Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, MNSD, MNDC, OLC, FF

Introduction

These proceedings were convened in response to cross applications.

The Landlords filed an Application for Dispute Resolution, in which the Landlords applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee paid to file an Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent, for a monetary Order for money owed or compensation for damage or loss, for the return of his security deposit, and to recover the fee paid to file an Application for Dispute Resolution.

The proceedings commenced on August 29, 2016. That hearing was adjourned for reasons outlined in my interim decision of August 29, 2016. The hearing was reconvened on October 26, 2016 and was concluded on that date.

In my interim decision of August 29, 2016 each party was directed to serve a copy of their original Application for Dispute Resolution.

On September 02, 2016 the Landlords submitted a duplicate copy of their Application for Dispute Resolution to the Residential Tenancy Branch. The Landlord stated that the Tenant was served with a copy of this Application for Dispute Resolution on September 01, 2016, via registered mail. The Landlord acknowledged receipt of this document.

On September 02, 2016 the Tenant submitted a duplicate copy of his Application for Dispute Resolution to the Residential Tenancy Branch. The Tenant stated that the Landlords were served with a copy of this Application for Dispute Resolution on September 01, 2016, via registered mail. The Landlord acknowledged receipt of this document.
In my interim decision of August 29, 2016 each party was directed to serve a sequentially numbered evidence package to the other party by September 03, 2016.

On September 02, 2016 the Tenant submitted 27 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this package was served to the Landlords, via registered mail, on September 01, 2016. The Landlord acknowledged receipt of this package.

I note that two items submitted to the Residential Tenancy Branch by the Tenant on August 11, 2016 were not included in the package that was served to the Landlords on September 01, 2016, which include a "Document List" with five items on it and a photograph of a table that has purple stripes on the top of the table. As these items were not re-served to the Landlords, they were not accepted as evidence for these proceedings. As the remainder of the evidence that was submitted to the Residential Tenancy Branch by the Tenant on August 11, 2016 has now been received by the Landlords, it is accepted as evidence for these proceedings.

On August 31, 2016 the Landlords submitted 44 pages of evidence to the Residential Tenancy Branch. On September 02, 2016 the Landlords submitted 41 pages of evidence to the Residential Tenancy Branch. The packages are the same; with the exception that one package has three additional pages. The Landlord stated that the larger package was served to the Tenant, via registered mail, on September 01, 2016. The Tenant acknowledged receipt of this evidence package.

I note that one item submitted to the Residential Tenancy Branch by the Landlords prior to August 29, 2016 was not included in the packages that were served to the Tenant after the hearing on August 29, 2016. The Landlords originally submitted a revised Monetary Order Worksheet which increased the amount of the Landlord's claim from $3,300.00 to $4,100.00. The document that was re-submitted to the Residential Tenancy Branch has additional writing on it. As these documents were not exact duplicates of the original evidence, they were not accepted as evidence for these proceedings.

Residential Tenancy Branch records show that on September 09, 2016 the Landlords submitted 8 pages of evidence to the Residential Tenancy Branch, which included 4 photographs that were submitted to the Residential Tenancy Branch on August 31, 2016 and will be accepted as evidence on the basis of that submission. The Landlord insisted after repeated clarifications that she did not serve any additional evidence to the Residential Tenancy Branch after September 02, 2016 and she was not, therefore, able to establish that these documents were served to the Tenant. As there is no evidence that this package was served to the Tenant, I decline to accept it as evidence for these proceedings

As the remainder of the evidence that was submitted to the Residential Tenancy Branch by the Landlords prior to the hearing on August 29, 2016 has now been received by the Tenant, it is accepted as evidence for these proceedings.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure stipulate that no additional evidence may be submitted after the dispute resolution hearing commences, except as directed by the Arbitrator. I note that both parties submitted evidence to the Residential Tenancy Branch after the hearing of August 29, 2016, which had not been previously submitted to the Residential Tenancy Branch.

As I only authorized the parties to re-serve evidence that had been previously submitted to the Residential Tenancy Branch, any evidence that was not submitted to the Residential Tenancy Branch prior to the hearing on August 29, 2016 was not accepted as evidence for these proceedings. This includes 4 pages of text messages that appear to have been submitted to the Residential Tenancy branch by the Landlords on September 09, 2016, although I note two of those pages were submitted (and accepted) as evidence by the Tenant.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

On the basis of the undisputed evidence that the rental unit is not currently being occupied by the Tenant and that the Tenant does not wish to live in the rental unit, I find there is no need to consider the application for an Order of Possession or to cancel a Notice to End Tenancy.

Preliminary Matter #2

On September 02, 2016 the Landlords submitted a copy of a Monetary Order Worksheet that had been previously submitted to the Residential Tenancy Branch on August 26, 2016, in which the Landlord is seeking a Monetary Order for $4,100.00. The document that was submitted on September 02, 2016 is different than the document that was previously submitted, in that it indicates the Landlord is claiming compensation for cleaning, for floor repairs, and for re-grading the grass. I was unable to find any indication that the Landlords were claiming compensation for this damage in documents submitted prior to the hearing on August 29, 2016.

Rule 2.11 of the Residential Tenancy Branch Rules of Procedure stipulates that:

- an applicant may amend an Application for Dispute Resolution without consent if the dispute resolution hearing has not yet commenced;
- **i**f the Application for Dispute Resolution has not been served on any respondents, the applicant must submit an amended copy of the Application for Dispute Resolution to the Residential Tenancy Branch and serve the amended Application for Dispute Resolution to each respondent as soon as possible; and
- if the Application for Dispute Resolution has been served, a copy of the amended Application for Dispute Resolution must be served to each respondent

so that they receive it at least 14 days before the scheduled date for dispute resolution hearing.

As the Landlords did not serve the Tenant with notice that they would be claiming compensation for damage to the yard and rental unit prior to the commencement of the hearing on August 29, 2016, I find that they have not properly amended their Application for Dispute Resolution to include these claims. I therefore decline to consider their application for compensation for damage to the yard and rental unit.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent and to keep all or part of the security deposit?
Is the Tenant entitled to a rent refund, compensation for moving costs, compensation for damage to his personal property, and to the return of his security deposit?

Background and Evidence

The Landlords and the Tenant agree that:

- the rental unit is on the same residential property as the Landlords' home;
- the tenancy began in June of 2016;
- the parties signed a tenancy agreement;
- the Tenant agreed to pay rent of $1,600.00 by the first day of each month, with the exception of June of 2016;
- the Tenant agreed to pay $800.00 in rent for June of 2016;
- the Tenant did not pay any rent for July of 2016;
- the Tenant paid $800.00 in rent for June of 2016;
- the Tenant paid a security deposit of $800.00;
- the Tenant did not give the Landlords written authority to retain any portion of the security deposit; and
- the Landlords did not return any portion of the security deposit.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on July 04, 2016. The Tenant stated that this Notice to End Tenancy was located on the door of the rental unit on July 05, 2016. The parties agree that the Notice to End Tenancy declared that the Tenant must vacate the rental unit by July 22, 2016.

The Tenant stated that on July 02, 2016 he posted written notice of his intent to end the tenancy on the door of the Landlords' home. He was unable to locate a copy of this written notice at the time of the hearing but he believes it advised the Landlords that he was ending the tenancy immediately. The Landlord stated that the Landlords did not receive this notice.

The Landlords and the Tenant agree that on July 04, 2016 the Tenant sent the Landlords an email in which he declared, in part, that he will "not stay at this location and I will remove my items by July 31, 2016 (or sooner if possible).

The Tenant stated that all of his property was removed from the rental unit by July 23, 2016 and he finished cleaning the rental unit on July 24, 2016. The Landlord stated that she is not certain when the rental unit was fully vacated, but they know it was vacant on July 29, 2016.

The Landlord stated that they did not receive a forwarding address from the Tenant until they received his Application for Dispute Resolution. The Tenant stated that he does not recall if he provided the Landlords with a forwarding address prior to serving them with his Application for Dispute Resolution.

The Landlords are seeking $1,600.00 in unpaid rent for July of 2016 and $1,600.00 in lost revenue for August of 2016. The Landlord stated they did not advertise the rental unit after the Tenant vacated the unit in July and they still have not advertised the rental unit because they are not certain they wish to continue renting the unit.

The Tenant is seeking a refund of the $800.00 in rent he paid for June of 2016. The Tenant contends that his rent should be refunded, in part, because the Landlords breached a term of the tenancy agreement by telling him that they were going to allow bees to be kept on the property, which resulted in him deciding to vacate the rental unit.

In regards to this claim the Tenant and the Landlords agree that:

- on June 28, 2016 the Landlords asked the Tenant, via text message, if the Tenant has an allergy to bees, as they would like to allow a beekeeper to place bees on the property;
- on June 28, 2016 the Tenant advised the Landlords, via text message, that some family members had an allergy to bees;
- on June 28, 2016 the Tenant suggested, via text message, that the beekeeper be provided with space elsewhere on the residential property;
- on June 28, 2016 the Landlords advised the Tenant, via text message, that the beekeeper would be provided with space elsewhere on the residential property; and
- on July 04, 2016 the Landlords advised the Tenant, via email, that the beekeeper would not be provided space anywhere on the residential property.

The Tenant contends that his $800.00 in rent should be refunded, in part, because he had "lost faith" in the Landlords' promise that they would not conduct any commercial activity of the residential property. The Landlords and the Tenant agree that when this tenancy began the Landlords informed the Tenant that no commercial activity would be conducted on the residential property. The Landlord argued that keeping bees on the property is an agricultural, rather than a commercial, activity.

The Tenant is seeking moving costs of $611.37, which include gas costs and highway tolls.

The Tenant is seeking compensation of $500.00 for a damaged table. The Tenant stated that he moved the table into the rental unit and while he was away the table was scratched. He stated that he does not know who, or how, the table was damaged but he suspects that an "X" was intentionally scratched into the top of the table by the Landlords, as they were the only people who had access to the rental unit. The Landlord submitted a photograph of the damaged table.

The Landlord stated that the Landlords did not enter the rental unit while the Tenant's property was inside the unit and that they did not damage the table in any way.

Analysis

On the basis of the undisputed evidence I find that the Landlords and the Tenant entered into a tenancy agreement which required the Tenant to pay monthly rent of $1,600.00 by the first day of each month, with the exception of the June of 2016, for which he was only required to pay $800.00.

On the basis of the undisputed evidence I find that the Tenant did not pay the $1,600.00 in rent that was due on July 01, 2016. As tenants are required to pay rent when it is due, pursuant to section 26 of the *Residential Tenancy Act (Act),* I find that the Tenant must pay the Landlord the $1,600.00 that was due on July 01, 2016.

Section 46 of the *Act* authorizes a landlord to end a tenancy if rent is not paid when it is due by serving the tenant with a Ten Day Notice to End Tenancy. On the basis of the undisputed evidence I find that the Landlords posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on July 04, 2016, which the Tenant received on July 05, 2016. As the Tenant received the Notice to End Tenancy on July 05, 2016 and rent for July was not paid, I find that the Landlords had the right to end this tenancy pursuant to section 46 of the *Act* and that the tenancy did end on the basis of that Notice.

On the basis of the undisputed evidence I find that on July 04, 2016 the Tenant sent the Landlords an email in which he declared he would vacate the rental unit by July 31, 2016.

Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. As the Tenant did not provide the Landlord with written notice to end the tenancy on a date that is later than one month after the date the Landlord received the notice and is the day before the date that rent is due, I find that the email the Tenant sent on July 04, 2016 did not serve to end this tenancy on July 31, 2016.

Section 53 of the *Act* stipulates that if a tenant gives notice to end a tenancy on a date that is earlier than the earliest date permitted by the legislation, the effective date is deemed to be the earliest date that complies with the legislation. In these circumstances, the earliest effective date of the notice that was given by email on July 04, 2016 would have been August 31, 2016.

Even if I accepted the Tenant's testimony that he posted written notice to end the tenancy on the Landlords' door on July 02, 2016, I would conclude that this notice would not have served to end the tenancy any earlier than the notice he sent by email on July 04, 2016, as it was not served within the timelines established by section 45 of the *Act*.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results must do whatever is reasonable to minimize the damage or loss. As the Landlords made no attempt to find a new tenant for August of 2016 I find that they did not take reasonable steps to minimize their loss and I dismiss their claim for lost revenue for August of 2016. I find it entirely possible that the Landlords would not have experienced this loss if they advertised the rental unit as soon as they were aware that it had been vacated.

On the basis of the undisputed evidence I find that on June 28, 2016 the Landlords expressed an interest in having bees kept on the residential property; that the Tenant advised the Landlords he did not want the bees kept near his rental unit; and that on July 04, 2016 the Tenant was informed that the Landlords were not allowing bees to be kept on the residential property.

I find that the Tenant did not have the right to end this tenancy prematurely because the Landlords raised the possibility of keeping bees on the residential property. In adjudicating this matter I was mindful of section 45(3) of the *Act*, which stipulates that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Even if I accepted that keeping bees on the residential property was a breach of a material term of the tenancy agreement and that the Tenant gave the Landlords written notice that they had breached a material term of the tenancy agreement, I would find that the Tenant did not have the right to end the tenancy early pursuant to section 45(3) of the *Act*. This conclusion is based on the fact that the Landlords did not allow bees to be kept on the property and they informed the Tenant that bees would not be kept on the property within six days of the issue being raised.

Section 45(3) of the *Act* does not give a tenant the right to end a tenancy because the tenant is concerned that the landlord might breach a material term of the tenancy in the future. I therefore cannot conclude that the Tenant had the right to end this tenancy prematurely because he had "lost faith" in the Landlords' promise that they would not conduct any commercial activity of the residential property.

As the Tenant has not established that he had the right to end this tenancy prematurely as a result of a conversation about keeping bees on the property, I cannot conclude that the Tenant is entitled to a rent refund. I therefore dismiss the Tenant's claim for a rent refund of $800.00.

Section 67 of the *Act* authorizes me to order one party to pay compensation to another party if the applicant suffers a loss as a result of the respondent breaching the *Act* or a term of the tenancy agreement. As the Tenant has failed to establish that the Landlords breached any term of the tenancy agreement or the *Act*, I cannot find that the Landlord is obligated to pay any costs associated to the Tenant moving out of the rental unit. I therefore dismiss the Tenant's claim for moving costs.

When making a claim for damage under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. I find that the Tenant has submitted insufficient evidence to establish that the Landlords damaged his table and I therefore dismiss his claim for repairing/replacing the table. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's claim that the Landlords scratched his table or that refutes the Landlord's testimony that they did not damage the table.

I note that damage to the table, as depicted in the photograph submitted by the Tenant, does not clearly establish that the damage to the table was intentional. I find it possible that the table could have been damaged, unintentionally, during the moving process.

I find that the Landlords' Application for Dispute Resolution has merit and that they are entitled to recover the cost of filing their Application.

I find that the Tenant has failed to establish the merit of his Application for Dispute Resolution has merit and I dismiss his application to recover the cost of filing his Application.

Conclusion

The Landlords have established a monetary claim, in the amount of $1,700.00, which includes $1,600.00 in rent for July of 2016 and $100.00 in compensation for the fee paid to file an Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlords to keep the Tenant's security deposit of $800.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlords a monetary Order for the balance of $900.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, 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: October 27, 2016

Residential Tenancy Branch