Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF, SS

Introduction

This matter dealt with an application by the Landlords for compensation for a loss of rental income and repair expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Landlords also applied for an Order permitting them to serve documents on the Tenants in a different manner than required under the Act, however, the Landlords said their documents were served in person and by registered mail on the Tenants and therefore I find that there is no need for such an Order. As the Tenants were properly served with the Landlords' hearing package and evidence package as required by the Act, the Landlords' application to serve documents in a different manner is dismissed without leave to reapply.

Issue(s) to be Decided

1. Are the Landlords entitled to compensation for a loss of rental income and if so, how much?
2. Are the Landlords entitled to compensation for repair expenses and if so, how much?
3. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on April 15, 2010 and was to expire on April 14, 2011 however it ended on February 26, 2011 when the Tenants moved out. Rent was $1,100.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $550.00 at the beginning of the tenancy.

The Landlords said the Tenants first advised them by e-mail on November 16, 2010 that they wanted to end the tenancy early due to noise or lack of sound proofing and parking issues and were considering staying with family members. In a responding e-mail, the Landlords advised the Tenants that they would need to give them written notice and at that point, the Landlords would try to find another tenant. The Landlords advised the Tenants however, that their notice would not automatically allow the Tenants out of their lease.

The Landlords said the Tenants then advised them in a text message on January 15, 2011 that they had been approved for a mortgage, were looking for a house to purchase and suggested that the Landlords should look for a new tenant "for the Spring." In a responding text message, the Landlords indicated their expectation that the house purchase would take place at the same time as the Tenants' lease expired.

The Landlords said they received a voice mail message from the Tenants on February 2, 2011 advising them that they had purchased a house and would be ending the tenancy at the end of that month. The Landlords sent the Tenants an e-mail dated February 2, 2011 advising them that they would start to advertise the rental unit for availability but reminded the Tenants that they were still responsible for the remainder of their lease in the event a new tenant could not be found. The Landlords again asked the Tenants to provide them with written notice. In a text message dated February 8, 2011 and an e-mail dated February 9, 2011, the Landlords again requested that the Tenants to provide them with written notice and stated that they expected the Tenants to pay rent for March 2011 if another tenant could not be found by that time.

In an e-mail to the Landlords dated February 9, 2011, the Tenants advised the Landlords that the purchase of their new home had left them without the financial means to pay rent for March 2011. The Tenants said they believed that the Landlords should ask for a reduced rent to get renters for March 2011 and that the Landlords should not pressure them to pay rent for March 2011 given the "endless property issues" they had endured. The Landlords said they began advertising the rental unit on Castanet starting February 5, 2011 but because many renters would have to give notice at their current residences, they got few inquiries for the first few weeks. The Landlords said they entered into a new tenancy agreement on March 11, 2011 with new tenants to commence on April 14, 2011.

The Tenants said they told the Landlords on January 5, 2011 that they wanted to leave as soon as possible (which the Landlords denied). The Tenants said it was at this time that one of the Landlords, L.H., advised them that they could end the tenancy early as long as they gave one month's notice (which the Landlords also denied). The Tenants said the reason they wanted to leave was because they were being harassed by other residents of the rental property and admitted that they had not brought this issue to the Landlords' attention. The Tenants also admitted that "property issues" were not the reason they were ending the tenancy.

The Tenants said they verbally advised the Landlords on January 20, 2011 that they had purchased a home and would be taking possession of it on March 1, 2011. The Tenants claim that at this time, the Landlord, L.H., advised them that they would not be responsible for March 2011 rent as long as they were not occupying the suite (which the Landlords denied). The Tenants claim that they later discovered that the Landlords did not start advertising the rental unit until February 4, 2011 (or 17 days later). Consequently, the Tenants argued that it was due to the Landlords' delay that the rental unit was not re-rented for March 2011. The Tenants admitted that they did not give the Landlords written notice they were ending the tenancy.

The Landlords argued that there was no evidence of the harassment alleged by the Tenants. The Landlords said the Tenants told them in a text message dated February 8, 2011 that the real reason the Tenants wanted to end their tenancy early was because it was cheaper to pay a mortgage than rent.

The Parties also agree that the Landlords waited until the end of the fixed term to ask the Tenants to do a move out inspection. The Tenants said they were out of town at the time and were unavailable to do the inspection. The Parties agree that the only issue arising from the move out inspection were some holes in 2 closets due to the Tenants lowering a closet organizer. The Landlords said they got a written quote from a contractor (who had not seen the holes) for $224.00 to repair these holes. The Tenants admitted that they forgot to repair these holes before moving out but argued that there were only 6 small holes and that the amount claimed by the Landlords for it was unreasonable.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. The only exception to this rule, it s. 45(3) of the Act which states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant has given written notice of the failure, the tenant may end the tenancy without further notice to the Landlord.

Although the Tenants made a written complaint to the Landlords in November 2010 about noise and parking, the Tenants admitted that this was not the reason they ended the tenancy. The Tenants claimed the reason they left was because they were being harassed by other residents in the rental property. The Landlords argued that there was no evidence of this and claimed that the Tenants ended the tenancy early because it was cheaper for them to pay a mortgage than rent. In any event both parties agree that the Tenants did not give the Landlords written notice that they were in breach of a material term of the tenancy agreement. As a result, I find that the earliest the Tenants' could have ended the tenancy would have been April 14, 2011.

The Tenants also argued that one of the Landlords verbally agreed that they could end the tenancy early if they gave the Landlords one month's notice. The Landlords denied this and argued that it was their practice to maintain written records of conversations with the Tenants which they did and which show that they never agreed to let the Tenants out of the obligations under the lease. I accept the evidence of the Landlords on this issue as they provided many written records of conversations with the Tenants throughout the tenancy which show their intention to hold the Tenants to the terms of their tenancy agreement if a new tenant could not be found. Consequently, I find that

there is insufficient evidence to conclude that the Landlords agreed that the Tenants would not have to be responsible for rent after February 26, 2011 as the Tenants allege.

Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. The Tenants argued that they gave the Landlords verbal notice on January 20, 2011 that they were moving out but the Landlords did not start advertising the rental unit for a further 17 days. The Landlords claim that the Tenants gave them verbal notice on February 2, 2011 and that as a result, they could not get a new tenant for March 2011. Both Parties agree that the Tenants never gave the Landlords written notice they were ending the tenancy despite numerous requests from the Landlords that they do so.

I find that the Landlords' obligation to mitigate or to look for another tenant did not arise until they got written notice from the Tenants that they would be vacating the rental unit on March 1, 2011. In the absence of written notice from a tenant, there is a risk that if a landlord secures a new tenant but the former tenant does not move out, the Landlord cannot rely on the former tenants' verbal notice and could be liable in damages to the new tenant. For this reason, I find that it is irrelevant whether the Tenants gave the Landlords verbal notice on January 20, 2011 or February 2, 2011 that they were moving out because they refused to provide the Landlords with written notice. I find that the Landlords did take reasonable steps to re-rent the rental unit as soon as possible but that a new tenant could not take possession of the rental unit until April 14, 2011. Consequently, I find that the Landlords are entitled to a loss of rental income for March 2011 in the amount of $1,100.00 and for April 1 – 13, 2011 in the pro-rated amount of $476.67 for a total of $1,576.67.

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion." The Parties agree that at the end of the tenancy, there were some holes in the wall as a result of the Tenants moving a closet organizer. The Landlords provided photographs showing 6 holes but argued there were many more. The Tenants claimed that there were only 6 holes and that it would be a simple matter of plastering, sanding and repainting the areas (with paint left behind in the rental unit). However, the Landlords sought $224.00 to have a contractor go to the rental unit to do the work because they did not have time to do it.

Based on the photographs of the Landlords, I find that $224.00 is an unreasonable amount to repair the holes. I find that there is insufficient evidence to conclude that there are more than 6 small holes. The Landlords have a duty under s. 7(2) of the Act to mitigate their damages and in that regard, I find it unreasonable that the high repair cost they want to pass onto the Tenants is due to their unwillingness to do the work themselves although they admitted they are able to do so. I agree with the Tenants

and find that the holes should take very little time to repair and as a result, I find that the Landlords are entitled to be compensated $75.00 for this repair.

As the Landlords have been successful on this matter, they are also entitled pursuant to s. 72(1) of the Act to recover from the Tenants the $50.00 filing fee they paid for this proceeding. Consequently, I find that the Landlords have made out a total monetary award of $1,701.67. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants' security deposit of $550.00 in partial satisfaction of the monetary award. The Landlords will receive a Monetary Order for the balance owing of $1,151.67.

Conclusion

A Monetary Order in the amount of **$1,151.67** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 *Residential Tenancy Act*.

Dated: September 29, 2011.

Residential Tenancy Branch