Decision

Dispute Codes:

MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to cross applications between the two parties.

The Landlords' filed an Application for Dispute Resolution, in which the Landlords have made application for a monetary Order for unpaid rent, to retain all or part of the Tenants' security deposit and pet damage deposit, and to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution. It is apparent from information on the Application for Dispute Resolution that the Landlords are seeking compensation for loss or damages relating to this tenancy ending early, so their Application was amended accordingly.

The Tenants filed an Application for Dispute Resolution, in which the Tenants have made application for a monetary Order for damage or loss, for the return of all or part of their security deposit and pet damage deposit, and to recover the filing fee from the Landlords for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided, in relation to the Landlords' Application for Dispute Resolution, are whether the Landlords are entitled to compensation because the Tenants ended their fixed term tenancy early, whether the Landlords are entitled to retain all or part of the security deposit and pet damage deposit paid by the Tenants; and whether the Landlords are entitled to recover the filing fee for the cost of this Application for Dispute Resolution from the Tenants.

The issues to be decided, in relation to the Tenants' Application for Dispute Resolution, are whether the Tenants are entitled to compensation because the Landlords did not provide them with a written copy of their tenancy agreement, whether the Tenants are entitled to compensation for living in a substandard rental unit, whether the Tenants are

entitled to the return of all or part of their security deposit and pet damage deposit, and whether the Tenants are entitled to recover the filing fee for the cost of this Application for Dispute Resolution from the Landlords.

Background and Evidence

The Landlords and the Tenants agree that this was a fixed term tenancy that started on September 01, 2008 and was scheduled to end on August 31, 2009. The parties agree that the tenancy ended on December 31, 2008. The parties agree that the tenancy agreement required the Tenants to pay monthly rent of $1,200.00.

The female Landlord stated that the Tenants paid a security deposit of $600.00 on October 01, 2008. The Landlords submitted a tenancy agreement that shows that the security deposit was paid on September 01, 2008, however the female Landlord stated that she had prepared the agreement prior to meeting with the Tenants on September 01, 2008, and that the Tenants were not able to pay the deposit at that time.

The Tenant stated that she paid $800.00 to the Landlords sometime in August of 2008 and that she paid $1000.00 to the Landlords on September 01, 2008. She stated that these payments represented a $600.00 security deposit and rent for the month of September.

The female Landlord stated that the Tenants paid a pet damage deposit of $600.00 on October 01, 2008. The Tenant agrees that she paid a pet damage deposit of $600.00 but she contends it was paid on September 03, 2008. The tenancy agreement shows that a pet damage deposit of $500.00 was paid on October 01, 2008. The parties agree that they mutually agreed to increase the amount of the pet damage deposit after the tenancy agreement was created.

The Tenants contend that the Landlords did not complete a Condition Inspection Report at any point in the tenancy and have, therefore, forfeited their right to claim against the security and pet damage deposits. The Landlords submitted no evidence to show that they completed a Condition Inspection Report.

The Tenant stated that they noticed that the septic field smelt at the beginning of the tenancy. She stated that water backed up into their bathtub approximately twice per month and into their bathroom sink whenever they did laundry every time they did laundry or the tenants upstairs used a lot of water. She stated that she verbally advised the Landlords of these problems on several occasions, but they did nothing to resolve the problems.

The Tenant stated that she did not give written notice of her concerns because she did not have the Landlords' address. She stated that she never received a copy of the

tenancy agreement from the Landlord until January 02, 2009 and she did not receive her mailing address until December 13, 2008.

The female Landlord stated that the first time she was advised of a problem with the septic field was on December 13, 2008. She stated that the Tenants could have given them written notice on the first day of each month when she picked up their rent. She also stated that she left a copy of the tenancy agreement, which had her mailing address, in the Tenants' mail box on September 15, 2008. She stated that she left a second copy of the tenancy agreement in their mail box on November 27th or 28th, after learning that the Tenants had not received the first copy.

The female Landlord and the Tenant agree that they had a telephone conversation on December 13, 2008. The female Landlord stated that she advised the Tenant at that time that she would have someone look at the septic field. She stated that she subsequently contacted a septic company and made arrangements to have someone investigate the problem the following Monday, which was December 15, 2008.

The Tenant stated that when they spoke on December 13, 2008 the female Landlord advised her that they would not be fixing the problem until after the Christmas holidays. She advised that Landlord that was not acceptable, and she insisted that they have someone investigate the problem prior to the end of the upcoming weekend. She stated that she was advised that the male Landlord had left a message with one company and that they "may come out".

The Tenant stated that she phoned the Landlord back a second time on December 13, 2008 and insisted that they phone every septic company in the telephone book until they found a company that would be able to address the problem. She agreed that the Landlords did eventually advise her that someone would look into the problem on December 15, 2008.

The Tenant stated that the female Landlord told her during their second conversation on December 13, 2008 that she could move out if she wished. She stated that she phoned the Landlord back on December 14, 2008 and advised her that they would be vacating the rental unit on December 31, 2008.

The female Landlord stated that she did not advise the Tenant that she would agree to end the tenancy. The Landlords are seeking compensation, in the amount of $2,400.00 for loss of revenue for the months of January and February. The female Landlord stated that she advertised the rental unit in a Kelowna newspaper on, or about, December 27, 2008 and in a Penticton newspaper sometime during the first week of January. She did not submit any evidence to establish the times and dates that the rental unit has been advertised.

At one point in the hearing the female Landlord stated that she could not rent the rental unit until it had been approved by the City of Kelowna, as they specifically told her it was not a legal suite and that she could not rent it. She later stated that approval was merely a formality and that she was still attempting to locate a tenant. The Landlord stated that she has not yet located a tenant.

The Tenants are claiming compensation, in an undisclosed amount, for having to live with a substandard septic field throughout this tenancy.

The Tenants are seeking compensation, at a rate of $300 per month, for being unable to apply for government funding for rental assistance for the four months they resided at this rental unit. The Tenant stated that she is currently receiving provincial funding from to assist her with her rent, although she was unable to provide details regarding the precise source of the funding. She stated that the funding is based on income levels and she contends that she would have been eligible for this funding during this tenancy. She stated that she was unable to apply for the funding because the Landlords failed to provide her with rent receipts for September and October and they also failed to provide her with a copy of the tenancy agreement that established the amount of rent she was paying.

The Tenants are claiming compensation, in an undisclosed amount, for being denied access to two sheds located on the residential property. In written documentation the Tenants stated that the Landlords advised them that neither they, nor the other persons occupying rental units on the residential property, were permitted to use the sheds. The tenancy agreement does not stipulate that the Tenants have access to the sheds and there is no mention that the tenancy includes storage. The Tenants contend that the sheds are common property that they should have been permitted to use.

The Tenants are also seeking compensation, in an undisclosed amount, for a variety of minor deficiencies in the rental unit, including missing light covers; missing or broken blinds; a living room heat register that does not provide sufficient heat, a broken shower curtain rod; a missing door knob; garbage being left in the sheds, which poses a risk to their children; failure to remove vehicles from the residential property that belonged to former tenants, having to live without electricity in a portion of their rental unit for a period of two weeks, which was the result of a tripped electrical breaker that could not be reset because the breaker was in an electrical panel in a different rental unit.

Analysis

The evidence shows that the Landlords and the Tenants entered into a fixed term tenancy that was to continue until August 31, 2009, for which the Tenants were required to pay monthly rent in the amount of $1,200.00.

In view of the contradictory statements provided in regards to the date of payment of the security deposit, I find the most accurate evidence to be the written tenancy agreement.

I therefore find that the Tenants paid a $600.00 security deposit on September 01, 2008.

Section 36(2) of the *Act* stipulates that a landlord cannot claim against the security deposit or pet damage deposit for damages to the residential property if they fail to complete a Condition Inspection Report at the beginning and the end of the tenancy. In these circumstances the Landlords are claiming for compensation for loss of revenue, not for damage to the rental property. Therefore I find the Landlords are entitled to make a claim against the security deposit regardless of whether a Condition Inspection Report was completed.

As both parties verbally agreed that the Tenants paid a pet damage deposit of $600.00, I am disregarding the information on the written tenancy agreement, which indicates that $500.00 was paid. In view of the contradictory statements provided in regards to the date of payment of the pet damage deposit, I find the most accurate evidence to be the written tenancy agreement. I therefore find that the Tenants paid pet damage deposit of $600.00 on October 01, 2008.

Section 38(7) of the *Act* stipulates, in part, that a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise. As the Landlords have not claimed compensation for damage to the residential property, and the Tenants have not agreed to allow the Landlords to retain the pet damage deposit, I hereby find that the Landlord must return the pet damage deposit of $600.00, plus interest in the amount of $2.26.

Section 45(2)(b) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. The evidence clearly indicates that the Tenants did not give notice in accordance with section 45(2)(b) of the *Act.*

Section 45(3) of the Act stipulates, in part, that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. I find that the Tenants did not comply with section 45(3) of the Act when they vacated the rental unit without giving the Landlord written notice of a breach of any term in their tenancy agreement. In reaching this conclusion, I dismissed the Tenant's argument that they were unable to provide written notice because they did not have a mailing address for the Landlord until December 13, 2008. Even if I accept that they did not have a mailing address for the Landlord prior to December 13, 2008, the Tenant could have provided written notice of a breach after December 13, 2008 or at any time when they met with the Landlord to pay their monthly rent.

As the Tenants failed to comply with section 45 when they ended the fixed term tenancy on December 31, 2008, I find that the Landlords are entitled to compensation for any damages that flow from the Tenants' failure to comply with the *Act*. In these circumstances, I am satisfied that the Landlords were unable to locate a new tenant for January 01, 2008 due to the fact that the Tenants only provided 17 days notice of their intent to vacate. I therefore find that the Landlords are entitled to compensation for loss of revenue for the month of January, in the amount of $1,200.00.

Section 7(2) of the Act stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord submitted insufficient evidence to establish that they were diligent in their attempt to locate a new tenant for February of 2009. In reaching this conclusion I considered the following:

- No documentary evidence was submitted to establish the extent of advertising done by the Landlord
- Based on the verbal testimony of the female Landlord I find the extended delay in renting this rental unit was, in part, the result of questions concerning the legality of the rental unit, which is not the responsibility of the Tenant,
- Given the current rental market in major cities in the Province of British Columbia, I find it unlikely that a tenant could not be located after six weeks, with a reasonable amount of effort.

As I am not satisfied that the Landlords made reasonable efforts to find a new tenant for February 01, 2009, I find they have not shown that they made reasonable efforts to mitigate their losses, as required by section 7(2) of the *Act*. On this basis, I dismiss the Landlord's application for loss of revenue from February of 2009.

Although the Tenant claims that they repeatedly advised the Landlords that they were experiencing problems with the septic field, the Landlord stated that they were not

aware of problem until December 13, 2008. Whenever two parties disagree, the burden of proof rests with the person claiming compensation for damages. In these circumstances, the onus is on the Tenants to prove they notified the Landlords of the problem with the septic field and that the Landlords failed to repair the problem. I find that the Tenants submitted insufficient evidence to establish that they notified the Landlords that there was a problem with the septic system prior to December 13, 2008. I find that the Landlords can not be held liable for repairing a problem they were unaware of, and I hereby dismiss the Tenants' claims for compensation for living with a substandard septic field. In reaching this conclusion, I note that the Landlord made timely and reasonable efforts to have someone investigate the problem on December 15, 2008.

I find that the Tenants submitted insufficient evidence to establish that the Landlords prevented them from accessing provincial assistance when they allegedly failed to provide them with all of their rent receipts or a copy of the tenancy agreement. In reaching this conclusion I was strongly influenced by the absence of evidence that corroborates the Tenant's statement that she would have been eligible for government funding during this tenancy. As the Tenant has not reasonably established that she suffered a financial loss, I dismiss her application for compensation in the amount of $1,200.00.

I find that the Tenants have failed to establish that the sheds on the residential property were common property that they had the right to access. I find that the written tenancy agreement does not specify that the Tenants had the right to use these sheds, although there is space on the agreement to specify if storage areas were included. I find that storage areas on residential property cannot be considered common property, particularly when the property is governed by more than one tenancy. To find otherwise would imply that tenants in an apartment building had unrestricted access to storage areas within the building, which is unreasonable. On this basis, I dismiss the Tenants' Application for compensation for not being able to use the storage sheds.

I dismiss the Tenants' claims for compensation for living in a rental unit that had missing light covers; missing or broken blinds; a living room heat register that does not provide sufficient heat, a broken shower curtain rod; a missing door knob; garbage being left in the sheds; failure to remove vehicles from the residential property that belonged to former tenants, and having to live without electricity in a portion of their rental unit for a period of two weeks. I hereby dismiss this portion of the Tenants' Application for Dispute Resolution, pursuant to section 62(4)(c), as I find them to be frivolous. In concluding that this portion of the Tenants' Application is frivolous, I was influenced by the following:

- The nature of the deficiencies are relatively insignificant and, even if proven, would not result in a meaningful amount of compensation

- There is obvious animosity between the two parties which, when combined with the minor nature of the deficiencies, causes me to conclude that this portion of the Tenant's application is not being made in good faith.

I find that the claims of both parties have some merit, and I therefore find that they are each responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

I find that the Landlords have established a monetary claim, in the amount of $1,200.00, in compensation for loss of revenue from the month of January of 2009. I hereby authorize the Landlords to retain the Tenants' security deposit, plus interest in the amount of $3.00, in partial satisfaction of that claim. After deducting the security deposit and interest from the Landlords' monetary claim, I find that the Tenants owe the Landlords $597.00.

I find that the Tenants have established a monetary claim, in the amount of $602.26, which represents the return of their pet damage deposit plus interest.

I have offset the Landlords' monetary claim against the Tenants' monetary claim, and I have granted the Tenant a monetary Order for the difference $5.26. 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.

Date of Decision: February 12, 2009.

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