Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, "O", FF

This is an application by the Tenants for a monetary order for return of rent paid to the Landlord and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The male Tenant explained that he did not receive the mail containing the evidence from the Landlord as the mail was sent to an incorrect address. It appears the Landlord used the address for service of the Tenant on the Application; however, there was a typographical error made by the female Applicant on their Application and this was an incorrect address. Nevertheless, the male Tenant confirmed he had looked at the Landlord's evidence that had been provided to the female Tenant by the Landlord.

The Landlord testified and submitted that he did not receive the Tenants' hearing package until May 28, 2014, although it had been filed by the Tenants in late February of 2014. The Landlord stated that the rules of procedure provide that this should have been served on him three days after they received the hearing package. The record shows the Tenants' Application was processed and ready to be sent out on February 25, 2014. The Landlord testified he felt he was at a disadvantage because they served him so late. He testified he had to print off everything he had for evidence and submit it, and he did not have time to properly edit the evidence he wanted to send in, so he just sent it all in.

The Tenants replied that they had served the Landlord with the hearing package by sending it to him at his place of work by courier, with strict instructions it was to be signed by the Landlord only. The Tenants explained that another worker did sign for the Landlord and took the package. The Landlord replied that he did not get this for about

one month and he did not feel it was legally binding on him, since someone else signed for it.

The Landlord acknowledged receiving the package on May 30, 2014.

Pursuant to the rules of procedure, I asked the Landlord if he wished to have an adjournment in order to have more time to review the Tenants' hearing package. The Landlord testified he did not want to adjourn and wanted to proceed in order to get the matter over with.

In any event, I note the Landlord did respond with his evidence on time for the hearing.

As the Landlord wished to proceed, I did not find an adjournment was necessary or that proceeding with the hearing would prejudice either party, and we proceeded with the hearing. I do note below there is a repercussion for the Tenants serving the Landlord at his place of employment rather than using the service address on the tenancy agreement.

Issue(s) to be Decided

Has there been a breach of the Residential Tenancy Act (the "Act"), or the tenancy agreement by the Landlord?

Background and Evidence

The parties entered into a fixed term, one year written tenancy agreement which began on September 1, 2013 and was for a term of one year, until August 31, 2014. The Tenants paid a security deposit of $800.00 on July 29, 2013**,** and the monthly rent was agreed upon at $1,600.00 per month, payable on the first day of each month.

The parties both agreed during the hearing that they had dealt with the security deposit following the end of the tenancy and the Tenants testified they were satisfied with this.

On or about November 25, 2013, the Tenants emailed the Landlord informing him they were breaking the lease effective on November 30, 2013. On or about December 16, 2013, the Tenants wrote a letter to the Landlord informing them they were breaking the lease and had vacated the rental unit as of December 16, 2013. They returned the keys to the Landlord on or about December 17, 2013. According to the Tenants their personal relationship had ended and so they were moving out as they no longer wished to live together.

The male Tenant testified that in January of 2014, he was in contact with a cable company and then the hydro company regarding setting up accounts at his new address. He testified he was informed by these companies that a new cable account for the subject rental unit had been applied for on December 19, 2013, and that a new hydro account for the subject rental unit had been applied for in early January of 2014.

The male Tenant testified he went to the subject rental unit in January of 2014 and buzzed the unit. He testified that a person who answered the intercom identified themselves as a new renter.

The Tenants claim for the return of half the rent paid to the Landlord for December 2013 and for all the rent paid to the Landlord for January of 2014, in the amount of $2,400.00, plus the filing fee of $50.00 for the Application.

The Landlord alleged the Tenants damaged the rental unit, left it unclean and did not replace light bulbs. The Landlord had not filed a claim to recover the alleged damages to the rental unit by the Tenants, although he tried to counter claim through the Tenants' Application. It was explained to the Landlord that much of the evidence submitted was not relevant to the Tenants' Application, as the Landlord could not counterclaim without filing his own Application. The Landlord testified he had not filed a claim as the Tenants were friends of friends and that they had tried to negotiate the dispute between themselves.

The Landlord denied he had anyone renting the subject rental unit in December of 2013. The Landlord testified he had re-rented the subject as of January 1, 2014, and submitted a copy of the new tenancy agreement.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the civil standard, that is, on a balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

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.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants had insufficient evidence to prove the rental unit had been re-rented to another renter for December of 2013. The evidence the Tenants had regarding the establishment of new accounts did not verify that someone had paid the Landlord rent for December of 2013. In the absence of such proof the Tenants were required to pay the Landlord rent for December of 2013.

As they breached a fixed term tenancy, the Tenants would have been liable for the month of January and any following months, had the rental unit not been re-rented.

The evidence of both parties leads me to find the Landlord did have a new renter for January of 2014. As the Tenants had already paid the Landlord for January rent and the Landlord had another renter in the rental unit, I find the Landlord has been paid double rent for the month of January 2014. As the Tenants were not in possession of the rental unit in January of 2014, I find it would be an unjust enrichment for the Landlord to also collect rent from them.

Therefore, I find the Tenants have established a monetary claim for the return of January rent from the Landlord.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.
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> [Reproduced as written.]

I find that the Tenants have established a total monetary claim against the Landlord of **$1,605.00** comprised of **$1,600.00** in January rent and **$5.00** in partial compensation for the filing fee for the Application.

I have allowed the Tenants only a portion of their filing fee for the Application pursuant to sections 67 and 72 of the Act, as despite finding the Tenants' claims had some merit, they chose to serve the Landlord at his work address by courier for some unknown reason. This greatly delayed the service of these documents on the Landlord.

The Tenants had the Landlord's correct address for service as he lived in the same building as the subject rental unit, the address for service was set out in the tenancy

agreement and in fact, *this was the address for service for the Landlord the Tenants used in their Application.*

Their use of his work address for service caused unnecessary delay and was, in any event, contrary to the service provisions of the Act. The Landlord did receive their documents eventually through a second, correct service, although these should have been sent to him much sooner at the correct address for service.

For the above reasons, I grant the Tenants an order against the Landlord under section 67 for the balance due of **$1,605.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord breached the Act by accepting rent for the rental unit when in fact he had another renter in place who had also paid rent. Although the Tenants beached a fixed term tenancy agreement the Landlord is not allowed to be unjustly enriched by having double payments for rent, when these Tenants were no longer in possession of the rental unit.

The Landlord is ordered to pay the Tenants $1,605.00 in compensation for one month of rent and a portion of the filing fee for the Application.

Only a portion of the filing fee for the Application has been allowed as the Tenants chose to serve the Landlord at his work address, which is not allowed under the Act. The Tenants had the Landlord's service address in the tenancy agreement and was in fact this was the same address they had placed on their Application for the Landlord. Their choice of serving the Landlord at his place of employment caused unnecessary delay, although the Landlord was ultimately served at the correct address.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 13, 2014

Residential Tenancy Branch