Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding LAVIK VENTURES INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNRL-S, FFL
Tenant: MNSDB-DR, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed applications regarding a residential tenancy dispute.

The landlord applied on July 21, 2022 for:

- recovery of unpaid rent and/or utilities, requesting to retain the security and/or pet damage deposit; and
- recovery of the filing fee.

The tenant applied on July 28, 2022 for:

- the return of the security and pet damage deposits; and
- recovery of the filing fee.

The hearing was attended by the landlord and the tenant. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

1) Is the landlord entitled to recover $5,000.00 for unpaid rent?
2) Is the landlord entitled to the filing fee?
3) Is the tenant entitled to recover the security and pet damage deposits?
4) Is the tenant entitled to the filing fee?

Background and Evidence

While I have considered all the presented documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

The parties agreed on the following facts. The tenancy began October 25, 2021 and the tenant vacated the unit June 30, 2022; rent was $1,250.00, due on the first of the month; and the tenant paid a security deposit of $625.00 and a pet damage deposit of $250.00 which the landlord still holds.

The parties agreed that the tenancy agreement was for a fixed term ending on October 31, 2022, and a copy of the tenancy agreement is submitted as evidence.

The parties agreed that no move in condition inspection was completed, and that the landlord did not give the tenant at least two opportunities to participate in an inspection. The parties agreed that no move out condition inspection was conducted and that the tenant was not given a copy of a move out condition inspection report. The landlord testified that she thought she gave the tenant two opportunities to participate in a move out inspection; the tenant testified that the landlord did not.

The parties agreed the tenant provided a forwarding address in writing. The landlord testified the tenant provided it in early July, 2022; the tenant testified she dropped a letter in the landlord's office mailbox on July 2, 2022.

The parties agreed the tenant did not agree in writing for the landlord to keep any part of the deposits.

The landlord testified she seeks to recover $5,000.00 for four months' rent for July to October 2022, because the tenant broke the fixed term tenancy agreement and the landlord was not able to re-rent the unit.

The landlord testified the tenant broke the tenancy agreement because she purchased a condo, then asked the landlord to sign a mutual agreement to end the tenancy. Submitted as evidence by the landlord is a text message from the tenant, stating that she takes possession of her condo on July 1. In the same text string, on April 28, the landlord gave the tenant notice of upcoming showings, and the tenant asked the landlord to sign the mutual agreement. The landlord testified that after she refused to

sign the agreement, the tenant initially told the landlord she would not let her in and that the landlord could show the unit if she signed the mutual agreement.

The landlord testified that when she went in to show the unit, she found there was a large crack in a skylight. The landlord testified the crack was not there at the beginning of the tenancy.

The landlord submitted that due to the cracked skylight she did not feel it would be safe to move in a new tenant until the skylight was fixed. The landlord testified that with the cracked skylight she was also not able to cool the unit sufficiently for occupation by another tenant, so she left the unit empty until the skylight could be replaced.

The tenant testified that she ended the tenancy due to a breach of material terms, not because she purchased a condo. Submitted as evidence is an email from the tenant to the landlord, dated April 26, 2022, in which the tenant asks the landlord “again” to sign a mutual agreement to end the tenancy, stating that if the landlord does not, the tenant will end the tenancy for “breaching material terms.” The email lists the following issues: despite multiple requests, the landlord has not fixed a window in the bedroom that will not open; the unit does not have a hood fan; the tenant was injured on outdoor stairs; and the landlord has not installed an outdoor safety light purchased by the tenant, despite several reminders.

The tenant testified that the skylight was broken when she moved in, and was still not fixed when she drove by the unit on March 5, 2023. A photo is submitted as evidence. The tenant testified that she did not damage the unit.

The landlord testified that the skylight replacement took a long time because it was a custom order as the unit is an older build, and that the replacement was charged to the landlord just recently. Submitted as evidence by the landlord is an estimate for the replacement, dated July 7, 2022. The landlord did not clarify when she placed the order for the replacement.

The tenant testified that she never saw showings for the unit posted online. The landlord testified that as she works in real estate and rental vacancies are so low, she had a lineup of people from her network interested in renting the unit.

Analysis

Section 38(1) states:

> **38**(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (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;
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> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) states:

> (6) If a landlord does not comply with subsection (1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
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> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The parties agreed that the tenant vacated the rental unit on June 30, 2022. I find this is the date the tenancy ended, pursuant to section 44(1)(d) of the Act.

Based on the testimony of the parties, I find the tenant provided a forwarding address in writing by leaving a copy in the landlord's office mailbox on July 2, 2022, and pursuant to section 90 of the Act, I deem the address received by the landlord on July 5, 2022.

The landlord made her application on July 21, 2022.

As the landlord did not repay in full or make a claim against the security and pet damage deposits within 15 days of the date she received the tenant's forwarding address, I find that in accordance with section 38 of the Act, the landlord is required to pay the tenant double the amount of the security and pet damage deposits: $1,750.00. The tenant is entitled to a monetary award of $1,750.00.

The landlord seeks to recover $5,000.00 for four months' rent for July to October 2022, because the tenant broke the fixed term tenancy agreement and the landlord was not able to re-rent the unit.

The tenant testified she ended the tenancy agreement because the landlord breached material terms of the tenancy, not because the tenant purchased a condo.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

As the tenant vacated the rental unit on June 30, 2022, I find the tenant contravened section 45 of the Act, causing the landlord to lose monthly rent of $1,250.00 she otherwise would have received.

I do not accept the tenant's position that she ended the tenancy due to the landlord breaching material terms of the tenancy. Based on the landlord's testimony and submitted texts and the April 26 email submitted by the tenant, the tenant told the landlord that she had purchased a condo, would take possession on July 1, 2022, and asked the landlord to sign a mutual agreement to end the tenancy. Only after the landlord refused to sign the mutual agreement, and not any time earlier in the tenancy, the tenant took the position that the landlord was breaching material terms.

Considering the timing of these events, on a balance of probabilities, meaning more likely than not, I find the tenant vacated the unit on June 30, 2022 because she was taking possession of a new condo the next day.

Next I must consider whether the landlord acted reasonably to minimize the rent lost.

The landlord testified that the skylight replacement took a long time as it was a custom order, due to the age of the unit. The landlord submitted an estimate dated July 7, 2022, but did not clarify when she placed the order for the replacement.

The landlord testified she did not rent out the unit because, due to the broken skylight, the unit was not safe and she could not control the temperature in the unit.

I find the landlord could have mitigated her losses by blocking off the skylight until it could be replaced, and charging a new tenant a decreased rent in the interim.

Though I find the landlord failed to mitigate her losses, as the tenant broke the tenancy agreement I find the landlord is entitled to $1,250.00, one month's rent under the tenancy agreement, as that is a reasonable amount of time to find a new tenant.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. As both parties have had some success in their disputes, I decline to award the filing fee.

Having awarded the tenant $1,750.00, this amount must be offset against the monetary award of $1,250.00 I have granted the landlord.

Accordingly, I order the landlord to pay the tenant $500.00 ($1,750.00 - $1,250.00).

Conclusion

The tenant is granted a monetary order in the amount of $500.00. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 10, 2023

Residential Tenancy Branch