Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF
MNDC, OLC, RR, FF, O, SS

Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Tenants also applied for an Order for substitutional service of documents however I find that that Order is unnecessary and that part of the Tenants' application is dismissed without leave to reapply. The Tenants also applied for and Order that the Landlords comply with the Act in regard to the loss of parking and storage facilities, however as the tenancy has ended, I find that this part of the Tenants' application is also unnecessary and it is dismissed without leave to reapply.

The Landlords applied for compensation for cleaning expenses and to recover horse boarding fees and the filing fee for this proceeding as well as to keep the Tenants' security deposit in payment of those amounts.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation and if so, how much?
2. Are the Landlords entitled to compensation and if so, how much?
3. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on December 15, 2004 and ended on October 31, 2009 when the Tenants moved out. The Tenants paid a security deposit of $350.00 at the beginning of the tenancy.

The Tenants' Claim:

The Tenants claimed that storage and parking were included in their rent under the tenancy agreement. The Tenants said that when the Landlords purchased the rental property and subsequently moved in on or about September 2, 2009, they told the Tenants to remove their belongings that were stored in the basement (of the Landlord's residence) and garage and told them that they could no longer use the same parking spot near the rental unit. The Tenants said they had to get other storage at a cost to

them of $150.00 per month for two months. The Tenants also said that they had to park further down the driveway for the following two months.

The one of the Tenants also claimed that one of the Landlords started harassing her from approximately October 9, 2009 until the Tenants moved out. In particular, the Tenants claim that one of the Landlords advised them that if they were not going to pay horse boarding fees for September 2009, they would have to remove their equipment from the barn and paddock area. The Tenants said that on October 9, 2009 one of the Tenants and one of the Landlords got into an argument. The Tenants claim that one of the Landlords started yelling at swearing and said that he would make things so difficult for the Tenants that they would want to move.

The Tenants claim that the same Landlord continued to intimidate them by waiting until only one of the tenants was alone and then went to rental unit a couple of times after October 9, 2009 and banged on the door. The Tenants said they were so intimidated and stressed out by the actions of this one Landlord that they spent little time at the rental unit for the balance of that month and decided to rent the first place that came available. One of the Tenants claimed that she was thereby "coerced into signing" a mutual agreement to end the tenancy. The Tenants said that as a result of having to move, they had to pay an extra $200.00 per month to rent similar accommodations.

The Tenants also claimed that during the tenancy, their right to quiet enjoyment was breached by the same Landlord who allowed his dog to chase and bite their horses and did not respect their right to privacy. On one occasion, the Tenants claim that the Landlords' dog scratched their car and they sought compensation of $400.00 for that damage as well.

The Tenants said that the Landlords did not do a move out condition inspection and did not return their security deposit or apply to make a claim against their security deposit within the time limits required under the Act. The Tenants said they mailed their forwarding address to the Landlords on November 3, 2009. Consequently, the Tenants argued that the Landlords were liable to return double the amount of their security deposit.

The Landlords said that the storage area granted to the Tenants under the tenancy agreement was an 8' x 6' storage shed by the front door of the rental unit but that the Tenants used it for storing garbage. The Landlords said that they had plans to renovate the basement area and as a result, asked the Tenants to pile all of their belongings in one area of the basement because they were spread out over 3 rooms. The Landlords said that the Tenants removed most of their belongings but still left unwanted items stored there. The Landlords denied telling the Tenants to remove their belongings from

the basement but in any event argued that the storage area in their basement was not included in the Tenants' rent.

The Landlords admitted that they told the Tenants that they would have to move their parking space next to the rental unit but argued that the Tenants were still provided with parking facilities on the rental property.

The Landlords denied harassing the Tenants or interfering with their right to quiet enjoyment. The Landlords said they were in Europe for two weeks in September and the Tenants were also away on holidays from September 22nd to October 6, 2009. The Landlords admitted that one of them got into an argument with one of the Tenants on October 9, 2009 but claimed that the Tenant in question said she was not happy with the changes the Landlords were making, called the Landlord a derogatory name and swore at him. One of the Landlords claimed that he felt he was being harassed by the Tenants who tried to "dictate what he could or could not do with his property" and then threatened to bring an application for dispute resolution against him.

The Landlords denied that they told the Tenants to leave and said that on October 19, 2009, they received a letter from the Tenants advising them that they had found a new residence and wanted to end the tenancy at the end of that month. The Landlords said the Tenants also included a copy of a Mutual Agreement to End the Tenancy which they signed. The Landlords said that after the incident on October 9, 2009, they did not have much contact with the Tenants except to try to arrange viewings of the rental unit for prospective tenants.

The Landlords admitted that their dog may have chased the Tenants' horses on occasion but claimed that once the dog got stepped on by a horse, it never went back into the horses' field. The Landlords disputed that their dog scratched the Tenants' car but argued in any event that that was not a matter that fell within the jurisdiction of the Act.

The Landlords' Claim:

The Landlords said that the Tenants had a verbal agreement with the previous owners of the rental property whereby they paid $200.00 per month for the use of a barn and paddock area. The Landlords said that the Tenants did not pay anything for September 2009 although they "tied up" the use of those facilities by storing their equipment in the barn for part of that month.

The Tenants said that they removed their belongings from the barn as soon as the Landlords asked them to but in any event they argued that this was a separate

agreement that was not a part of the tenancy agreement and therefore is not a matter that falls within the jurisdiction of the Act.

The Landlords also claimed that at the end of the tenancy, the Tenants did not clean the rental unit properly and did not remove all of their belongings and garbage. The Landlords admitted that they did not ask the Tenant to schedule a move out condition inspection even though they knew the Tenants would be vacating at the end of October 2009. The Landlords provided copies of some photographs showing a dirty bathroom fan cover and baked grease on an oven door as well as some articles that they said the Tenants left behind. The Landlords said it took them approximately 10 hours to clean inside the rental unit and further time to dispose of the articles. The Landlords said they incurred recycling expenses but did not provide any evidence of those expenses.

The Tenants said that the rental unit was reasonably clean at the end of the tenancy and argued that the state of the oven was the result of reasonable wear and tear over the course of their 5 year tenancy. The Tenants also said that garbage disposal was included in their rent. In particular, the Tenants said that the Landlords agreed to dispose of certain items that were left behind in the storage shed and basement. The Tenants claimed that some items did not belong to them but rather belonged to the previous owners. The Tenants said the only items they left behind that the Landlords did not agree to dispose of were some brake parts.

Analysis

The Landlords' Claim:

Section 2 of the Act states that the Act applies to tenancy agreements, rental units and other ***residential property***. The written tenancy agreement is only with respect to the rental unit. Consequently, I find that the verbal agreement that the Tenants had with the previous owner was not a part of the tenancy agreement and is not a matter that falls within the jurisdiction of the Act. Consequently, the Landlords' application to recover boarding fees for September 2009 is dismissed without leave to reapply for lack of jurisdiction.

The Landlords claimed that although they only provided 2 photographs of the interior of the rental unit, I should infer from them that the rest of the rental unit was in a similar condition. However, on this issue the Landlords bear the onus of showing that the rental unit was not left reasonably clean as required by s. 37 of the Act. A condition inspection report is intended to serve as some objective evidence of whether the Tenant has left a rental unit unclean at the end of the tenancy. In the absence of a condition

inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

Given that the Tenants claimed that the rest of the rental unit was reasonably clean and in the absence of any corroborating evidence from the Landlords, I find that they are entitled to compensation only for cleaning the bathroom fan and the oven. I do not accept that baked on grease is wear and tear as the Tenants claimed and note instead that a Tenant has a responsibility under s. 32(2) of the Act to maintain "reasonable cleanliness standards" throughout the tenancy. Consequently, I award the Landlords **$40.00** representing 2 hours of cleaning at $20.00 per hour.

The Landlords also claimed that the Tenants left horse manure in the paddock area, however as I have already found that the boarding agreement was not a part of the tenancy agreement, I find that there is no jurisdiction for granting compensation for cleaning the paddock area leased under the separate agreement.

I find that garbage collection is included in the rent under the tenancy agreement. As a result, I also find on a balance of probabilities that the Landlords probably did agree to dispose of the garbage left by the Tenants in the storage shed and basement. I am not satisfied that all of the garbage belonged to the Tenants (such as chairs and water bottles). Consequently, I find that the Landlords are entitled to be compensated for disposing of the Tenants' brake parts and I award them **$10.00** for this part of their claim.

The Landlords also sought to keep the Tenants' security deposit. Section 35 of the Act requires a landlord to schedule a condition inspection and to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the Tenants moved out, I find the Landlords contravened s. 35(3) of the Act. Consequently, s. 36(2)(c) of the Act says that the Landlords' right to claim against the security deposit for damages is extinguished.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date they receive the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

RTB Policy Guideline #17 at p. 2 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." This means that ***if a Tenant applies*** to recover only the original amount of the security deposit, the arbitrator must award an amount equal to double the security deposit.

I find that the tenancy ended on October 31, 2009 and that the Tenants mailed their forwarding address by regular mail to the Landlords on November 3, 2009. Under s. 90 of the Act, the Landlords are deemed to have received that mail 5 days later or on the next business day which would have been November 9, 2009.

Although the Landlords applied on November 20, 2009 to keep the deposit (within the 15 day time limit), I find that their right to do so was extinguished by s. 36(2) of the Act. However, as the Tenants did not make an application for the return of their security deposit, I find that s. 38(6) of the Act does not apply and the Landlords are only liable to return to the Tenants the original amount of the deposit of $350.00 plus accrued interest of $12.38 for a total of **$362.38**.

The Tenants' Claim:

I find that the Tenants' claim for compensation for alleged damage to their vehicle while on the rental properly is a matter that should be dealt with under the Insurance (Vehicle) Act of British Columbia and as a result, this part of the Tenants' claim is dismissed without leave to reapply.

Section 27 of the Act says that a Landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement. I find that storage and parking are included in the rent under the tenancy agreement.

The Tenants argued that they are entitled to compensation for the loss of a parking spot and storage facilities for a two month period. The tenancy agreement does not state that the Tenants have the right to a designated parking spot nor does it indicate the nature of the storage. The Landlords argued that the Tenants had parking on the rental property for the two months in question and that their storage was confined to a storage shed which they also had for the two months in question. The Tenants have the onus of proof on this issue and must show that storage in the garage, basement and shed was included in the rent. However, given the contradictory evidence of the Landlords and in the absence of any corroborating evidence to resolve the contradiction, I find that there is insufficient evidence that the Tenants' use of *multiple* storage facilities on the rental

property was included in their rent. Consequently, this part of the Tenants' application is dismissed.

Section 28 of the Act says that a tenant is entitled to quiet enjoyment including but not limited to the right to reasonable privacy, freedom from unreasonable disturbance and use of common areas for reasonable and lawful purposes free from significant interference.

I find that there is no evidence that the Landlords interfered with the Tenants' right to quiet enjoyment of the rental unit prior to October 9, 2009. In particular, I find that for the majority of the month of September 2009 there was very little interaction between the parties because they were away on separate vacations. I am also not satisfied that the paddock area where the Tenants' horses were boarded was a common area on the rental property. In any event, the evidence was that the Tenants' horses were not there for much of September and all of October.

I find there likely was a "power struggle" that resulted in a confrontation on October 9, 2009. In particular, the Tenants claimed that they believed the Landlords were bullying them around by making them move their belongings out of the basement, garage and barn and by taking their parking spot. The Landlords claimed that they had plans for the property and that the Tenants objected and wanted things to remain the way they always had been.

I find that after one of the Tenants had a confrontation with one of the Landlords on October 9, 2009, the Tenants decided to move out and started looking for other accommodations. Once the Tenants found other accommodations, it was they who presented the Landlords with the Agreement to end the tenancy. Consequently, I do not accept the Tenants' argument that they were coerced to sign a mutual agreement to end the tenancy. I also find that there is insufficient evidence that following the confrontation on October 9, 2009 that the Landlords engaged in a campaign of harassment. I accept the Tenants' evidence that they felt uncomfortable in the circumstances however, I find that the Landlords probably felt uncomfortable as well.

In essence, I find that it was a mutual breakdown of the Landlord/Tenant relationship that led to the Tenants' stress and anxiety rather than the actions of the Landlords alone. Consequently, I find that the Tenants are not entitled to compensation for the Landlords forcing them to move or for a loss of quiet enjoyment as they alleged and those parts of the Tenants' application are dismissed.

As the Parties have both been largely unsuccessful on their respective applications, I make no award reimbursing the filing fees.

Although the Landlords' right to deduct amounts from the security deposit is extinguished under s. 36(2) of the Act, I find that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlords to keep $50.00 from the Tenants' security deposit in full satisfaction of their claim and to return the balance of the security deposit and accrued interest of $312.38 to the Tenants.

Conclusion

The Tenants' application is dismissed. The Landlords' application is granted in part. A monetary order in the amount of **$312.38** has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 13, 2010.

Dispute Resolution Officer