Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNR MNDC MND FF
MNSD MNDC FF

Preliminary Issues

Upon checking in each person who attended this teleconference hearing, the Tenants submitted that the Landlord knew all along that there would be two tenants and that the Landlord requested that only one tenant be listed on the tenancy agreement.

The Landlord affirmed that the two named applicants on the Tenants' dispute were both Tenants. Based on the submissions of both parties and the Tenants' application listing both Tenants, the style of cause on this Decision includes both Tenants, pursuant to section 64(3)(c) of the Act.

The Landlord submitted that her boyfriend had attended as a witness and that he was not co-owner of the rental property and he had not conducted landlord business on her behalf, as her agent. As a result, I requested that the witness remove himself from the hearing, until such time that I called him to provide evidence.

At the commencement of this proceeding only a partial amount of the Tenants' evidence had been received on the *Residential Tenancy Branch* file. I explained that I would hear testimony and would write my decision after I received copies of all of the Tenants' evidence. During the course of this proceeding I received an email with an electronic copy of the full copy of the Tenants' evidence. I have considered all relevant evidence received by both parties in making this decision.

Introduction

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

The Landlord filed her application on April 21, 2014, to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the 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 Tenants for this application.

The Tenants filed their application on May 11, 2014, seeking a Monetary Order for: the return of 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 hearing was conducted via teleconference and was attended by the Landlord, her Witness, and both Tenants. The parties gave affirmed testimony and confirmed receipt of evidence served by the other. 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. Has the Landlord 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 scheduled to end on April 30, 2014. The Tenants were required to pay rent of $1,500.00 and on or before November 1, 2013 the Tenants paid a total of $1,500.00 as the security deposit. Despite the Tenants' requests, no condition inspection reports were completed with the Landlord, at move in or at move out.

The Landlord testified that she resides in a different city so she had the Tenants pay her former tenant(s) $750.00 of the security deposit and the balance was paid later, directly to the Landlord by the Tenants.

When reviewing why the Landlord had not scheduled a move out inspection, the Landlord argued that she did not know for certain, when the Tenants would be vacating. The Landlord stated that she attended the unit after she received the Tenant's letter dated April 7, 2014, where they provided her the forwarding address and requested their security deposit. She clarified that the unit did not have a key access; rather it was accessed by a numbered code.

The Landlord submitted that they had a fixed term tenancy agreement to the end of April 2014 but the Tenants put a stop payment on their March and April rent cheques.

Upon further clarification the Landlord submitted that “all of a sudden” the Tenants informed her that they wanted to move out. She pointed to an email sent from the Tenants on February 26, 2014, suggesting they would move out by March 31, 2014. The Landlord argued that she did not agree to their suggestions listed in that email.

Upon further clarification the Landlord submitted that her boyfriend and she attended a meeting with the male Tenant at the beginning of March 2014, where they agreed that the Tenants would move out on March 31, 2014, and the Tenant would show the rental unit to prospective tenants on her behalf. She argued that that agreement did not release the Tenants from the requirement to pay April rent if the unit had not been re-rented.

The Landlord testified that she advertised the unit as of March 3, 2014 and arranged for showings but the unit was not re-rented until May 1, 2014. Therefore, she was claiming lost rent for April 2014 plus $400.00 to cover a percentage of the cost to clean the rental unit. She noted that she charges different rental rates, depending on the season, as the unit is located in a ski resort area. Upon clarification of her claim the Landlord stated she was not seeking payment for March 2014 rent, because based on an agreement with the Tenants, she was to apply the security deposit as payment for March 2014 rent.

The Landlord pointed to photos provided in her evidence, which she took in April when she attended the unit, as proof of the condition the unit was left in after the Tenants vacated. She confirmed that she did not submit receipts to support her claim of $400.00 for cleaning and noted that her claim was to cover her labour, materials used to clean, plus the cost to replace damaged items which included a scratched table top and a stained carpet.

The Tenants testified that on February 25, 2014 they sent an email to the Landlord with different proposals on how they would end their tenancy, as provided at page 32 of their evidence. They noted that there were several reasons why they wanted to end their tenancy which included, but were not limited to, the fact that the Landlord did not provide them with a copy of the Strata By-laws which prohibited the use of a bbq, they were not provide with a form “k” to sign, there were bed bugs in the unit at the outset of the tenancy, and for other reasons.

The Tenants pointed to page 46 of their evidence which included their February 28, 2014, email where they wrote the following to the Landlord:

> *...due to our concerns of you not returning half our damage deposit of $750 per the tenancy act have cancelled the rental checks. You still have CAD$1500.00 (the original deposit) as payment for the month of March.*
>
> *I propose we pay you the legal deposit of CAD$750.00 either in cash tomorrow before you leave ... or in cash via Western Union payment...*

The Tenants noted that their email continued on page 47 of their evidence and included a confirmation about what was discussed that evening where they wrote at the bottom:

> *... & I will end our tenancy agreement penalty free on March 31st 2014 At which point you will return our security deposit pending a successful unit inspection.*

The Tenants pointed to the Landlord's response on March 1, 2014, shown on page 46 of their evidence and noted that she did not dispute their confirmation of the agreed upon terms.

The Tenants argued that the Landlord agreed to use their original deposit, an improper amount that had been collected at the onset of their tenancy, to pay March 2014 rent and that they paid the Landlord $750.00 cash for the proper deposit amount on March 1, 2014, as supported by the receipt provided in their evidence at page 48. They noted that the Landlord initialled the receipt acknowledging payment and agreeing that the deposit would be returned to the Tenants "on successful unit inspection on 31 March 2014".

The Tenants provided a written statement at page 60, from their witness who was in attendance at the February 28, 2014 meeting with the Landlord. They noted that the witness statement speaks to the Landlord's behaviour and that it was agreed by both parties that the new arrangement would be that the Tenants "would leave the condo a month early without penalty". They disputed the Landlord's claim for loss of April 2014 rent and argued that they were not responsible to pay rent for April because they mutually agreed to end the tenancy.

The Tenants disputed the Landlord's claim for cleaning and repairs and argued that when they had finished moving out and cleaning they called the Landlord on March 31, 2014, to find out when she would attend to conduct the inspection. It was at that time that the Landlord told them she was not able to attend the unit that day. The Tenants argued that they cleaned everything and in fact they left the unit cleaner than what it was when they took possession. They said there was no damage that they took note of and if there were the odd scratch or scuff mark it was normal wear and tear.

The Tenants submitted testimony in support of their claim where they are seeking $1,500.00 compensation for the mental stress, time of work, and physical actions required to deal with the bedbugs at the beginning of the tenancy. The Tenants acknowledged that the Landlord acted quickly to get an exterminator on site as soon as possible, even though it was a long weekend, and she also reimbursed them for costs

to launder everything. However, they were not reimbursed for their time off work to let the pest control staff into their unit for the required three or four treatments and inspections. The Tenants indicated that they did not seek additional compensation at that time because they did not want to ruffle any feathers with their new landlord.

The Tenants have also claimed $1,500.00 because the Landlord breached the Strata Property Act by failing to have them sign a form “K” and failing to give them a copy of the by-laws. The Tenants argued that they were never told they could not have a bbq and that that was one of the reasons why they felt they had to move early.

The remainder of the Tenants’ claim pertains to their request for the return of their $750.00 security deposit, which they said they paid in good faith, on March 1, 2014, in support of their mutual agreement to end the tenancy on March 31, 2014.

In response to the Tenants’ submission, the Landlord changed her earlier testimony and confirmed that she and her boyfriend attended a meeting with the male Tenant on February 28, 2014, where they discussed the Tenants ending the tenancy March 31, 2014. She was adamant that they mutually agreed to have the Tenants move out March 31, 2014 but that she told the Tenants they would still be responsible for April 2014 rent, unless the unit was re-rented.

The Landlord confirmed that she did not provide copies of the by-laws or a form “K” and argued that she has been a landlord for many years and had never been asked for a form “K” before. She denies ever discussing with the Tenants about their having a bbq and argued that they only ever asked if the unit had a balcony, as provided in the email on page 10 of the Tenants’ evidence.

The Landlord acknowledged that another deposit of $750.00 was paid by the Tenants on March 1, 2014, and could not provide an explanation on why she had not disclosed this earlier in her own testimony. Then, despite the receipt indicating that an inspection of the unit would be held on March 31, 2014, the Landlord continued to argue that she did not know that the Tenants would be vacating the unit by March 31, 2014 or that an inspection had been scheduled for that date. The Landlord did however confirm that the Tenant called her on March 31, 2014 to find out if she was attending the unit that day to conduct the inspection and that she informed him that she was unable to attend that day.

In closing, the Landlord’s witness, her boyfriend, was called in to provide testimony on what he recalled the terms of the mutual agreement were. He responded by stating “we

agreed the Tenants could go at the end of March but they would be responsible for April rent and the Tenants would try and re-rent the unit".

The Tenants questioned the witness's testimony given his relationship with the Landlord. They noted that their witness's statement was provided without their input, and included that the agreement was that they would end the tenancy early, without penalty.

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*.

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

Landlord's Application

In this case it was undisputed that the parties met February 28, 2014, and mutually agreed that the Tenants would vacate the unit by March 31, 2014, the Tenants would pay the Landlord another security deposit of $750.00 on March 1, 2014, and the Tenants would assist the Landlord by showing the rental unit. What is in dispute is if the Tenants would be responsible to pay April 2014 rent.

Upon review of all the evidence, and notwithstanding the Landlord's Witness's testimony, I favored the Tenants' evidence which included written email confirmation to the Landlord stating that their agreement was to end the tenancy March 31, 2014, "without penalty".

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I favored the Tenants' evidence over the Landlord's in part because I find the Landlord's explanation that she did not know for certain that the Tenants would be vacating the unit on March 31, 2014 or that she did not know about the scheduled March 31, 2014, inspection to be improbable, given that she had signed a receipt acknowledging receipt of the $750.00 payment which clearly indicated the unit inspection would be conducted on March 31, 2014. Furthermore, I find that based on the Landlord's contradictory testimony about how this tenancy ended and her evasiveness about the additional security deposit reduced the credibility of all her evidence. Rather, I find the Tenants' explanation that the parties had entered into a mutual agreement to end this tenancy March 31, 2014, and without penalty, to be plausible given the circumstances presented to me during the hearing, and as supported by their documentary evidence.

Based on the above, I find that this tenancy ended by mutual agreement, effective March 31, 2014, at which time the Tenants' obligations to the tenancy ended. Accordingly, I dismiss the Landlord's claim for loss of April 2014 rent, without leave to reapply.

Sections 24 and 36 of the Act stipulate that the right of a landlord to claim against a security deposit or a pet damage deposit, or both for damage to the rental property is extinguished if the landlord does not complete a condition inspection report form at move in or at move out, and give the tenant a copy.

Section 21 of the Regulations provides that In 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.

As per the foregoing, in the absence of signed move in or move out condition inspection report forms or receipts proving an actual loss, I find the Landlord provided insufficient evidence to prove entitlement to a claim for damages. Therefore, I dismiss the claim for damages, without leave to reapply.

The Landlord has not succeeded with their application; therefore, I decline to award recovery of the filing fee.

Tenants' Application

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Tenants have sought $1,500.00 as compensation for mental and physical stress plus loss of employment income while dealing with the presence of bedbugs at the onset of this tenancy. It was undisputed that the Landlord acted immediately to arrange for pest control services and reimbursement the Tenants for additional laundry costs incurred. The Tenants did not make an effort to seek additional compensation at the time because “they did not want to ruffle feathers”.

Based on the above, I find the Landlord acted within a reasonable time and she did what was required of her to reimburse the Tenants for their extra costs, in accordance with the Act. That being said, I find the Tenants failed to mitigate any additional losses they may have suffered for quiet enjoyment, by delaying in bringing their claim forward within a reasonable amount of time. Accordingly, their claim for $1,500.00 for mental stress or aggravated damages is dismissed, without leave to reapply.

Although the evidence supports that this relationship became adversarial and that the parties mutually agreed to end this tenancy. I find the Tenants provided insufficient evidence to prove they were entitled to compensation equal to one month’s rent for having to move or that they were required to move for the simple reasons that they were not given a copy of the Strata by-laws or the form “K’, or for any other reason. Accordingly, I dismiss the Tenant’s claim of $1,500.00, without leave to reapply.

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.

In this case the tenancy ended March 31, 2014, and the Tenants provided the Landlord with their forwarding address in writing on April 7, 2014, by registered mail. Registered mail is deemed received five days after it is mailed, in accordance with section 90 of the Act. The Landlord filed her application for Dispute Resolution on April 21, 2014, within the required 15 day period.

Based on the above, I find that the Landlord is not subject to the doubling provision of Section 38(6) of the *Act* as the Landlord’s application for Dispute Resolution was filed within the required time period. That being said, as noted above the Landlord failed to complete condition inspection report forms and therefore extinguished her right to claim against the deposit. Accordingly, I award the Tenants the original deposit plus interest of $0.00 in the amount of **$750.00.**

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

Conclusion

The Tenants have been awarded a Monetary Order for **$775.00** ($750.00 + $25.00). 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.

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

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: September 02, 2014

Residential Tenancy Branch