Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, LRE, OLC, FFT

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a One-month Notice to End Tenancy, issued on or about 2 April 2023 [the 'Notice'].
2. Compensation of monetary loss suffered by the tenants in the amount of $30,000.00 [the 'Compensation Claim'].
3. Suspension of the landlords' right to enter the rental unit [the 'Entry Claim'].
4. Compliance with the Act or tenancy agreement [the 'Compliance Claim'].
5. Reimbursement for the $100.00 filing fee for this application.

The tenants appeared at the continuation of the hearing of this dispute on 4 July 2023. The landlords also appeared.

Issues to be Decided

At the first hearing of their application, the tenants withdrew their Entry Claim and Compliance Claim.

At the continuation of the hearing of this application, the parties agreed that the Notice should be cancelled.

Accordingly, I am left to determined whether the landlords liable to the tenants for the Compensation Claim, and whether the landlords should reimburse the tenants for the cost of filing their application.

Preliminary Matter – Application to Adjourn

This dispute had already been adjourned once, and at the end of this hearing the tenants applied to adjourn again to continue the hearing on a later date. The landlords were opposed to this.

The basis for the adjournment was that the tenants wanted to present arguments to me about the boundaries of the rental property, and proof that they covered up a hole that they had dug in the yard.

Neither is relevant to the issues set out above. And the tenants have had since 6 April to prepare their arguments for this dispute. I see no basis to give the tenants further time to argue this dispute.

The dispute resolution process is intended to be a relatively informal and expeditious procedure and hearings are generally short in duration. The tenants have had sufficient opportunity to present their case to me.

Background & Evidence

The parties agree that the tenants paid to the landlords a security deposit [the 'Deposit'] sometime before the tenancy began on 15 August 2022. The tenants told me this Deposit was $950.00, but the landlords said it was only $900.00. A copy of the tenancy agreement between the parties corroborated the landlords' calculation.

And the tenants told me that they regularly paid $1,800.00 rent to the landlords *via* e-transfer. In doing so, the landlords came to learn of the e-mail address of the tenants. The rent that the tenants paid to the landlords during this tenancy totalled $26,000.00, said the tenants.

The tenants complained to me about several things that occurred during this tenancy:

1. the landlords disconnected power to the tenants' outdoor freezer (worth $100.00) [the 'Freezer'], causing its' contents (which the tenants value at $200.00) to spoil;
2. on several occasions, the landlords would 'show up unannounced';
3. hinges on a door to the unit were faulty, and so the tenants spent $100.00 fixing the hinges (but lost the receipts for these parts);
4. the tenants discovered that the landlords were running a vacation rental our of the rental property [the 'Vacation Rental'], in addition to renting the tenants' unit to them; and

5. this Vacation Rental caused the tenants a variety of problems.

But, the tenants told me, it was not until they filed this application that they apprised the landlords of the problems they had had with this Vacation Rental.

For their part, the landlords told me:

1. they did unplug the freezer because it was a danger: it was not an outdoor freezer;
2. they never entered the unit without the tenants' permission;
3. the tenants never contacted them about repairs needed to the door; and
4. the tenants were aware of the Vacation Rental, as they contacted the landlords about it during the tenancy and offered to manage it for them.

After the tenancy ended on 6 May 2023, the landlords asked the tenants several times for a forwarding address. But the tenants didn't provide one, claiming that they were afraid of the landlords. The tenants told me that the landlords knew the tenants' e-mail address, and could have e-transferred the tenants the Deposit.

Though the landlords concede that they knew the tenants' e-mail address, they told me that they didn't want to e-transfer the tenants the Deposit: they wanted to be able to track repayment of the Deposit by paying *via* cheque and using registered mail.

But they also conceded that they cannot keep the Deposit without applying to the RTB to do so, which they have yet to do (though they plan to).

They also told me that because the tenants did not provide a postal address as a forwarding address within 30 days of moving out, the tenants have lost their right to claim the Deposit (and so, presumably, the landlords do not feel they have to apply to keep it...). They did not cite any section of the *Residential Tenancy Act* [the 'Act'] in support of this belief.

Analysis

I have considered all the statements made by the parties and the documents to which they referred me during this hearing. And I have considered all the arguments made by the parties.

The tenants bear the burden of proving their Compensation Claim to me on a balance of probabilities. The landlords do not bear the burden of disproving the Compensation Claim.

In attempting to prove to me their Compensation Claim, the tenants must:

1. prove that the landlords failed to comply with the Act, regulation or tenancy agreement;
2. prove that they suffered loss or damage has resulted from this non-compliance;
3. prove the amount of or value of the damage or loss; and
4. show that they acted reasonably to minimize that damage or loss.

While the landlords did not deny that they ran a Vacation Rental out of the same property where the tenants resided, or that they unplugged the Freezer, the tenants offered no proof that doing so contravened the Act or the tenancy agreement.

The tenants argued that the landlords should repay all of the rent paid during this tenancy because of the Vacation Rental, but the tenants could offer no precedent for such an award and, more importantly, did not show that they minimized the alleged loss: they did not apprise the landlords of the issue they took with the Vacation Rental until after the tenancy ended, preventing the landlords from having the opportunity to address that issue.

The tenants argued that the landlords should pay them $300.00 for the Freezer and its contents, but offered no proof that the Freezer was rendered unusable because it was unplugged, nor did they detail any attempt to minimise the loss of its contents.

The tenants also argued that the landlords owe them $100.00 for fixing a door. But the tenants had no receipt to corroborate the value of the repair, and did nothing to minimise the loss by first asking the landlords to fix it themselves. Had the tenants done so, and had the landlords agreed, then the tenants would have saved themselves $100.00.

While the tenants alleged that the landlords showed up at the unit unannounced, the landlords denied this. In such circumstances, the tenants would need corroborating evidence (such as a witness to the unannounced appearance, or a journal entry, or a communication with someone about same) to tip the balance of probabilities in their

favour. But the tenants had no such evidence, and so I find it equally probable that the landlords never entered the unit without permission.

But what of the Deposit?

Thought not specifically pleaded as part of the tenants' application, the landlords told me that they were content to argue whether the Deposit ought to be returned.

I accept that the Deposit is probably $900.00: it is half the rent, as permitted under the Act; and that amount is corroborated by the tenancy agreement.

The landlords concede that they have not returned the Deposit, despite having an e-mail address for the tenants by which they could e-transfer them the Deposit. But, they argue, this does not contravene the Act, because the tenants lost their right to claim the Deposit when, 30 days after the tenancy ended, they did not provide a postal address to the landlords.

The landlords cited nothing in the Act to support this argument. Indeed, section 39 of the Act stipulates that the tenants have one year in which to provide a forwarding address.

Be that as it may, I do not see any reason why an e-mail does not qualify as a forwarding address - particularly when the parties have regularly processed payments *via* e-transfer, using e-mail addresses, during the tenancy. Since more than 15 days have passed since this tenancy ended, and since the landlords have not applied to retain the Deposit, they are liable to the tenants as follows:

1. double the Deposit, *i.e.* $1,800.00, *per* section 38.1; and
2. $10.29 in interest on the Deposit calculated from 15 August 2022;

As the tenants have succeeded in this portion of their application, I also order that the landlords reimburse them for the cost of filing the application.

Conclusion

I cancel the Notice.

I dismiss the Compensation Claim without leave to re-apply, save for that portion that was intended to address the Deposit.

I order that the landlords pay to the tenants $1,910.29.

The tenants must serve this order on the landlords as soon as possible. If the landlords do not comply with my order, then the tenants may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the tenants can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 2 August 2023

Residential Tenancy Branch