tenancy agreement by the Landlord, and therefore they are not responsible for any lost rent over the remaining balance of the fixed-term of their tenancy agreement, I disagree. During the hearing the Tenant provided general reasons for displeasure with the tenancy, but failed to point to a specific term of the tenancy agreement that was breached by the Landlord, despite being asked by me to do so, or to provide any evidence or testimony regarding why they believe that the term of the tenancy agreement allegedly breached by the Landlord, if any, is a material term of the tenancy agreement. Residential Tenancy Policy Guideline (Policy Guideline) #8 states that it falls to the person relying on the breached term to present evidence and argument supporting the position that the term was a material term of the tenancy agreement.

As set out above, I am not satisfied by the Tenant that a specific term of the tenancy agreement was breached by the Landlord or their agents, or that any term breached was in fact a material term of the tenancy agreement. Further to this, Policy Guideline

#8 states that to end a tenancy agreement for breach of a material term, the party alleging a breach must inform the other party in writing that:

- There is a problem;
- They believe the problem is a breach of a material term of the tenancy agreement;
- The problem must be fixed by a reasonable deadline included in the letter; and
- If the problem is not fixed by the deadline, the party will end the tenancy.

The Tenant acknowledged at the hearing that they did not serve the Landlord with a breach letter in accordance with the above noted criteria of Policy Guideline #8, as they were not aware of the requirement to do so, and I find that the transcripts of written communications between the parties submitted for my review and consideration do not amount to a breach letter in accordance with Policy Guideline #8, even when all of the written communications are read and considered together.

As a result, I therefore dismiss the Tenant's argument that they were entitled under the Act to end their fixed-term tenancy agreement early due to a breach of a material term of the tenancy agreement and therefore are not responsible for any loss of rent suffered by the Landlord over the balance of the fixed-term due to the premature ending of the tenancy.

Policy Guideline #3, section C states that a tenant is liable to pay rent until a tenancy agreement ends. Policy Guideline #3, section C also states that where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the Act). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement. Further to this, the Policy Guideline states that compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement, that such compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy, and that it may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy. Finally, both Policy Guideline #3 and section 7 of the Act state that a party claiming loss because of the other's breach of a term of either the Act or the tenancy agreement, must do whatever is reasonable to minimize the damage or loss suffered.

At the hearing the Landlord stated that the rental unit was posted for re-rental right away, and that showing and interviews for prospective new tenants were commenced. The Tenant did not dispute this testimony. The Landlord stated that despite their best efforts, the rental unit was not re-rented until June 15, 2022, and therefore the Landlord suffered a loss of rent in the amount of $3,750.00; $2,500.00 for May and $1,250.00 for half of June as the rental unit was re-rented starting June 15, 2022, at the same rate. Based on the above, and as the parties agreed at the hearing that no rent was paid by the Tenant for May or June of 2022, I therefore grant the Landlord's claim for recovery of $3,750.00 in lost rent for May and June of 2022, pursuant to sections 7 and 26 of the Act.

Section 37(2)(a) 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. Although the Landlord also sought $510.00 for cleaning and repairs, for the following reasons I am not satisfied by the Landlord, who bears the burden of proof, that the rental unit was either damaged by the Tenant or that the Tenant failed to leave it reasonably clean at the end of the tenancy. As no condition inspection reports were completed by the Landlord or their agent(s) at the start or the end of the tenancy, the Landlord acknowledged that the rental unit was not immediately inspected at the time the tenancy ended, and the Tenant denied causing damage to the rental unit, I find that the Landlord has failed to satisfy me on a balance of probabilities that any damage present at the end of the tenancy did not either occur after the Tenant had vacated or pre-exist the start date for the tenancy. While the Landlord also argued that the rental unit was not left reasonably clean, no move-out condition inspection or report were completed by the Landlord as required, the Landlord submitted only two photographs allegedly taken at the end of the tenancy, one close-up photograph of toilet paper in a toilet bowl, and one close-up photograph of smudges on a wall, and although they stated that the rental unit was professionally cleaned at a cost of $150.00, a copy of the cleaning invoice was not submitted for my review and consideration. In contrast, the Tenant stated that the rental unit was left reasonably clean and submitted 7 photographs allegedly taken at the time they vacated, showing what appears to me to be a reasonably clean fridge, living room, bedroom(s)/room(s), bathroom, and kitchen. As a result, I find the Tenant's evidence regarding the state of the rental unit at the end of the tenancy more compelling and I find that the Landlord has failed to satisfy me that the rental unit was not left reasonably clean at the end of the Tenancy. I therefore dismiss their claim for monetary compensation for monetary loss or other money owed in the amount of $510.00 without leave to reapply.

Despite the above, as the Landlord was successful in the claim for recovery of lost rent, I therefore grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Having made these findings, I will now turn to the matter of the security deposit. As the Landlord agreed that a move-in condition inspection report was not completed at the start of the tenancy as required by section 23(4) of the Act, I therefore find that the Landlord extinguished their right to claim against the security deposit, but only for damage to the rental unit, pursuant to section 24(2)(c) of the Act. As there is no evidence before me that the Tenant extinguished their right to the return of their security deposit, I find that they have not.

Despite the above, as the parties agreed that the Tenant has not provided the Landlord with their forwarding address in writing, I therefore find that the requirements set out under section 38 of the Act regarding the return or retention of the security deposit have not yet been triggered, and in any event, the Landlord filed claims against the security deposit for matters other than damage to the rental unit. As a result, I find that the Landlord properly withheld the security deposit after the end of the hearing, pending the outcome of this Application. Although the Tenant paid a security deposit in the amount of $1,250.00, in accordance with the regulations and the Residential Tenancy Branch Deposit Interest Calculator, I find that the security deposit has accrued interest in the amount of $0.80 since it was paid. I therefore find that the Landlord is deemed to hold a security deposit in the amount of $1,250.80 as of the date of this decision.

Pursuant to section 72(2)(b) of the Act, and as requested by the Landlord in the Application, I therefore grant the Landlord authority to withhold the $1,250.80 security deposit in partial repayment of the $3,850.00 owed by the Tenant to them for recovery of lost rent and the filing fee. Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary Order in the amount of $2,599.20, for the balance owing after deduction of the security deposit and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's $1,250.80 security deposit.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **$2,599.20**. 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.

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: January 12, 2023

Residential Tenancy Branch