Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF
MNDC MNSD OLC FF

Introduction

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

The Landlords filed their application on February 11, 2014, seeking money owed for compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Tenants for their application.

The Tenants filed their application on May 12, 2014, seeking to obtain a Monetary Order for the return of double their security deposit, money owed for compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of their filing fee.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. The Landlords' evidence had not been matched to the file at the time of the teleconference hearing but was located shortly afterwards. The Landlords' 29 pages of faxed documents were considered as evidence, along with all of the Tenants' documentary evidence.

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. Have the Landlords proven entitlement to a Monetary Order?

2. Have the Tenants proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on November 1, 2013 and was set to expire on November 1, 2014. The Tenants were required to pay rent of $1,200.00 on the first of each month and on October 15, 2013 the Tenants paid $600.00 as the security deposit. No condition inspection report forms were completed at move in or move out. The Tenants provided their forwarding address to the Landlord's agent (boyfriend, the second applicant/respondent to this dispute) on February 2, 2014.

The Landlord testified that on October 10, 2013, the parties signed the written tenancy agreement and lease addendum which states as follows:

> *The landlord acknowledges that the tenant has two dogs. Any additional pets will require prior approval [sic].*

The Landlord stated that at the time the tenancy agreement was signed, no other documents were provided to the Tenants. On Friday January 10, 2014 the Landlord said she received an e-mail from the Strata Corporation informing her that she was required to provide the Tenants with a copy of the Strata by-laws and have them sign a Form K. This e-mail also informed her that the Strata had received a complaint that her Tenants had put up lattice boards in the yard and that they had two dogs, which were against the Strata by-laws. She contacted the Strata person who told her that he could not discuss the complaint at that time as there was a Strata meeting scheduled for Monday January 13, 2014.

The Landlord submitted that she arranged to meet up with the Tenants that weekend to discuss the issues and have them sign the Form K. During that meeting the Tenants had mentioned their concerns about the meeting and they were worried that they would not be allowed to stay with their two dogs.

The Landlord argued that she received a text message from the Tenants on January 14, 2014 advising that the Tenants had found a new place and would be moving out at the end of January 2014. She said she requested a formal end of tenancy and did not one in writing, until January 17, 2014. The Landlord confirmed that text messaging and e-mails were an established form of communication between her and the Tenants.

The Landlord said she began advertising the unit once she received the formal notice and was able to re-rent the unit as of March 1, 2014 and the Tenants remained in

possession of the unit until February 2, 2014. She The Landlord is seeking to recover the lost rent for February 2014 and the $100.00 filing fee.

The Tenants testified that they informed the Landlord they would be looking for another place during their meeting on Sunday January 12, 2014, which is when they met to sign the Form K. They said they were concerned about being without a home as they needed to find a place in the same school district to accommodate their son and that they had told the Landlord during that meeting that they had already been looking at other places.

The Tenants argued that when they did not hear back from the Landlord by Tuesday, January 14, 2014, after the Monday Strata meeting, they sent her a text advising that they had found a place and decided to move into it by the end of January. The Tenants pointed to their evidence which included the Landlord's reply by text as follows:

> *I regret that you feel you have to make this decision prior to the outcome of the meeting. That said I am willing to let you guys out of your lease contract and I will return your damage deposit upon completion of the unit inspection...*

The Tenants argued that they provided their formal notice to end tenancy on January 15, 2014, as requested by the Landlord; however, the Landlord would not accept it because it only had one of their signatures. So they re-did the notice, with both their signatures, and sent it to the Landlord as an e-mail attachment on January 17, 2014. At no time did the Landlord tell them that she would not be honoring her previous agreement to let them out of their lease.

The Tenants stated that the end of January was a Friday so they had planned to move out after work that day. During that week the Strata had machinery on the pathways conducting work on the outside area lights which caused the area to be very dark and caused the pathways to be dug up and uneven. The Tenants were concerned trying to move in the dark under those conditions so they contacted their Landlord to find out if the unit had been re-rented and to see if they could move out on the Saturday during the daylight hours. The Landlord approved them to move on the weekend and at no time did they discuss having to pay rent for those two additional days.

The Tenants are seeking the return of double their deposit as it had not been returned within the required 15 day period and they are seeking $800.00 for moving costs as they had to move after the Landlord had agreed to allow them to put up the lattice board and approved their two dogs. They could not reside in a place that would require the dogs to be walked separately or only allowed outside one at a time.

In closing the Landlord stated she too was in shock when she was first told about the by-laws and Form K. She argued that the Tenants did not tell her on January 12th that they would be leaving and questioned why they would sign the Form K if they were planning to leave. She did not think the Tenants' two dogs would be a problem as she had two dogs while residing in the unit. The only issue would be the two dogs could not be out on the common ground at one time.

Analysis

I have carefully considered the forgoing, all documentary evidence, and on a balance of probabilities I find as follows:

The undisputed evidence was that the parties had established text messaging and e-mails as an accepted form of written communication between them. This is supported by the documentary evidence submitted by each party and which clearly shows that each party acknowledged receipt of the communication and then acted upon the communication.

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.

Landlords' Application

Section 44(1)(c) of the Act provides that a tenancy ends when the landlord and tenant agree in writing to end the tenancy.

Upon review of the forgoing, I have no doubt that this situation created a stressful situation for all involved and put the Tenants in a position where they felt they may have

to move suddenly or be told they would have to part with one of their family pets. Based on that, I find the Tenants did what was reasonable in seeking alternate accommodation and with communicating that decision with the Landlord.

The evidence supports that when the Tenants found new accommodations the advised the Landlords who then mutually agreed to let the Tenants out of their lease, as provided in the January 14, 2014 text message where the Landlord wrote:

> *I regret that you feel you have to make this decision prior to the outcome of the meeting. That said* ***I am willing to let you guys out of your lease contract and I will return your damage deposit upon completion of the unit inspection****..*[my emphasis added].

Based on the foregoing, I find the parties mutually agreed to end this tenancy effective January 31, 2014 and that the Tenants were granted permission to remain in possession of the unit until February 2, 2014, due to the absence of proper exterior lighting and due to the condition of the common pathways. In the absence of evidence to the contrary, I find there was no requirement for the Tenants to pay rent for the two days their move was delayed.

Upon review of the Landlords' claim and the 4 criteria required to meet the test for damage or loss, as listed above, I find the Landlords' loss stems from her breach of the Act, not the Tenants' breach. I make this finding in part because the Landlord failed to provide the Tenants with a copy of the Strata by-laws and Form K at the time she entered into the tenancy agreement and addendum. Accordingly, I dismiss the Landlords' claim, without leave to reapply.

The Landlords have not been successful with their application; therefore I decline to award recovery of the **$100.00** filing fee.

Tenants' Application

The Tenants have sought the return of double their security deposit as the Landlords were required to return it within 15 days of the tenancy ending.

In this case the parties mutually agreed to end the tenancy on January 31, 2014 and the Landlord had agreed to return the Tenants' deposit. The Tenants told the Landlords' boyfriend their forwarding address during the walk through on February 2, 2014. The Landlords filed their application for dispute resolution on February 11, 2014, within 15 days. The Landlords' did not file their application seeking to retain the security deposit;

rather, they filed to obtain a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

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 in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Based on the above, I find that the Tenants' provided insufficient evidence to prove they served the Landlords with their forwarding address, in writing. Therefore, the Landlords are not subject to section 38(6) of the Act which requires them to pay the tenant double the security deposit. Accordingly, the Landlords are ordered to return the security deposit plus interest in the amount of **$600.00** ($600.00 + $0.00 interest).

The Tenants are seeking to recover $800.00 for moving costs; however, they did not submit evidence to support the amount claimed. Based on the foregoing, I find the Tenants' have not met the burden to prove the third criteria (the actual value of the loss) of the test for damage or loss, as listed above. Accordingly, I dismiss their claim for moving costs, without leave to reapply.

The Tenants have been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **$25.00**.

Conclusion

I HEREBY DISMISS the Landlords' application, without leave to reapply.

The Tenants have been awarded a Monetary Order in the amount of **$625.00** ($600.00 + $25.00). 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: June 02, 2014

Residential Tenancy Branch