Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

a. A monetary order in the sum of $10,313.
b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlords by mailing, by registered mail to where the landlords reside on around the middle of June 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the tenants are entitled to a monetary order and if so how much?
b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenants and the previous owner entered into a tenancy agreement in January 2016 that provided that the rent was $2000 per month payable in advance on the first day of the month. The tenants paid a security deposit of $1000 and a pet damage deposit of $1000 at the start of the tenancy.

The respondents purchased the property and took possession in the spring of 2017. The rental property is a farm house located in a vineyard. The landlords testified they were assured by the sellers of the rental property and the sales agent that there were not existing contracts and/or leases agreements.

The rental unit is a farm house located on ALR landlord. The City of Kelowna bylaws do not allow rentals. However, the property can be used for employees of the owner of the property. There is a dispute between the parties as to whether the tenants were employees of the previous owner.

The tenants testified that on April 20, 2017 they were given oral notice by the landlord that the tenancy was to end at the end on May 31, 2017. The landlord stated the property was needed as their family was moving in and construction was going to start on June 7, 2017. The landlord takes the position that the tenancy was not permitted by municipal bylaws and the tenants would have to vacate.

The parties presented considerable evidence relating to when the tenancy was to end.
The parties and the previous owner had a meeting at the end of April. The e-mails indicate there was an agreement between the parties that the tenancy would end on June 30, 2017 and the tenants would vacate by that time. Later the parties agreed that the tenants could stay until June 15, 2017 and they set out a per diem charge.

In early May the tenants e-mailed the landlord stating they had secured somewhere for June 1. The landlord responded saying that June 1, 2017 was fine with them.

On Friday, May 5, 2017 the tenants e-mailed the landlord stating the following:

> "Just want to run something by you…We were just informed that the placed we had secured for June 1st was just rented to someone else. . Are you still comfortable with use staying until the middle of June? We have secured a place in Nanaimo for July 1st but have nowhere to go come June 1st. We are happy to pay you for our stay in June on May 26th. …Please let me know your thoughts."

The landlords never responded to this e-mail. The tenants assumed it was okay. The parties saw each other on the property in May but the tenants never took time to clarify whether the landlords had agreed to their proposal.

The landlord's testified they never saw this e-mail until June. They were in the process of moving from the lower mainland. Further the female landlord had to undergo medical treatment and the landlords' were concerned about her health.

The landlords testified that on May 30 they went to the Farm House and they noticed the tenants were moving their belongings out.

On June 1 they returned and the moving trucks were gone. They looked through the windows and door and noticed garbage on the floor, the freezer downstairs was empty and water was leaking on the floor. They determined the property had been abandoned. They immediately called the tenants to ask about the remaining personal belongings. The tenants told the landlord they were on their way to Nanaimo and wouldn't be back to pick the remaining stuff until June 5, 2017. The landlord told the tenant that June 1, 2017 was the move-out date and he demanded they return to collect the remainder of their belongings.

The tenants returned on June 5, 2017 to collect the remainder of their belongings. The tenants testified they had intended to stay in the rental property until June 15, 2017 so that they could attend their daughter's graduation. The landlord denied them access to pick up their belongings and refused to allow them to stay in the rental unit. The police were called. The landlord gave them 4 hours to remove the remainder of their belongings. They had originally planned that a friend from Nanaimo would drive up to Kelowna the following weekend and they would place the remainder of their belongings in his truck. As a result of the landlord's demands they could not wait for their friend and they had to rent a U-Haul.

The tenant(s) provided the landlord with his/her their forwarding address in writing on June 9, 2017.

Analysis:
I do not accept the submission of the landlord that the Residential Tenancy Act does not apply. While the rental unit may have been in the ALR and the rental to the tenants may have been contrary to municipal bylaws this does not exclude the jurisdiction of the Residential Tenancy Act.

Further, the tenants may have breached the tenancy agreement in staying longer than what was agreed. However, the landlords did not have a legal right to deny them access to the rental unit and to prevent them from staying. Section 57(2) of the Act provides as follows:

> What happens if a tenant does not leave when tenancy ended
>
> 57 (2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

The Residential Tenancy Act requires that the landlord must first obtain an Order of Possession through the arbitration process, then obtain a Writ of Possession from the Supreme Court of British Columbia and finally employ the services of a court bailiff to regain possession of the premises in a situation such as this.

I do not accept the submission of the landlord that the tenants had abandoned the rental unit. There may have been grounds for the landlord to think the tenants had abandoned the property when they first attended the rental property. However, the tenants very quickly made it clear that they had not abandoned the rental unit when the landlord talked to the Tenants by telephone.

I determined the landlords are responsible to compensate the Tenants for the additional costs incurred by the Tenants caused by the actions of the landlord in denying the tenants' access to the rental unit and preventing them from living there. The parties had agreed the Tenants were vacating the rental unit and the tenants had decided to move to Nanaimo. The landlords are not responsible to pay the costs of the move.

Section 7 of the Act states as follows:

> **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.
>
> (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.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires

a. Proof that the damage or loss exists
b. Proof that this damage or toss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
c. Verification of the Actual amount required to compensate for loss or to rectify the damage
d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

Policy Guideline #16 includes the following:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

…

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

With regard to each of the Tenants' claims I find as follows:

a. I dismissed the tenants claim in the sum of $2000 for the equivalent of one month rent under section 51(1) of the Act which provides as follows;

Tenant's compensation: section 49 notice

51 (1) 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 obligation of the landlord to pay the equivalent of one month rent is triggered by the service of a Notice to End Tenancy under section 49 of the Act.

> 49(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act provides as follows:

> Form and content of notice to end tenancy
>
> 52 In order to be effective, a notice to end a tenancy must be in writing and must
>
> > (a) be signed and dated by the landlord or tenant giving the notice,
> > (b) give the address of the rental unit,
> > (c) state the effective date of the notice,
> > (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
> > (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
> > (e) when given by a landlord, be in the approved form.

It is not necessary for me to consider whether the landlord intended to use the rental property for personal use or whether the rental of the property conflicted with Municipal bylaws giving the landlord the right to end the tenancy for cause under section 47(1)(k) of the Act which provides as follow:

> “Landlord's notice: cause
> 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> > (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;”

The landlord did not serve a Notice to End Tenancy under section 49 of the Act and this claim is dismissed.

b. The tenants claimed the sum of $2000 for the return of their damage deposit and pet damage deposit. The Residential Tenancy Act provides that a landlord must return the security deposit/pet damage deposit to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

The tenants paid a security deposit of $1000 and a pet damage deposit of $1000 in June 2016. I determined the tenancy ended on June 4, 2017. I further determined the tenants provided the landlord with their forwarding address in writing on June 9, 2017. The parties agreed in writing that $1000 of the deposits could be applied to the rent for May 2017. The parties have not agreed in writing that the landlord can retain the remaining $1000 of the security deposit/pet damage deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit/pet damage deposit held by the landlord at the end of the tenancy or the sum of $2000 ($1000 x 2 = $2000).

c. I determined the landlords breached the Act by denying access to the tenants to the rental property without first obtaining an Order of Possession. The tenants testified they had made arrangements with a friend in Nanaimo that he was to drive his truck from Nanaimo to Kelowna and return with their belongings. I determined the tenants paid the sum of $933.44 for the cost of a U-haul truck. However, I determined that it is reasonable the tenants would have reimbursed their friend for the cost of the gas and ferry for the additional trip of bringing the truck from Nanaimo to Kelowna. The tenants provided evidence they paid $248 for gas and $245 (the cost of a 35 foot commercial vehicle on BC ferries) for a total of $493. I determined this sum must be deducted from the tenants claim. The tenants are entitled to $440 for the additional sums they incurred to rent the U-Haul minus what they would have reimbursed their friend for the additional trip from Nanaimo to Kelowna.

d. I dismissed the tenants' claim of $248 for the cost of truck fuel. The tenants were in the process of moving and they would have incurred this expense had they vacated the rental unit on June 15, 2017 or June 30, 2017. This is not the landlords' responsibility.

e. I dismissed the tenants' claim of $333.34 for the cost of BC Ferries. The tenants were in the process of moving and they would have incurred this expense had they vacated the rental unit on June 15, 2017 or June 30, 2017. This is not the landlords' responsibility.

f. The tenants claimed the sum of $800 for the cost of paying 4 co-workers ($200 each based on $50 an hour for 4 hours to pack). I carefully reviewed all of the evidence presented including the photos. I do not accept the testimony of the tenants that it took 4 people four hours to pack. I determined much of this relates to the cost of cleaning which is a cost the tenants would have incurred even if the landlords had not denied entry to the tenants. I determined the tenants are entitled to $200 of this claim.

g. I dismissed the tenants claim for lost wages. The tenant failed to present sufficient evidence as to the amount of the wages she lost.

h. I determined the tenants are entitled to $500 for the cost of the Air B&B. I determined this was an additional cost incurred by the tenants because of the actions of the landlord in denying access to the tenants.

i. I dismissed the claim of $529.92 for the cost of storage fee. The receipt indicates that the tenants paid rent of $1413 for rent for June 7/17 to June 30/17. The tenants would have paid rent to the

landlord for this period of time had they not been denied access which is more than the storage fee.

j. I dismissed the claim of $166.95 for the cost of kenneling their dog. The receipt produced by the tenants was for the period of June 1 to 4 which was prior to the landlord denying access to the property.

k. The tenants claimed $1545 for additional living out expenses based on an expense schedule on what they could charge the government had they been travelling. This claim does not reflect the damages incurred by the Tenants. The Tenants failed to include receipts of expenses actually incurred. I determined the tenants failed to prove this claim and as a result this claim is dismissed.

l. I dismissed the tenants claim of $80.85 to treat their pet as any illness their pet had was not caused by the landlord.

m. I dismissed the tenants' claim of $115 for the cost of dry grand and dinner ticket as the tenants failed to provide a receipt and failed to prove this is the landlord's responsibility.

n. I determined the tenants' claim of $300 for lost food was not supported by the evidence and was excessive. However, I determined the tenants are entitled to $150 of this claim.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of $3290 plus the sum of $100 in respect of the filing fee for a total of $3390.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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: November 24, 2017

Residential Tenancy Branch