



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Preliminary Issues

C.G-C. was present at the outset of this proceeding and requested that her spouse U. G-C. be allowed to represent her during this proceeding. Upon approval, she disconnected from the hearing and her spouse provided testimony on both their behalf.

Upon review of the Landlords' claim they withdrew their request for costs to have the security system removed.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 15, 2013, by the Landlords to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlords 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

Are the Landlords entitled to a Monetary Order?

Background and Evidence

The parties agreed that they entered into a written month to month tenancy agreement that began on May 1, 2011. Rent began at \$1,300.00 and was later increased to \$1,350.00 payable on the first of each month. On April 7, 2011 the Tenants paid \$650.00 as the security deposit. No move in or move out condition inspection report forms were completed. On May 27, 2013, the Landlord received the Tenants' written notice to end their tenancy effective June 30, 2013. The Tenants vacated the unit by June 27, 2013, and attended a walk through the Landlords on approximately June 29, 2013, during which they provided the Landlords with their forwarding address.

The Landlords testified that they are seeking loss of rent for the month of June 2013 in the amount of \$1,350.00 because the Tenants refused them access to the unit to show to prospective tenants. They argued that they began advertising the unit as soon as they received the Tenants' notice and the first time they provided written notice to show the unit they received a letter from the female Tenant refusing them access, which they provided in their evidence. They indicated that the Tenant told them that the security system was alarmed at all times and she was refusing to deal with the Landlords' requests and demanded that they speak with her husband.

The Tenant testified that his spouse's letter indicates that the Landlords needed to contact him to arrange for showings. He argued that the Landlords have his telephone number yet they never called him. The Tenant stated that a neighbour had knocked on their door asking to see the unit because he was interested in renting the unit, or his buddy was. He said he showed the neighbor the unit on two separate occasions. Then a few weeks after they moved out they got a call from that neighbor to tell them they had mail at the unit and when they arrived they saw that the neighbour was living inside their old unit. He had told them that he moved into the unit with his buddy after his unit had a water leak.

The Landlords confirmed that they did not contact the male Tenant to arrange to show the unit. They argued that they felt it was not their responsibility to call the male Tenant as they felt they did what was required under the Act by providing written notice but that they were not granted access after their first notice. The Landlords clarified that they would never request a man come home from work to let them show a unit to a prospective tenant, especially when the man works out of town.

The Landlords stated that they knew the security alarm was installed shortly after the Tenants moved into the unit. They initially requested to be given the access code for the alarm but they never pursued that request because they did not want to cause problems. They did not feel that it was their responsibility to gain access to the unit once the female Tenant told them to deal with her spouse.

The Landlords stated that there was a water leak in the neighbor's unit on approximately July 9, 2013. The rental unit was rented to the neighbor's friend and the agreement was entered into in July but was not to be effective until August 1, 2013. Upon further clarification the Landlords stated that the neighbor had made

arrangements to move in with his friend on his own, after the water leak, and he occupied the unit since July 1, 2013.

In closing the Landlords stated that they did not have any requests to show the unit to anyone else other than the neighbor. They claimed that they were not initially aware that he asked to see the unit but argued that he was looking at it for his friend and not himself.

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.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 45 of the Act stipulates that a tenant may end a fixed term tenancy by providing one month notice to end the tenancy effective on a date that was not prior to the end of the fixed term.

In this case the undisputed evidence was that the Tenants ended their tenancy prior to the end of their fixed term lease, which I find to be a breach of section 45 of the Act. The Landlords advertised the unit and made one request, in writing, to arrange a showing. The female Tenant responded indicating the Landlords were to contact her spouse to make arrangements for showings. The Landlords made no effort to contact the male Tenant to arrange showings and let a neighbor to occupy the unit while his unit was being repaired, during which time his friend, the new tenant also occupied the unit.

I find the Landlords did not do what was reasonable to minimize their loss because they made no effort to acquire the security code and made no effort to contact the male Tenant to arrange showings. Furthermore, upon review of the Landlord's testimony, I find they provided contradictory testimony when they initially stated the neighbor moved into the Tenant's unit on July 9, 2013, and then later said the neighbor's friend rented the unit as of August 1, 2013, while confirming the friend occupied the unit since the first of July.

Based on the foregoing, I find there to be insufficient evidence to prove whether the Landlords actually suffered a loss for July 2013 rent because they indicated that the neighbor's friend was occupying the Tenants' unit during the month of July 2013. By allowing the unit to be occupied by two others, it was not available for rent to any other prospective tenants. I do not find it is a mere coincidence that the neighbor's friend became the new tenant as of August 1, 2103 but had occupied the unit since sometime in July 2013. Rather, it is reasonable to conclude that the neighbor's friend rented the unit in July 2013 and allowed the neighbor to stay with him while the neighbor's unit was being repaired. Therefore, I find the Landlords have not met the four criteria to claim for a loss, as listed above, and the claim is dismissed, without leave to reapply.

The Landlords have not been successful with their application; therefore I decline to award recovery of the filing fee.

The Landlords have held onto the security deposit pending the outcome of this claim. As the Landlords' claim has been dismissed, I Order the Landlords to return the Tenants' security deposit of \$650.00 + \$0.00 interest forthwith.

Conclusion

I HEREBY DISMISS the Landlords claim, without leave to reapply.

The Tenants have been issued a Monetary Order in the amount of **\$650.00** for the return of their security deposit. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do 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: November 19, 2013

Residential Tenancy Branch

