Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND FF
MNDC FF

Preliminary Issues

The undisputed evidence was that the Tenants rented the self-contained basement suite and the Landlord resided in the upper level of the house. Accordingly, the style of cause for each application was amended to clarify the rental unit address as being the basement (BSMT), pursuant to section 64(3)(c) of the Act.

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following in the details of the dispute:

> *Tenant didn't give us written notice, damage to the property and they are asking for one month compensation.*
>
> [Reproduced as written]

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking compensation for improper notice to end the tenancy. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement,* pursuant to section 64(3)(c) of the Act.

Introduction

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

The Landlord filed on November 21, 2014 seeking to obtain a Monetary Order for: damage to the unit, site or property; 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.

Tenants filed on November 6, 2014 seeking to obtain a Monetary Order 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 and the three Tenants. Each person gave affirmed testimony and confirmed receipt of evidence served by the other.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each person 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 person was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Tenants proven entitlement to a monetary order for compensation for being served a 2 Month Notice to end tenancy?
2. Has the Landlord proven entitlement to monetary compensation for loss of rent due to the Tenants' failure to provide proper notice to end the tenancy?
3. Has the Landlord proven entitlement to monetary compensation for damage to the unit site or property?

Background and Evidence

The undisputed evidence was that the parties entered into a verbal month to month tenancy agreement that began on January 3, 2011. Rent was payable on the first of each month and was initially $750.00. The rent was increased to $800.00 per month on approximately July 1, 2014. On January 3, 2011 the Tenants paid $375.00 as the security deposit. Although the parties did a brief walk through of the unit at move in and move out no condition inspection report forms were completed.

The Tenants testified that on August 30, 2014 the Landlord personally served them with a 2 Month Notice to end tenancy listing an effective date of October 31, 2014, for the following reason:

> *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse).*

The Tenants submitted that they told the Landlord that they had found a place and were moving out on approximately September 17, 2014. The Tenants did not know the exact date they told the Landlord they were moving and argued that the Landlord had to move his vehicles to make space for their moving truck so the Landlord knew they were moving out early.

The Tenants asserted that they had paid full rent for September 2014 and were not compensated for being evicted with the 2 Month Notice. As a result they filed their application to seek $800.00 as compensation equal to one month's rent for being served the 2 Month Notice.

The Landlord testified that the Tenants did not provide him with 10 days written notice that they would be vacating the rental unit earlier than the effective date of the eviction Notice. He argued that two of the Tenants moved out around September 17, 2014 and R.C. remained in possession of the rental unit until September 30, 2014. They conducted a walk through on September 30, 2014, the keys were returned, and on October 16, 2014 the Landlord returned the Tenants' security full deposit of $375.00.

The Landlord said he agrees to pay the Tenants compensation equal to 20 days rent for issuing the 2 Month Notice. He said he filed his application to retain an amount equal to 10 days rent because the Tenants failed to give him the proper 10 day Notice for ending the tenancy early.

The Landlord testified that he purchased this house in 2006 and it was built in the late 1990's or early 2000's. The Landlord is seeking $1,275.05 compensation for damage or loss to the rental unit comprised of the following:

1) $39.00 to clean the rental unit carpet, as per the steam cleaner rental receipt dated October 3, 2014 and provided in his evidence;
2) $318.30 for the cost of laminate flooring which was installed in the living room after the carpet was removed. The Landlord stated that his flooring installer told him the carpet was too dirty and too stained to clean it. The carpet was in the house when he purchased it in 2006 so he did not know the exact age of the carpet;
3) $217.75 for the cost of paint for the doors, walls, and ceilings. The rental unit was painted in 2006 when the Landlord first purchased the house; and
4) $700.00 for labour costs to install the laminate flooring, repair the tap in the bathtub, and for painting the rental unit.

The Tenants disputed all of the items claimed by the Landlord and argued that they had left the rental unit in the same condition as it was when they first moved in. They submitted that they had cleaned the carpets twice before they moved out.

The Tenants questioned why the Landlord would return their security deposit if there were damages to the rental unit. They also asserted that they did not ask the Landlord to renovate the entire suite after they moved out and they did not ask him to install hardwood floors.

Analysis

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

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Tenant's application

Section 51(1) of the *Act* stipulates a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The undisputed evidence was the Tenants were served a 2 Month Notice to end tenancy under section 49 of the Act on August 30, 2014 and the Tenants were not provided compensation equal to one month's rent.

Based on the above, I conclude that the Tenants have met the burden to prove the merits of their application for compensation equal to one month's rent, pursuant to section 51(1) of the Act. Accordingly, I grant the Tenants' application and award them monetary compensation in the amount of **$800.00.**

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

Landlord's Application

The party making the claim for damage or loss has the burden to prove **each** component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act and did whatever was reasonable to minimize the damage or loss.

Section 50(1)(a) of the Act provides that if a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* or 49.1 *[landlord's notice: tenant ceases to qualify]*, the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

Notwithstanding the Tenants' submissions that they verbally told the Landlord they were moving out before the effective date of the Notice, the undisputed evidence was the Tenants did not provide the Landlord written notice. That being said, the Landlord did not submit any evidence to prove he suffered any loss or proof of the actual cost of any loss due to the absence of proper written notice.

Based on the above, I find the Landlord submitted insufficient evidence to meet the 4 criterion of the test for damage or loss, as listed above. Accordingly, the Landlord's claim for 10 days rent is dismissed, without leave to reapply.

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.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

The evidence was that the Landlord and Tenants conducted a brief walk through of the rental unit at the end of the tenancy and at no time did the Landlord inform the Tenants

that there was damage caused to the rental unit. Furthermore, the Landlord did not give the Tenants an opportunity to rectify or repair any alleged damage and the Landlord did not put the Tenants on notice that he would be seeking compensation for the alleged damages.

Based on the above, in absence of a move in or move out condition inspection report form or any other evidence to prove the condition of the rental unit at the start and end of this tenancy, and in the presence of the Tenants' disputed testimony, I find the Landlord submitted insufficient evidence to prove the merits of his claim. Simply submitting receipts for work performed, or materials purchased, does not prove the other party is responsible for the costs. Accordingly, the Landlord's claim of $1,275.05 for damages is dismissed in its entirety.

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

Conclusion

The Tenants have succeeded with their application and have been awarded $850.00 ($800.00 + $50.00). The Tenants have been issued a Monetary Order for **$850.00**. 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 British Columbia Small Claims Court and enforced as an Order of that Court.

The Landlord has not succeeded in proving his claim. As a result the Landlord's application is HEREBY DISMISSED, 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: June 24, 2015

Residential Tenancy Branch