Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S (Landlord)
FFL, MNSD (Tenants)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application September 17, 2019 (the "Tenants' Application"). The Tenants sought return of the security and pet damage deposits as well as reimbursement for the filing fee. The Tenant confirmed at the hearing that the Tenants are seeking double the deposits back.

The Landlord filed the application September 22, 2019 (the "Landlord's Application"). The Landlord sought compensation for monetary loss or other money owed, to keep the security and pet damage deposits and reimbursement for the filing fee.

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence and no issues arose at the outset.

During the hearing, I asked about photos submitted by the Landlord. The Landlord said these were not served on the Tenants. The Rules of Procedure require all evidence to be relied on at the hearing to be served on the other party. Given the photos were not served on the Tenants, I have not considered them.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to return of double the security and pet damage deposits?

2. Are the Tenants entitled to reimbursement for the filing fee?

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

4. Is the Landlord entitled to keep the security and pet damage deposits?

5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

- $222.75 for utilities for May 01 to August 31, 2018
- $209.36 for utilities for September 01 to December 31, 2018
- $211.33 for utilities for January 01 to April 30, 2019
- $242.53 for utilities for May 01 to August 31, 2019
- $847.15 for heating costs

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started June 01, 2018 and was a month-to-month tenancy. Rent was $1,450.00 per month due on the first day of each month. The Tenants paid a $725.00 security deposit and $725.00 pet damage deposit.

The parties agreed the tenancy ended August 31, 2019.

The Tenant testified that the Tenants provided their forwarding address in writing to the Landlord in person September 07, 2019. The Landlord acknowledged receiving the forwarding address in person and did not dispute the date as he could not recall the date.

The parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the deposits.

The parties further agreed that both parties did move-in and move-out inspections.

Utilities

In relation to the request for compensation for utilities, the Landlord testified that it was part of the agreement that the Tenants would pay for these and the Tenants never did. The Landlord testified that the rental unit is a house and the Tenants rented the entire house.

In relation to the specific bills, the Landlord testified that he is only seeking compensation for the water and sewer charges as the Tenants were not required to pay for garbage. The Landlord also confirmed he is not seeking the previous bill amount or penalty charge for the first bill with a billing period from May 01 to August 31, 2018. In relation to the bill for May 01 to August 31, 2018, the Landlord acknowledged it should be reduced given the tenancy started June 01, 2018.

At first, the Landlord testified that he is seeking the penalty charges for the period during the tenancy because the Tenants did not pay the bills. However, the Landlord testified that the account and bills were in his name. He testified that the bills were mailed to the rental unit in his name. The Landlord testified that he did not think about the utilities during the tenancy and only realised near the end of the tenancy that the bills had not been paid. The Landlord acknowledged that the Tenants were not made aware of the bills during the tenancy.

The Landlord submitted the utility bills.

The Tenant testified as follows in reply. When the parties went over the tenancy agreement, there was no mention of the Tenants having to pay for water and sewer. The Landlord's mail was coming to the rental unit during the tenancy. The Tenants reminded the Landlord multiple times about his mail. When the parties did the move-out inspection, the Landlord raised the issue of the bills not being paid. The tenancy agreement should have stated that the Tenants were responsible for water and sewer.

The Tenants should not have to pay the penalties as these were due to the Landlord's negligence in not bringing the issue of paying the bills up until the end of the tenancy.

Heating Costs

The Landlord sought compensation for oil used during the tenancy and testified as follows. The Tenants told him in January or February that they wanted to use the oil for heating. He filled the tank at that point. The parties agreed the Tenants would refill the tank or pay for the oil used. The oil tank was changed in March or April. There were 515 litres of oil remaining at the end of the tenancy. The Tenants did not refill the oil tank or pay for the oil they used. He obtained the price of oil at that point to determine the amount sought because the tank being filled was now smaller than the original tank.

The Landlord submitted documentary evidence showing at least 855.2 litres of oil were put into the tank February 07, 2019. The Landlord submitted documentary evidence showing 515 litres of oil were transferred to the new tank May 29, 2019.

The Tenant testified as follows. The Tenants used the oil conservatively for three months from February 09 to May 09, 2019. The Landlord transferred oil from one tank to another. He was not there at the time and does not know what happened. He thinks there is a discrepancy in the amount of oil used as the Tenants could not have used 620 litres of oil in three months. The Landlord has not submitted evidence of the size of the original tank.

Analysis

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet damage deposits if they do not comply with the *Act*.

Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

The parties agreed the Tenants participated in the move-in and move-out inspections and therefore I find the Tenants did not extinguish their rights in relation to the security or pet damage deposit under sections 24 or 36 of the *Act*.

I do not find it necessary to determine whether the Landlord extinguished his rights in relation to the security or pet damage deposit under sections 24 or 36 of the *Act* as

extinguishment relates to claims for damage to the rental unit which is not the issue here.

Based on the testimony of the parties, I find the tenancy ended August 31, 2019.

I accept the Tenant's testimony that the Tenants provided their forwarding address in writing to the Landlord September 07, 2019 as the Landlord did not dispute this.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from September 07, 2019 to repay the security and pet damage deposits or file a claim against them. The Landlord's Application was filed September 22, 2019, within the 15-day time limit.

However, Policy Guideline 31 deals with pet damage deposits and states:

> The landlord may apply to an arbitrator to keep all or a portion of the deposit **but only to pay for damage caused by a pet.** The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing. (emphasis added)

The Landlord was not entitled to keep the pet damage deposit based on unpaid utilities or heating costs as neither is related to damage caused by a pet. The Landlord was therefore required to return the pet damage deposit within 15 days of September 07, 2019. The Landlord did not do so. The Landlord therefore did not comply with section 38(1) of the *Act* in relation to the pet damage deposit. Pursuant to section 38(6) of the *Act*, the Tenants are entitled to return of double the pet damage deposit. The Landlord must return $1,450.00 to the Tenants. No interest is owed on this as the interest owed has been 0% since 2009.

I find that the Landlord did comply with section 38(1) of the *Act* in relation to the security deposit. Therefore, the Tenants are not entitled to return of double the security deposit.

Section 7 of the *Residential Tenancy Act* (the "*Act*") states:

> 7 (1) If a…tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.

> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Utilities

I accept that the Tenants were responsible for paying for water and sewer given the rental unit was a house, the Tenants rented the entire house and the tenancy agreement shows that water and sewage disposal were not included in rent. I find the tenancy agreement shows the Tenants were responsible to pay the water and sewer costs.

I do not accept that the Tenants are responsible for paying the penalty amounts included in the bills. I find it is the Landlord's fault that the penalties were imposed as the bills were in his name, were sent to him and he did not forward them to the Tenants during the tenancy.

In considering the amounts of the bills, I have removed the penalty charges and garbage charges as the tenancy agreement shows garbage collection was included in rent. In relation to the bill for May 01, 2018 to August 31, 2018, I have divided the amount by four to determine the monthly charge and then accounted for June to August as the tenancy agreement did not start until June 01, 2018. I find based on the bills that the Tenants were required to pay the following:

<u>May 01 to August 31, 2018</u>

- Water $64.40
- Water $31.80
- Water $18.03
- Sewer $33.44
- Sewer $75.08
- **Total = $222.75 ($222.75 / 4 = $55.69 x 3 = $167.07)**

<u>September 01 to December 31, 2018</u>

- Water $70.84
- Water $29.39
- Sewer $20.27

- Sewer $76.60
- **Total = $197.10**

January 01 to April 30, 2019

- Water $70.84
- Water $31.16
- Sewer $21.49
- Sewer $76.60
- **Total = $200.09**

May 01 to August 31, 2019

- Water $70.84
- Water $34.80
- Water $8.62
- Sewer $28.48
- Sewer $76.60
- **Total = $219.34**

I acknowledge that the Landlord did not provide these bills to the Tenants during the tenancy. The Landlord should have done so. However, the Tenants were responsible for paying for the water and sewer and therefore owe these amounts. I may have found that the Landlord gave up his right to claim for unpaid utilities if this had been a multi-year tenancy where the Landlord did not collect payment for utilities for a number of years. However, these are not the circumstances here. I am not satisfied the Landlord failed to collect payments for so long that the Landlord gave up his right to collect the payments.

There is no issue that the Tenants did not pay the above amounts. I find the Landlord is entitled to recover these amounts which equal **$839.28.**

Heating Costs

I accept that the Tenants agreed to refill the oil tank or pay for the oil used during the tenancy as I did not understand the Tenant to dispute this.

The Tenant disputed the amount owing. I find from the documentary evidence that at least 855.2 litres of oil were put into the tank February 07, 2019. I find from the documentary evidence that 515 litres of oil were put into the new tank May 29, 2019. The Landlord said 515 litres of oil were left at the end of the tenancy and I accept this based on the documentary evidence about what was put into the new tank May 29, 2019. I find the Tenants used at least 340.2 litres of oil from February to May.

I do not accept the Tenant's suggestion that there may have been an issue when the oil was transferred as the documentary evidence referring to the transfer does not mention or support this. I would expect the documentary evidence to do so if there was an issue. There is no documentary evidence before me showing there was an issue.

Further, the Tenant indicated that the Tenants could not have used 620 litres of oil in three months. I have not found that the Tenants did. I have found that they used 340.2 litres.

There is no issue that the Tenants did not refill the tank or pay for the oil used.

I find the Landlord is entitled to recover the cost of 340.2 litres of oil. I have based the cost on the amount paid in February of 2019 as this is what the Landlord paid and what the Landlord has lost through the Tenants' use of the oil. Based on the documentary evidence, I find the oil cost was:

340.2 x $1.1305 = $384.60 (cost)
340.2 x 0.0895 = $30.45 (carbon tax)

Subtotal = $415.05

5% GST = $20.75
BC ICE + PST = $1.66

Total = $437.46

The parties were both partially successful in their applications and therefore neither is ordered to reimburse the other for the filing fee.

In summary, the Tenants owe the Landlord $1,276.74. The Landlord holds the $725.00 security deposit and $725.00 pet damage deposit. However, the pet damage deposit

has been doubled and therefore I consider the Landlord to hold $2,175.00 in deposits. The Landlord can keep $1,276.74 of this pursuant to section 72(2) of the *Act*. The Landlord must return $898.26 to the Tenants. The Tenants are issued a Monetary Order for this amount.

Conclusion

The Tenants are entitled to return of double the pet damage deposit. However, the Landlord is entitled to recover $1,276.74 from the Tenants. Therefore, the Landlord can keep $1,276.74 of the deposits and must return $898.26 to the Tenants. The Tenants are issued a Monetary Order for this amount. If the Landlord does not return this amount, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it 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: January 24, 2020

Residential Tenancy Branch