Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary claim of $7,271.91 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the $100.00 cost of their Application filing fee.

The Tenants, J.S. and C.H., and the Landlord, K.Y., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenants said they had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenants confirmed that they had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Parties provided or confirmed their email addresses at the outset of the hearing, and they also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 8, 2018, with a monthly rent of $2,950.00, due on the first day of each month. They agreed that the Tenants paid the Landlords a security deposit of $1,475.00, and no pet damage deposit. The Landlords still held the security deposit at the time of the hearing. The Parties confirmed that they had not inspected the premises prior to the start of the tenancy for comparison at the end of the tenancy. They agreed that the residential property is a single-family dwelling built in the 1950s, but renovated in 2015. It has two bedrooms and two bathrooms.

The Parties agreed that the terms of the tenancy changed in February 2020, when the Landlords decided to move back into the residential property, having put the residence in which they were then living up for sale. The Landlord said that they advised the Tenants by email on February 16, 2020, that they intended to move back into the residential property. The Landlord said that they gave the Tenants official notice of their intentions on March 28, 2020, by personally serving the Tenants with a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice"). This notice gave the Tenants an effective vacancy date of May 31, 2020.

However, the Tenants applied for dispute resolution to cancel the Two Month Notice, which resulted in the Parties attending an RTB arbitration hearing on May 29, 2020. In this hearing, they came to a mutual settlement agreement on the following terms:

1. The 2 Month Notice is amended to reflect the landlord's signature and date of March 28, 2020 but the vacate date is extended to July 31, 2020 and the landlords shall be provided an Order of Possession with an effective date of July 31, 2020 to serve and enforce upon the tenants.

2. In extending the vacancy date to July 31, 2020 the tenants undertake to do their best to find alternative housing by July 1, 2020 but if such is not secured the tenants may occupy the rental up until July 31, 2020 at which point the tenants must return vacant possession of the rental unit to the landlords in any circumstance.

3. The landlords may request, and the tenants shall provide, via email, weekly updates as to the tenant's success, or efforts, in trying to secure alternative accommodation.

4. Rent remains payable to the landlords on June 1, 2020; however, the tenants remain entitled to compensation provisions for receiving a 2 Month Notice, as provided under section 51 of the Act, and to end the tenancy earlier than July 31, 2020 pursuant to section 50 of the Act.

   The landlords remain obligated to use the rental unit for their own use for at least six months after the tenancy ends, as provided under section 51(2) of the Act. .

   [Settlement Agreement]

#1 REIMBURSE LANDLORDS FOR AIRBNB STAY → $5,337.02

In the hearing before me, the Landlord referred to the previous hearing, saying:

> The Arbitrator upheld the [Two Month Notice], but since it was only the 29th and we had to vacate on the 1st, we were left with no choice, but to find temporary accommodation. We found an AirBnb for May 31 to July 14. We couldn't get into the house until July 31. We also stayed with my sister for two weeks. We're just claiming for the AirBnb accommodation for the month and a half or so. That's the reason behind that expense.
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> We anticipated moving in on May 31. At the other hearing, the Tenant refused to move out and we tried to make some accommodation, but he refused to move out for at least two months, so there wasn't any choice in the matter. So, July 31 was the drop-dead date that he committed to.
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> In the ruling you'll see that he committed to search for accommodation, and to keep us apprised on a weekly basis of his progress, but he did neither of those things, and later in an email on June 13, he admitted that he had no intention of moving out ahead of the two months, because he was purchasing a home and was moving in by the end of August.

The Tenants said:

> That's all accurate. But regarding compensation: So we had an agreement from dispute resolution; we came to an agreement, we followed what was outlined in that agreement with the time given. There was nothing in that agreement that we were to reinstate him for any incurred costs for moving or AirBnB rentals. We met at the end of the tenancy at the end to look for damage. There wasn't a CIR, but

> we walked through and found everything was okay, thinking we would get the security deposit back, but it was held on to when he sold his home to when he got possession of the rental property.

The Landlords submitted an invoice from an AirBnB for $5,337.02, for a stay that lasted from May 31, 2020 to July 14, 2020.

#2 MOVING EXPENSES → $1,934.89

The Landlords said:

> If we had moved from our home to the residential property, it's only a few blocks away; but because they held over, we had to move all of our stuff to a storage location at my place of work. There were no storage charges, but it meant that we had to move to [the city]. Once we got possession, we had to move again to [the residential property town]. The claim is for the extra move required, although the cost is higher, because the cost of the move we paid for ourselves was much higher; but I didn't make any claim for that or for storage, just for one of the moves.

The Tenants said:

> In our minds, we're under the impression that if we were required to pay his living expenses, I figure that would have been outlined in our previous hearing. We're a little confused as to why he's coming after us for those costs now and mixing it in with the return of the security deposit. It doesn't make any sense to me. We had a mutual agreement and followed its terms. We were out of the house when we were supposed to be and without any damage. These costs don't make any sense.

The Landlords said:

> I think that [C.H.] and [J.S.] feel like if there was no mention of damages or costs in the previous dispute that they shouldn't be brought up now. But the previous dispute was before we incurred these costs. We didn't know what they would be at that point. I think it is reasonable for us to say that the dispute was about the possession of the property that was resolved. But these costs are real costs and there were more than these, not to mention the mental anguish of having to move twice and being homeless for almost two months. They knew these were

> the costs that we had to incur, and it is rather disingenuous to say now that they shouldn't have to be held responsible or these costs.

The Tenants said:

> You know, we've sort of said what we had to say. Those costs were known about. I think that the Landlords knew that those costs would be occurring and that they were responsible to pay them. We went to dispute resolution and we came to an agreement and abided by those terms. We've done nothing wrong.

The Landlords submitted a mover's invoice for $1,934.89 for having moved the Landlords' possessions from storage to the residential property address on August 1, 2020.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I explained how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlords must prove:

1. That the Tenants violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlords to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlords did what was reasonable to minimize the damage or loss.

("Test")

#1 REIMBURSE LANDLORDS FOR AIRBNB STAY → $5,337.02

In the Settlement Agreement, the Tenants undertook "to do their best to find alternative housing by July 1, 2020". However, the Landlord's evidence is that in an email on June 13, C.H. admitted that he had no intention of moving out ahead of July 31, 2020, because he was purchasing a home and was moving in by the end of August. C.H. did not deny this in the hearing. I find that C.H. breached the terms of the Settlement

Agreement by not following through with a commitment he was required to make.

The Landlords said that C.H. did not keep them up to date on his search for alternate housing to vacate before July 31, 2020. The clause in the Settlement Agreement says:

> The landlords may request and the tenants **shall provide**, via email, weekly updates as to the tenant's success, or efforts, in trying to secure alternative accommodation.
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> [emphasis added]

However, the evidence before me is that the Tenants did not advise the Landlords of their progress, beyond saying that they ([C.H.], anyway), did not intend to move out until July 31, 2020. The wording in this clause makes their keeping the Landlords updated in this regard a requirement, not a choice or an option for the Tenants. I find that "shall provide" is equivalent to "will provide" or "must provide". Further, the presence of this clause in the Settlement Agreement means that the Parties had not decided that the Tenants unequivocally had until July 31, 2020 to move out. I find that the Parties' intention was that the Tenants would make their best efforts to find alternate housing by July 1, 2020, with July 31, 2020 being the ultimate date, if their efforts did not work out. However, C.H. made it clear to the Landlords that he did not intend to make any effort to find alternate accommodation by July 1, 2020.

In this regard, I find that C.H. was the only Tenant who did not find alternate housing ahead of the "drop dead date" of July 31, 2020. Based on the evidence before me, I find it more likely than not that C.H. did not intend to abide by the Settlement Agreement in terms of "doing [his] best to find alternative housing by July 1, 2020". While the Settlement Agreement allowed the Tenants to stay until July 31, 2020, if they could not find alternate housing earlier, the presence of the term requiring them to seek alternate housing is not to be ignored in this set of circumstances.

Based on the evidence before me overall, I find that on February 16, 2020 the Tenants were advised by the Landlords' of their intention to move back into the residential property on June 1, 2020, such that the Tenants had to be moved out by May 31, 2020. This notice was formalized on March 28, 2020, and the Landlords said: "…in both cases, they indicated they would move out." Based on this assurance, the Landlords put their residence up for sale with the intention of moving back to the residential property on June 1, 2020. However, the Tenants' disputed the Two Month Notice, which they were entitled to do, and which notice was found to be valid.

Further, given this delay, as well as C.H.'s failure to follow the terms of the Settlement Agreement, I find that the Landlords were forced to find alternate, short-term housing until August 1, 2020, and that they thereby incurred a cost, as a result of the Tenants; breach. The Landlords claim accommodation compensation for May 31 to July 14, 2020, as they stayed at a relative's house for the remaining time until the Tenants both moved out. I find the Landlords established the value of the cost incurred, including a cost reduction, because they stayed with relatives for the last two weeks, which equates to minimizing or mitigating their costs the incurred. I find that these findings equate to the Landlord having established that they fulfilled the four steps of the Test.

Based on the evidence before me overall, I find that the Landlords provided sufficient evidence to support their claim in this regard. I, therefore, award the Landlords with **$5,337.02** from the Tenants, pursuant so section 67 of the Act.

#2 MOVING EXPENSES → $1,934.89

Similarly, if not for the Tenants' behaviour in not vacating the residential property when required to by the valid Two Month Notice and not adhering to the Settlement Agreement, I find that the Landlords would not have incurred this cost. I find that they had to pay to have their belongings moved to a storage facility, and then moved again to the residential property when the Tenants moved out. I find that the Landlords have demonstrated that the Tenants breached the Two Month Notice and the Settlement Agreement by their behaviour in not attempting to find alternate housing prior to July 31, 2020.

The Landlords claimed the extra moving expense, but not the storage expense, as they stored their possessions at K.Y.'s work place, thereby minimizing their costs, pursuant to the fourth step of the Test.

I find that the Landlords have met their burden of proof in this matter by establishing that (i) the Tenants breached the Settlement Agreement, (ii) the Landlords incurred costs because of this breach, (iii) the value of those costs, and (iv) that the Landlords did what was reasonable in the circumstances to minimize the costs in not claiming a storage cost, as well as moving expenses. I find that the Landlords provided sufficient evidence to support having fulfilled the Test. I, therefore, award the Landlords with **$1,934.89** from the Tenants, pursuant to section 67 of the Act.

Tenants' Joint and Several Liability

Policy Guideline #13 ("PG #13") "Rights and Responsibilities of Co-tenants" helps clarify the rights and responsibilities relating to multiple tenants renting a rental unit under a single tenancy agreement. PG #13 includes the following:

> **B. TENANTS AND CO-TENANTS**
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> A tenant is a person who has entered a tenancy agreement to rent a rental unit…. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.
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> **. . .**
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> **D. DEBTS OR DAMAGES**
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> Co-tenants are usually jointly and severally liable for any debts or damages relating to the tenancy, unless the tenancy agreement states otherwise. This means that the landlord can recover the full amount of rent, utilities or any damages owing from all or any one of the tenants. The co-tenants are responsible for dividing the amount owing to the landlord among themselves. For example, if John and Susan move out at the end of their tenancy, the landlord can make a claim for any damages to the property against either co-tenant, regardless of whether John was solely responsible for causing the damage.
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> If a dispute between Susan and John occurs over debts or damages related to their co-tenancy, the two would have to resolve the matter outside of the Residential Tenancy Branch. Disputes between co-tenants are not within the jurisdiction of the RTA nor the MHPTA and cannot be resolved through the Branch.
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> [emphasis added]

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset

against the Tenants' security deposit of $1,475.00 in partial satisfaction of the Landlords' monetary award.

As the Landlords were successful in their Application, I also award them recovery of the **$100.00** Application filing fee pursuant to section 72 of the Act for a total award of $7,371.91. The Landlords are authorized to keep the Tenants' security deposit in partial satisfaction of the monetary award. The Landlords are granted a Monetary Order from the Tenants in the amount of **$5,796.91** for the remainder of the monetary award owing by the Tenants to the Landlords.

Conclusion

The Landlords are successful in their Application for compensation from the Tenants in the amount of $7,271.91. The Landlords are also awarded recovery of the $100.00 Application filing fee for a total monetary award of **$7,371.91**.

The Landlords are authorized to retain the Tenants $1,475.00 security deposit in partial satisfaction of this award. The Landlords are granted a Monetary Order in the amount of **$5,796.91** from the Tenants in full satisfaction of the remaining monetary award owing.

This Order must be served on the Tenants by the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 14, 2020

Residential Tenancy Branch