Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 4, 2014, and amended on June 10, 2014, by the Tenants to obtain a Monetary Order for: the return of double their security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The Tenants were represented by Tenant K.P. who affirmed that he was at the hearing to represent both Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by each other and gave affirmed testimony. The Landlord submitted that he did not receive the amended application and evidence until June 13, 2014. The Tenant affirmed his documents were sent to the Landlord by registered mail on June 9, 2014.

The Tenant argued that the Landlord's evidence was not received until June 17, 2014, which is the date the Landlord personally served it. Each party confirmed that they had received the other's evidence and had had the opportunity to review that evidence; therefore, I accept all the documentary evidence, pursuant to rule # 11.5 of the *Residential Tenancy Branch Rules of Procedure.*

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 Tenants entitled 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 June 1, 2013 and was scheduled to switch to a month to month tenancy after one year. The Tenants were required to pay rent of $1,500.00 on the first of each month and on or before June 1, 2013 the Tenants paid $750.00 as the security deposit.

On January 17, 2014 the Landlord served the Tenants with a 2 Month Notice to end the tenancy for Landlord's use effective March 31, 2014 for reasons that the Landlord or close family relative would be occupying the rental unit. On January 30, 2014, the Tenants gave the Landlord written notice to end the tenancy effective February 15, 2014, prior to the effective date of the Notice, as provided under the Act. The Tenants specified in their written notice "*…and you will then only be required to pay a total of $750 of the $1500 required on the last day of tenancy which will be the 15th".*

The Tenant testified that as per his documentary evidence, he is seeking compensation for double his security deposit because the Landlord did not return their deposit within the required period. The Landlord sent them a partial refund of $525.00 and kept $225.00 without their permission; so they are also seeking the return of the $225.00. He stated that no condition inspection report forms were completed at move in or at move out.

The Tenant argued that the Landlord has not used the property for the reason why they were evicted. He pointed out that they had a fixed term lease for one year and the Landlord forced them to move saying that he was going to move into their unit.

The Tenant stated that the property had a main house, which was their rental unit, and an attached suite and a recreational trailer. He indicated that the Landlord was living in the trailer when they first moved in and after the Landlord evicted the tenant in the suite the Landlord moved into that suite. The Tenant pointed to the photos in his evidence

which prove the Landlord put the property up for sale which he believes is the reason why they were evicted. As a result, he is seeking compensation equal to two month's rent of $3,000.00 ($2 x $1,500.00).

In addition to the above amounts, the Tenants are seeking $277.50 which is comprised of $157.50 for the Tenant's labour to repair the loose carpet on the stairs, which was completed at the start of the tenancy; $40.00 for ¼ of a cord of firewood which the Landlord refused to return to them after they were only able to remove ½ of the wood in their first trip; and $80.00 for custom metal/wood shelves the Tenants installed and did not remove when they left.

The Landlord testified that on February 15, 2014 he gave the Tenants $1,150.00 in cash. The Landlord argued that he was of the opinion that the $1,150.00 included $400.00 for the purchase of the oil in the tank and $750.00 as the security deposit. He could not remember if he had a receipt for this cash or what it may have said if he did have one.

The Landlord confirmed that he requested the Tenants' forwarding address, in a text message and they provided it to him by text. Upon receipt of their new address the Landlord sent the Tenants a cheque for $525.00 which he now claims was the compensation for being issued the eviction notice less $225.00 for damages done to the rental unit. The Landlord stated that he recalls completing a move in inspection report form but did not know for certain if any of the Tenants signed the form. The Landlord did not know if he kept a copy of the condition inspection form. The Landlord stated that this relationship became adversarial and confrontational so no condition form was completed at move out.

The Landlord submitted that he had had a real estate friend give him an estimated value of his property after he requested permission to view the rental unit back in January 2014. He evicted the Tenants and moved into the main part of the house before listing the property for sale sometime in May, 2014. The Landlord was not able to provide testimony of the exact date the property was listed but knew it was listed before the May long weekend.

The Landlord confirmed that he did not make an application for Dispute Resolution, he did not have an Order granting him authority to keep the deposit, and he did not have the Tenants' permission to keep any portion of their deposit.

In closing, the Tenant pointed to the text messages he provided in his evidence. The text dated 2014-02-16 which includes a conversation about the Tenants wanting to

come back and get their remaining possessions and wood. The Landlord replied by text which reads as follows:*"Not after todays b….. erin has taken half of it already"*. The Tenant also pointed to the test dated 2014-01-31 where the Landlord wrote "*Can I show my realtor the house quickly on sat a 2?"* and argued that this is proof the Landlord had always intended to sell the property.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

I do not accept the Landlord's assertion that he returned the Tenants' security deposit to them on February 15, 2014 and that he retained the compensation owed for issuing them the 2 Month Notice. Rather, I find the Landlord acted in accordance with the Act, and paid the Tenants the compensation owed to them for the Notice, on February 15, 2014 and he retained the security deposit and later deducted amounts for damages, before sending the partial refund.

Sections 24 and 36 of the Act stipulate that when a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not complete move-in or move-out inspection reports and did not provide copies to the Tenants, he lost his right to claim or withhold the security deposit for damage to the property.

The Landlord was therefore required to return the security deposit to the Tenants within 15 days of the later of the two of the tenancy ending and having received the Tenants' forwarding address in writing. That being said, the Tenants did not provide their forwarding address to the Landlord in writing; rather they responded to the Landlord's request for their address via text message.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and the Tenants failed to provide their forwarding address in writing, I find that the doubling provision under section 38 of the Act does not apply in this case.

Based on all of the above findings, I conclude that both parties extinguished their right to the deposits. In such cases, I refer to the Residential Tenancy Policy Guideline 17 which provides that:

8. *In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished,* ***the party who breached their obligation first will bear the loss.*** *For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first. [my emphasis added].*

As per the foregoing I find the Landlord bears the extinguishment and must return the full security deposit of $750.00 plus interest of $0.00 to the Tenants. A partial refund of $525.00 was received and cashed by the Tenants on March 4, 2014. Accordingly, I award the Tenants the balance owing of **$225.00.**

Section 51(2) of the Act stipulates that in addition to the amount payable under subsection (1) (tenant's compensation), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose **for at least 6 months** beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement [my emphasis added].

In this case the Landlord served the Tenants a 2 Month Notice to end tenancy for reasons that he or a close family relative would be occupying the property. The tenancy ended February 15, 2014 and the Landlord moved into the rental unit shortly afterwards.

Despite the property being listed for sale near the beginning of May 2014, as of this proceeding held June 19, 2014, no offers have been made to purchase the property and the Landlord continues to reside in the unit. Accordingly, I find the Tenants' application for compensation under section 51(2) of the Act to be premature, as the six month time period has not expired and the Landlord continues to reside in the rental unit. Accordingly, I dismiss this portion of the Tenants' claim with leave to reapply.

I find there to be insufficient evidence to prove the Landlord is responsible for labour costs for repairing the carpet at the beginning of the tenancy and for the cost of a custom made shelf that the Tenants chose to leave behind. I make this finding in part because the evidence suggests these costs were incurred by the Tenants by their own choice and not by agreement or by a breach on the part of the Landlord. Furthermore there is insufficient evidence to prove the Tenants mitigated these losses. Accordingly,

the claims of $157.50 for labour plus $80.00 for the shelf are dismissed, without leave to reapply.

I accept the Tenant's submission that the text message sent by the Landlord on 2014-02-16 stating:*"Not after todays b….. erin has taken half of it already"* is evidence to support his claim that the Landlord refused the Tenants access to the remaining half of their wood. Accordingly, I award the Tenants compensation for the quarter cord of wood in the amount of **$40.00.**

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

Conclusion

The Tenants have been awarded a Monetary Order for **$315.00** ($225.00 + $40.00 + $50.00). 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: June 23, 2014

Residential Tenancy Branch