Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCL-S, FFL

Introduction

In this dispute, the landlords seek a monetary order for a loss of rent in the amount of $1,850.00 pursuant to section 67 of the *Residential Tenancy Act* (the "Act"). In addition, they seek recovery of the $100.00 filing fee under section 72 of the Act.

The landlords filed an application for dispute resolution on June 10, 2020 and a dispute resolution hearing was held on October 2, 2020. The landlords and the tenants attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Are the landlords entitled to any or all of the compensation claimed?
2. Are the landlords entitled to recovery of the application filing fee?

Background and Evidence

The tenancy in this dispute began on December 15, 2019. It was to be a one-year fixed term tenancy ending December 15, 2020. However, it ended early on May 31, 2020 after the tenants gave notice. Monthly rent was $1,425.00 and the tenants paid a security deposit of $712.50, the latter of which is held in trust by the landlords pending the outcome of this dispute.

A copy of the written Residential Tenancy Agreement was submitted into evidence by the landlords.

On April 19, 2020 the tenants contacted the landlords and explained that due to the pandemic, they would have difficulty making rent. If they could not afford the rent, then they would need to move in with their parents. The landlords, who were also affected by the pandemic, felt bad for the tenants and agreed to reduce the rent from $1,425.00 to $1,000.00, effective for May 2020. The parties agreed to this reduction in rent.

On May 1, 2020, while they were paying rent, the tenants gave written notice (both in a text message and on a hand-printed letter) that they were ending the tenancy effective May 31, 2020. A copy of the hand-printed notice and a copy of the text message were submitted into evidence. The tenants moved out on May 29, 2020.

Almost immediately (“within a day or two of getting the notice”) the landlords listed the rental unit for rent. The landlords acknowledged that they listed the rental unit for $1,450.00, but then after no more than a week, changed it to $1,425.00.

While the landlords received many inquiries from potential tenants, some of these prospects simply did not get back to the landlords and in many cases the prospective tenants were not able to, or not interested in, taking possession as early as June 1. Eventually, the landlords were able to secure a new tenant for July 1, 2020.

The tenants testified that they would try to let the landlords know as early as possible about the likelihood of them moving out and back in with their parents. They testified that they had a verbal discussion with one of the landlords on April 25 about moving out.

In response, the landlords denied that this subject ever came up in that conversation. Rather, the conversation as they recall it had to do with the tenants expressing gratitude for the rent reduction. The first the landlords heard anything about the tenants’ intention of moving out was on May 1, when they received the notice and the text message.

Regarding the text message of May 1, 2020, the tenant testified that after they gave the landlord notice of ending the tenancy the landlord said, “sounds good.” There was, the tenants testified, no further discussions with the landlords about what other arrangements were possible in terms of further, or alternative, rent reductions.

Submitted into evidence by both parties were copies of text conversations.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 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.
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> (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.
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> . . .
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> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Claim for Loss of Rent

A tenancy may be ended in one of several ways, all of which are listed in section 44(1) of the Act. Section 44(1)(a)(i) refers to a tenant’s notice to end a tenancy under section 45 of the Act.

Section 45(2) of the Act deals with the method by which a tenant can end a fixed term tenancy, which is the type of tenancy that existed in this dispute. The section states:

> A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice,
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> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
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> (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, the tenants ended the tenancy effective May 31, 2020, which was well before the date specified in the tenancy agreement as the end of the tenancy (that is, December 15, 2020). As such, the tenants breached section 45(2) of the Act. Thus, I find that the landlords have established the first criteria required to prove compensation.

Having found that the tenants breached the Act and the tenancy agreement, I must next determine whether the landlords' loss resulted from that breach. This is known as *cause-in-fact,* and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach? If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage. If the answer is "yes," indicating that the loss or damage would have occurred whether or not the respondent was negligent, their negligence is not a cause-in-fact.

In this case, but for the tenants' breach of the Act and the tenancy agreement, the landlords would not have suffered, *prima facie*, a loss of rent for June 2020.

Turning now to the third criteria – namely, have the landlords proven the amount of the loss – it must be recognized that the landlords changed the amount of rent from $1,425.00 to $1,000.00, and that the tenants agreed to that change. A change of this nature to the tenancy agreement become binding upon all parties from that point on.

Section 14(2) of the Act states that

> A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

A term of this tenancy agreement was that rent was $1,425.00. That term was changed to $1,000.00 with both the landlords and the tenants agreeing to that change, or amendment. Thus, I find that the monthly rent at the time the tenants gave notice was $1,000.00. Indeed, the monthly rent of $1,000.00 would legally have remained in place from then on, subject to any rent increases made in compliance with the Act. Given the forgoing, I find that the loss of rent for June 2020 was $1,000.00.

As for the fourth criteria, the landlords took almost immediate action in mitigating their losses by listing the rental unit for rent available June 1, 2020. However, they were unsuccessful in securing new tenants until July 1, 2020. That the many prospective tenants cancelled potential visits or simply were not interested in taking possession in such a short time is not the fault of the landlords and was outside of their control.

While the landlords initially listed the rental unit at $1,450.00, I find the $25.00 increase in rent to be of negligible effect on the landlords' mitigation. Indeed, that they had less than a month to find a new tenant is understandable. I find that this does not materially affect the landlords' mitigation. (As an aside, while the parties agreed to lower the rent to $1,000.00, this was, or appears to have been, done on a temporary basis and as such for the purposes of my analysis above, however, I fix the rent at the original amount, namely, $1,425.00.)

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for loss of rent for June 2020, though that amount is calculated in the amount of $1,000.00.

In respect of the landlords' claim for $450.00 for the balance between what rent used to be ($1,425.00) and what rent was then lowered to ($1,000.00), they cannot then attempt to collect an amount that otherwise had been agreed upon need not be paid. While the landlords were certainly and understandably displeased by the tenants' rather abrupt notice to end the tenancy, by May 1 the rent had been reduced to $1,000.00 and that is the amount that the tenants were legally obligated to pay. And, from the evidence, appear to have paid. For these reasons, I dismiss the landlords' claim for $450.00.

Claim for Application Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlords were successful in respect of their claim for loss of rent for June 2020, I therefore grant them recovery of the filing fee of $100.00.

Summary of Award and Monetary Order

The landlords are awarded total compensation in the amount of $1,100.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlords may retain the tenants' $712.50 security deposit in partial satisfaction of the above-noted award.

Issued to the landlords, in conjunction with this Decision, is a monetary Order in the amount of $387.50 which represents the difference between the monetary award and the amount retained by the landlords.

Conclusion

I hereby grant the landlords a monetary order in the amount of $387.50, which must be served on the tenants. Should the tenants fail to pay the landlords the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: October 2, 2020

Residential Tenancy Branch