Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF
MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed his application on June 11, 2013, seeking a Monetary Order for: damage to the unit site or property; for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed their application on May 23, 2013, seeking a Monetary Order for: the return of double their security deposit; and to recover the cost of the filing fee from the Landlord for their application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be granted a Monetary Order?
2. Should the Tenants be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: Canada Post receipts; 17 photos of the rental unit; a locksmith receipt; an itemized list of cleaning; and an e-mail.

The Tenants submitted documentary evidence which included, among other things, copies of: their written submission; text messages; e-mails; Canada Post receipts; and the tenancy agreement.

The parties confirmed they entered into a written fixed term tenancy that began on June 1, 2011 and switched to a month to month tenancy after June 1, 2012. Rent was initially payable on the first of each month in the amount of $1,400.00 and on June 1, 2011 the Tenants paid $700.00 as the security deposit. The tenancy ended on April 30, 2013, when the Tenants vacated the property.

The parties agreed that their normal method of communication with each other was either by text messaging or by verbal telephone conversations. They did not normally communicate by e-mail and the Landlord sent only one e-mail to the Tenants as provided in evidence. The Tenants informed the Landlord on April 5, 2013, that they would be moving if they were able to secure a new place and on April 8, 2013 they confirmed with the Landlord, over the phone, that they would be vacating the unit by April 30, 2013.

The Landlord testified that no formal move in condition inspection report form was completed in 2011. He had allowed the Tenants to move into the unit early, on May 28, 2011, and did not have time to have the carpets professionally cleaned prior to their moving in. The Landlord stated that he did not offer two dates and times to conduct a move out inspection and did not issue a final written notice of inspection.

The Landlord is seeking $1,400.00 for loss of rent for May 2013 due to short notice provided by the Tenants. He advised that on April 8, 2013, he listed the property for sale with the community's sales office and arranged for an open house. He received the first offer to purchase the property on May 7, 2013, which was accepted on May 16, 2013, and the title of the property changed hands as of June 1, 2013.

He is claiming $1,400.00 for May 2013 rent due to short notice provided by the Tenants. He is also seeking to recover costs of cleaning the unit and rekeying the locks which amounts to a total claim of $1,878.20. The Landlord relied on the photos provided in evidence, which were taken on May 4th, to prove the condition of the rental property. He argued that the Tenants' submission was incorrect as the rental could not be in the same or better condition at the end of two years after wear and tear of them living in the unit. He confirmed the Tenant's left a key for the unit for his friend to check it on May 1, 2013, but that he never received the rest of the keys.

The Tenants pointed to their text messages provided in evidence which support that they tried on several occasions to set up a meeting to return the keys but that the Landlord was always a no show.

The Tenants are seeking the return of double their security deposit and to recover the $200.00 overpayment of rent due to an illegal rent increase that began on March 1, 2013. The Tenants relied primarily on their written submission and statement in support of their claim.

Both parties confirmed that the Landlord initiated a text message on May 6, 2013 seeking the Tenants' forwarding address which the Tenants responded to the same day.

In closing, each party confirmed their mailing address as listed on their applications. The Landlord indicated he was moving and that he would have his mail forwarded through Canada Post.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Tenants' Claim

Section 71 (2) (c) The Director may make any of the following orders: That a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Upon reviewing the evidence before me I find the parties established text messaging as an acceptable form of written communication between them. Accordingly, I find the Landlord was sufficiently served notice of the Tenants' forwarding address on May 6, 2013, as he sent a text asking for the Tenants' forwarding address that day at 8:12 a.m. and the Tenants responded the same day at 9:13 a.m. with their address.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the tenancy ended April 30, 2013 and the Landlord received the forwarding address on May 6, 2013; therefore, the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than May 21, 2013. The Landlord did not return the deposit and did not file his application for dispute resolution until June 11, 2013, thirty six days after he received the forwarding address.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the foregoing, I find that the Tenants succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double their security deposit plus interest in the amount of **$1,400.00** (2 x $700.00 + Interest of $0.00).

Sections 41, 42, and 43 of the Act stipulate the requirements for a rent increase. These sections of the Act have been reproduced at the end of this decision for review. The regulation stipulates the amount of the annual rent increase amount and for the year 2013 the allowable rent increase amount was 3.8%.

With respect to the $100.00 per month rent increase issued to the Tenants and was effective March 1, 2013, I find that the Landlord contravened Section 43(1)(a) of the *Act*, as the amount of the increase was not calculated in accordance with the *Regulations*. The allowable rent increase for 2013 would have been $53.20 and not $100.00 per month. Accordingly, I award the Tenants recovery of the illegal rent increase in the amount of **$200.00** (2 x $100.00), pursuant to section 43(5) of the Act.

The Tenants have succeeded with their application; therefore, I award recovery of the **$50.00** filing fee.

The Tenants have been granted monetary compensation in the total amount of **$1,650.00** ($1,400.00 + $200.00 + $50.00).

Landlord's Claim

Section 45(1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

> (a) is not earlier than one month after the date the landlord receives the notice, and
>
> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, I find the Tenants breached section 45 of the Act by failing to provide one months notice to end their tenancy. If the Tenants intended to end their tenancy on April 30, 2013, in accordance with the Act, their notice had to be received by the Landlord no later than March 31, 2013.

Notwithstanding the Tenant's breach, the Landlord still had an obligation to mitigate any potential loss such as re-renting the unit while he waited for it to sell. In this case the Landlord made a conscious decision not to re-rent the unit and instead he put it up for sale, April 8, 2013, the same day he received the Tenant's notice that they were moving. Based on the foregoing I find the Landlord provided insufficient evidence to meet the test for damage or loss, as listed above, and I dismiss his claim for loss of May rent, without leave to reapply.

Section 21 of the Regulation stipulates that in a dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Notwithstanding the absence of a condition inspection report form; I accept that the photos of the rental unit that were taken on May 4, 2013 represent the condition of the rental unit as of the end of the tenancy. In the absence of a move in condition inspection report form I find there is insufficient evidence to prove the condition of the unit at the outset of this tenancy.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove damages occurred during the course of the tenancy. Accordingly, the only evidence before me regarding the difference in condition from the onset to the end of the tenancy was disputed verbal testimony. Accordingly, I find the disputed verbal testimony insufficient evidence to meet the Landlord's burden of proof for damages.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must: (a) leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned and photographic evidence before me, I find the Tenants have breached section 37(2) of the Act, leaving the rental unit requiring some cleaning at the end of the tenancy.

As per the foregoing I find the Landlord has met the burden of proof for cleaning and I award them compensation in the amount of **$80.00** (4 hours x $20.00 per hour).

Upon review of the receipt from the locksmith I note that the address listed for service is different than the rental unit address. Furthermore, I note that the invoice was issued June 1, 2013, the date the title to the property was transferred to the new owner. Accordingly, I find this receipt does not relate to a tenancy that ended a full month earlier and prior to the property being sold. Therefore, I find the claim to rekey the rental unit is hereby dismissed, without leave to reapply.

The Landlord has only been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **$10.00.**

The Landlord has been granted monetary compensation in the total amount of **$90.00** ($80.00 + $10.00).

Monetary Order – I find that the monetary claims meet the criteria under section 72(2)(b) of the *Act* to be offset against the other as follows:

Tenants' monetary award	$1,650.00
LESS: Landlord's award	- 90.00
Offset amount due to the TENANTS	**$1,560.00**

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **$1,560.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims 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 *Residential Tenancy Act*.

Dated: August 28, 2013

Residential Tenancy Branch

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.