



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL, MNDCT, MNSD, MNETC

Introduction

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

1. Payment of unpaid rent and utilities in the amount of \$5,509.21 [the 'Rent Claim'].
2. Compensation for the cost of removing tenants' belongings abandoned in the rental unit, in the amount of \$997.50 [the 'Removal Claim'].
3. Reimbursement for the \$100.00 filing fee for this application.

The tenants and separate applicants [the 'Applicants'] also applied for Dispute Resolution. They ask me for the following orders against the landlords.

1. Compensation for monetary loss occasioned by moving out of the rental unit, in the amount of \$3,000.00 [the 'Moving Claim'].
2. Return of a security deposit [the 'Deposit'] to the tenants, in the amount of \$1,400.00.
3. Compensation for the tenancy ending pursuant to a Four-month Notice to End Tenancy, in the amount of \$5,000.00 [the 'Eviction Claim'].

The landlords appeared at the hearing on 19 September 2023. The Applicants appeared, but the tenants did not (and the Applicants did not appear as agents for the tenants).

Note that I refer to the parties to this dispute in the plural form, even though a party may be an individual. I do this in adoption of the BC Public Service Agency's guidelines, 'Words Matter: Guidelines on Using Inclusive Language in the Workplace' [updated 18 May 2018].

Preliminary Matter - Non-appearance at the Hearing

The tenants did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1100 hours and ended at about noon. I confirmed:

1. that the landlords sent a copy of the Notice of Dispute Resolution Hearing to the tenants pursuant to an order for substituted service on 6 April;
2. that the Applicants provided the tenants with notice of the hearing of their application and information on how to participate;
3. that the RTB had provided the correct call-in numbers and participant codes in the Notice of Dispute Resolution Hearing; and
4. by reviewing the teleconference system, that the landlords, Applicants and I were the only ones who had called into this teleconference.

Rule 7.3 of the RTB Rules of Procedure reads:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the 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.

The tenants failed to attend this hearing, but I conducted it in their absence. The landlords and Applicants satisfied me that they had correctly notified the tenants of this hearing and how to participate.

Preliminary Matter – Parties to Tenancy Agreement

The Applicants argue that they are (along with the tenants) parties to the tenancy agreement with the landlords [the 'Agreement']. In other words, the Applicants argue that they are also tenants of the landlords.

This Agreement lists the landlords, the tenants and another individual (who is not the Applicants) as parties to the tenancy.

The landlords deny that the Applicants are parties to this Agreement. They told me the following about the tenancy that is subject to this dispute:

1. when they acquired this property, they knew that the tenants had a 'roommate' living with them (*i.e.* the Applicants);
2. the Agreement was only with the tenants, and never with the Applicants;
3. they only ever received rent from the tenants (not the Applicants);

4. in February, the Applicants proposed that they could continue to live in the rental unit after the tenants had left, and the landlords responded by proposing that the Applicants execute a new tenancy agreement with the landlords: but the Applicants refused to sign such an agreement; and
5. on one occasion when the landlords received an attempted rent-payment from the Applicants, the landlords returned it.

For their part, the Applicants told me that they had lived in this rental unit for four years with the tenants and that, during this time, they 'had a lease' with the tenants (not the landlords). They also agree that they refused to sign a tenancy agreement with the landlords when given the option to do so.

Having considered the statements of both parties, it is clear to me that the Applicants are not parties to the Agreement. In other words, they are not tenants of the landlords. Consider that the Applicants:

1. were not named in the Agreement;
2. never paid rent to the landlords;
3. instead, paid rent to the tenants;
4. asserted that they 'had a lease' with the tenants (and not the landlords); and
5. declined to enter into a tenancy agreement with the landlords when offered.

The RTB have published a policy guideline that assists me in considering this issue: number 19, 'Assignment and Sublet'. That guideline reads (in part):

'Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party... The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.'

So, while I accept that the Applicants lived in this unit for four years with the actual tenants, they were, during this time, roommates of the tenants, and not tenants of the landlords. This means that they have no rights or responsibilities under the *Residential Tenancy Act*. Any claims they might have, therefore, cannot be brought before the RTB: they must pursue these claims either in court or in another venue that has jurisdiction over the claims of the Applicants.

Issues to be Decided

The tenants did not participate in the hearing of their application for the Moving Claim and the Eviction Claim. And the Applicants cannot advance the Moving Claim and

Eviction Claim on their own behalf before the RTB, as they were roommates of the tenants.

And so I dismiss the Moving Claim and the Eviction Claim with leave for the tenants to re-apply. In doing so, I do not make any assessment of these claims on their merits: the tenants are free to re-apply to the RTB for these claims, and the Applicants are free to pursue these claims in an appropriate venue.

This leaves me with the following issues to decide:

Should I grant the Rent Claim?

Should I grant the Removal Claim?

Should the tenants reimburse the landlords for the cost of filing their application?

Background and Evidence

The landlords told me the following about this tenancy:

1. rent was \$2,870.00 *per* month;
2. the tenants only paid half of this amount for December rent;
3. the landlords contacted the tenants about this partial payment and the tenants replied that they didn't have the money to pay the full rent;
4. the tenants paid no rent for February, and so the landlords issued them a notice to end the tenancy;
5. the landlords understood from the tenants that they would vacate the unit before March;
6. accordingly, the landlords shut off utilities to the rental unit on 1 March;
7. come March, the tenants indicated that they were still in the rental unit, but the landlords again received no rent;
8. the landlords believe that the tenants continued to live in the rental unit in March, but aren't sure for how long: they guess for about the first week;
9. when the landlords finally confirmed that the tenants had vacated the unit, they entered the unit and discovered mounds of garbage and belongings of the tenants left behind in the unit (and they corroborated this with photo's of the state of the unit after it was vacated);

10. they contacted the tenants and asked them if they wanted to retrieve their belongings, and if they didn't, they would have the belongings disposed of as garbage; and
11. the tenants did not retrieve their belongings from the unit.

The landlords hired labour to clear up the unit from the garbage and belongings. They submitted two invoices from labourers for this work, and together these amounted to \$997.50.

The landlords also told me that the tenants paid the Deposit (in the amount of \$900.00) to the previous owner of the rental unit: the landlords do not have this Deposit.

Analysis

I grant the Rent Claim. Section 26 (1) of the *Residential Tenancy Act* [the 'Act'] places a positive obligation upon the tenants to pay rent. The landlords' uncontested statements have satisfied me that the tenants did not comply with this obligation for December and February, in the total amount of \$4,305.00 (\$1,435.00 for December plus \$2,870.00 for February).

But the landlords submit that this amount ought to be reduced in credit of the Deposit (though they do not hold it), and so I reduce the debt to \$3,405.00.

I do not grant the landlords any rent or utilities for March. They were unsure as to how long the tenants were actually in the unit in March. Furthermore, they shut off utilities to the unit, which effectively frustrated their Agreement with the tenants such that the tenants could not have performed the Agreement, *i.e.* the tenants could not have been expected to reside in a unit that had no utilities and still pay rent for such a unit. They cannot, therefore, be liable for any rent or utilities for March.

I grant the Removal Claim. I am satisfied that, under section 37 (2) of the Act, the tenants were obliged to leave the unit clean, but that they failed in this obligation. The landlords contacted the tenants to, in effect, provide them with the opportunity to reclaim these belongings and clean out the unit. But the uncontested statements of the landlords are that the tenants declined. As a result, the landlords hired labourers to clean out the unit, and this cost them \$997.50.

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

As for the Deposit, the uncontroverted statements of the landlords are that they do not have it: the previous landlords do. And so I dismiss the tenants' application for return of the Deposit, without leave to re-apply against these landlords (but with implicit 'leave' to apply against the previous landlords).

Conclusion

I order that the tenants pay to the landlords \$4,502.50 *per* section 67 of the Act.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords 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: 6 October 2023

Residential Tenancy Branch