Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, OPB, MNR, MNSD
Tenants: CNR, DRI, OLC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to cancel a notice to end tenancy and to dispute an additional rent increase.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

At the outset of the hearing the parties confirmed the tenants vacated the rental unit as of October 31, 2016. The tenants confirmed that they no longer intended to pursue their Application for Dispute Resolution but were attending the hearing to respond to the landlord's claim only. I accept the tenants have withdrawn their Application for Dispute Resolution.

The landlord also confirmed she no longer required an order of possession. I amend the landlord's Application to exclude the matter of possession.

The landlord stated that she had included seeking to recover her filing fee for her Application for Dispute Resolution. While there was no evidence of any changes to the tenant's Application for Dispute Resolution of such a request a further review of the physical file records that on December 5, 2016 the landlord submitted an Amendment to an Application for Dispute Resolution. The Amendment sought to change her original claim from $300.00 to $4,457.13.

The Monetary Order Worksheet submitted with the Amendment form indicated that the landlord sought additional compensation for lost revenue; "work not completed"; and cleaning and repairs.

Residential Tenancy Branch Rules of Procedure 4.3 stipulates that amended applications and supporting evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC office as soon as possible and in any event early enough to allow the applicant to comply with Rule 4.6.

Rule 4.6 says as soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

As the landlord only submitted her Amendment form to the Residential Tenancy Branch only 8 days before the hearing I find the landlord could not have been able to comply with the requirements of Rules 4.3 and 4.6 above.

Had the landlord been compliant with the Rules of Procedure I would have reconvened this hearing to adjudicate the landlord's additional claims. However, since the landlord was not compliant I decline to amend her original Application for Dispute Resolution. I note, the landlord remains at liberty to file a new Application for Dispute Resolution for any matters not adjudicated in this hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and for all or part of the security, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The parties agree the tenancy began on April 1, 2016 for rent due on the 1st of each month with a deposit of $1,000.00 paid. The parties also agree the tenancy ended on October 31, 2016. The parties agreed a written tenancy agreement was not made.

The landlord submitted that rent was $1,900.00 and she collected a security deposit of $900.00 and a pet damage deposit of $100.00 was paid. The landlord stated that the parties agreed to rent in the amount of $1,900.00 but that for 6 months the rent would be reduced to $1,600.00 in lieu of work completed by the tenants.

The landlord testified the tenants only paid $1,600.00 for the month of October 2016 but that the rent reduction ended at the end of September 2016.

In support of her claim the landlord has submitted copies of several receipts recording payments received from the tenants. The landlord has noted on each receipt the reason for the payment and any alterations. For example the June 2, 2016 receipt indicates a late payment of $1,600.00 and that full rent was $1,900.00 with work to be done for $300.00.

The tenants submitted that while the landlord originally wanted $1,900.00 for the monthly rent she agreed to rent in the amount of $1,600.00 because the property was

provided in a manner consistent with what the tenants thought they were agreeing to. The tenants stated that it was not for specific length of time at any point. They testified the landlord simply demanded $300.00 more on October 1, 2016.

The tenants submit the landlord never provided them with receipts except for the one they have for the security deposit that was on a scrap paper and recorded a security deposit of $900.00 and $100.00 extra because the tenant didn't have any change to give the landlord only $900.00.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regards to the claim for unpaid rent the burden of proving that amount of rent that was not paid is predicated on the amount of rent that was agreed to at the start of the tenancy. As such, as the landlord is making the claim for lost rent the burden rests with her to establish the amount of rent that was agreed upon.

Section 13 of the *Act* stipulates that the landlord is required to prepare a tenancy agreement in writing and that they must, within 21 days after the parties enter into a tenancy agreement, provide the tenant with a copy of the tenancy agreement.

When two parties provide equally plausible but differing accounts of an agreement, the party with the burden must provide additional evidence to establish their position. In this case, the landlord has failed to provide a copy of a tenancy to confirm the rent amount to be $1,900.00.

In addition, despite the landlord's notations on the receipts I find there is no documentary evidence to confirm the rent would be or that they had agreed to a **temporary** rent reduction. The only agreement between the parties is that for the period of April 2016 to September 2016 the tenants paid the landlord $1,600.00 each month, as well as for October 2016.

As such, I find landlord has failed to establish there was any agreement with the tenants to have the rent be charged at $1,900.00 per month beginning on October 1, 2016. As a result, I find the landlord has failed to establish the tenants owe her $300.00 for rent for the month of October 2016.

While, normally, when dismissing a landlord's Application like this I would grant to the tenants a monetary order for return of their security deposit, I find that the landlord has intention to pursue a claim against the deposit. I also find the landlord was attempting to submit her claim as an amendment to this Application to be within the timeframes allowed under Section 38 of the Act.

I find it would be unfair to the landlord to have to wait to receive this decision, which may occur after the deadline allowed in Section 38, to find she must submit a new Application for that claim. As such, **I order** that despite receiving the tenants' forwarding address prior to this hearing the landlord is allowed 15 days from the date she receives this decision to either return the security deposit to the tenants or to file a new Application for Dispute Resolution claiming against the deposit for any other compensation she seeks. I make this order pursuant to Section 66 of the *Act*.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety.

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: December 13, 2016

Residential Tenancy Branch