Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL / MNSDS, FFT

Introduction

On June 15, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to request a Monetary Order for compensation, to apply the security deposit to the claim, and to be compensated for the filing fee.

On June 16, 2020, the Tenants submitted an Application for Dispute Resolution under the Act to request a Monetary Order for the return of the security deposit, and to be compensated for the cost of the filing fee. The Tenants' Application was crossed with the Landlord's Application and the matter was set for a participatory hearing via conference call.

The Landlord, represented by the Property Manager, attended the conference call hearing; however, the Tenants did not attend at any time during the 32-minute hearing. The Landlord testified that he served the Tenants with the Notice of Dispute Resolution Proceeding by sending it via registered mail on June 18, 2020 and by delivering it via email, pursuant to the Director's Order. The Landlord stated that Canada Post did not confirm delivery but that he sent the Notice via email to both Tenants; addresses where he has corresponded with the Tenants on tenancy matters. I also noted that the Tenants were emailed a Notice of Dispute Resolution Proceeding package, as a result of their own Application, from the Residential Tenancy Branch on June 16, 2020. As a result, I find that the Tenants have been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

Based on the Tenants' failure to appear for this hearing, I find that their Application for Dispute Resolution has been abandoned. Although I dismiss the Tenants' Application based on their non-attendance, I will be addressing the return of the security deposit while deciding on the Landlord's Application.

As the Tenants did not call into the conference, the hearing was conducted in their absence and the Landlord's Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

Issues to be Decided

Should the Landlord receive a Monetary Order for compensation and apply the security deposit to the claim, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord testified that the one-year, fixed-term tenancy began on May 15, 2019 and that the Tenants moved out of the rental unit on May 30, 2020. The monthly rent was $7,300.00 and the Landlord collected a security deposit and pet damage deposit in the amount of $7,300.00.

The Landlord stated that the Tenants had several complaints against them for loud parties that went into the early hours of the morning. Specifically, the Landlord said that there were parties and loud noise from the rental unit that occurred on September 9, 16 and 22, 2019. The Landlord submitted emails from various owners of the residential property who had complained to the Strata manager and concierge about the Tenants and their partying.

The Landlord submitted a letter, dated September 27, 2019, sent to him from the Strata Manager, that stated there had been noise complaints about the Tenants in the rental unit and warned that further violations could mean that the Strata Corporation may choose to levy a fine of up to $200.00 per violation. The Landlord stated that this letter was forwarded to the Tenants via their email.

The Landlord submitted a letter, dated October 31, 2019, sent to him from the Strata Council, that stated the Strata Corporation would be hiring a security service starting the evening of October 31, 2019. The Strata Council advised that the invoice for this

service will be billed back to the owner (Landlord) of the strata lot. The Landlord pointed out that this letter was copied to the Tenants of the rental unit.

The Landlord submitted a letter, dated November 26, 2019, sent to him from the Strata Council, that stated the Landlord owed $1,134.00 for the security service on October 31, 2019 and $756.00 for the security service on November 1 and 2, 2019, for a total of $1,890.00. This letter was also copied to the Tenants of the rental unit.

The Landlord submitted a copy of the Form K, signed by both Tenants, that included a notice to tenants that "If a tenant…contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines, denial of access to recreational facilities, and if the strata corporation incurs costs for remedying a contravention, payment of those costs." The Landlord stated that the Strata Council hired a security service to proactively mitigate any problems that the Tenants may cause on October 31-November 2, 2019 and that those costs should be borne by the Tenants.

The Landlord is claiming $1,890.00 in compensation for the cost of the security service and has held-back this amount from the Tenants' security deposit. The Landlord stated that he had returned the balance of the deposits to the Tenants within 15 days of the end of their tenancy.

The Landlord testified that the Strata Council has not levied any fines against the Tenants.

The Landlord testified that, to his knowledge, no party occurred in the rental unit on October 31 – November 2, 2019.

Analysis

Residential Tenancy Policy Guideline 16 refers to compensation for damage or loss between parties in a tenancy.

> "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."

In this case, the Landlord is claiming compensation for an invoice for security services on October 31 through to November 2, 2019. When I consider whether the Tenants failed to comply with the Tenancy Agreement, the Form K or the Act during these dates, I considered the following:

- The Strata Council, in the letter dated September 27, 2019, warned both the Tenants and the Landlord that further noise violations may result in a fine of up to $200.00.
- The Form K warns that the tenants "may be subject to penalties, including fines, and if the strata corporation incurs costs for remedying a contravention, payment of those costs."
- The Landlord's statement that no party occurred during the dates of October 31 - November 2, 2019.
- The Landlord's statement that the Tenants did not cause any further noise violations and did not have any fines levied against them.

Based on the above, I find that the Tenants did not contravene the Tenancy Agreement, the terms of the Form K or the Act between the dates of October 31 to November 2, 2019.

When considering the Landlord's claim that the terms of the Form K may apply to the fee for the security service, I find that the Strata Corporation did not levy any fines against the Tenants. Furthermore, I find that the Landlord failed to provide sufficient evidence that there was in fact a contravention between October 31 and November 2, 2019 that the Strata Corporation was attempting to remedy.

I acknowledge that the Strata Corporation may have been proactive in mitigating the potential harm that another noisy party could have had on the strata occupants; however, there was no evidence submitted that a party was about to occur or did actually occur on the dates when the security service was engaged.

As of September 27, 2019, the Strata Council provided written warning to the Landlord that another breach by the Tenants, such as a noisy party, could mean a fine of up to $200.00. I find that the Tenants were adequately warned and cannot be held responsible for the fee of a security service that the Strata Council chose to hire 3 days after the warning letter.

Based on the above, I find that the Landlord has failed to provide sufficient evidence that the Tenants should be held responsible for the $1,890.00 fee associated to the hiring of the security service between the dates of October 31 to November 2, 2019. As such, I dismiss the Landlord's Application for monetary compensation without leave to reapply.

I order the Landlord to return the balance of the Tenants' security deposit in the amount of $1,890.00 within 15 days of receiving this Decision.

I find that the Landlord's Application is without merit and do not award compensation for the filing fee.

Conclusion

I order the Landlord to return the balance of the Tenants' security deposit in the amount of $1,890.00 within 15 days of receiving this Decision.

I grant the Tenants a Monetary Order for the amount of $1,890.00, in accordance with Section 38 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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 06, 2020

Residential Tenancy Branch