



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD MNDC FF
 MNSD MNDC FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants.

The Tenants filed seeking a Monetary Order for the return of double their security deposit, money owed for compensation for loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlord.

Service of the hearing documents by the Landlord to each Tenant was done in accordance with section 89 of the *Act*, sent via registered mail on September 16, 2010. The Tenant confirmed receipt of the Landlord's hearing documents.

Service of the hearing documents by the Tenants to the Landlord was done in accordance with section 89 of the *Act*, sent via registered mail on September 16, 2010. The Landlord confirmed receipt of the Tenants' hearing package.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Did the Tenants breach the *Residential Tenancy Act*, regulation or tenancy agreement?

2. If so, has the Landlord met the burden of proof for monetary compensation as a result of that breach?
3. Did the Landlord breach the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, have the Tenants met the burden of proof for monetary compensation as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective June 1, 2008 which was set to switch to a month to month tenancy after May 31, 2009. Rent was originally payable in the amount of \$1,350.00 and was later increased to \$1,398.00 effective October 1, 2009, after three months notice was issued to the Tenants on the proper form. A security deposit of \$675.00 was paid on May 13, 2008. A move-in inspection report was completed May 31, 2008 and the move-out inspection report was completed August 31, 2010. There were no damages indicated on the move-out inspection and both inspections were signed by the Tenant. The Tenant provided the Landlord with their forwarding address on the move-out inspection form on August 31, 2010.

The Landlord testified that after entering into the written tenancy agreement he provided the Tenants with a copy of the tenancy agreement and the move-in inspection report. He stated that he did not provide any other documents at the onset of the tenancy; however he recalls giving the male Tenant a copy of the Strata Form K but did not know the date. He did not request the Tenants sign the Form K and never followed up on it because the Strata Corp never requested it from him.

The Landlord is seeking to recover \$635.94 from the Tenants to cover the costs of three fines issued to the Landlord from the Strata Corp during the tenancy. He referred to his evidence which included copies of the letters issued by the Strata Corp and collection letters he sent to the Tenants between 2008 and 2009 to recover the cost of the fines. The Tenants never paid him for these fines and he made no attempt to collect these monies through dispute resolution. He states that he was discouraged after losing his case when he attempted to evict the Tenants back in 2008 so he didn't pursue things with the *Residential Tenancy Branch*. He states that he saw the complaints received by the Strata Corp against his Tenants and he knows there were police reports files against them for noise complaints and other complaints. The Landlord confirmed he made no effort to obtain copies of these documents or the police reports under the Freedom of Information Act or by any other means.

The Tenant testified and stated that they never received any documents relating to the Strata Corp and certainly did not receive a Form K. She argued that the noise complaints were not against them or their unit but rather against their neighbors. She stated that her tenancy was with the Landlord not the Strata Corp or the agency managing the Strata business so they are not responsible for the fines. She referred to her evidence which included a copy of the decision issued from their previous hearing November 21, 2008 where it was determined that the Landlord had insufficient evidence to support the allegations that the Tenants were causing disturbances. Therefore, she is requesting the return of double her security deposit as the Landlord has not returned it within the 15 day requirement.

She is also seeking \$528.00 as reimbursement for an illegal rent increase. She confirmed she received the three month written notice of rent increase however she argued they had signed a new tenancy agreement just prior to receiving this notice of rent increase so the Landlord was not allowed to raise their rent for another year. She says that they had a discussion with the Landlord on May 1, 2009 where they all agreed to enter into another one year lease. The Landlord brought the new tenancy agreement over when he came to repair the cabinets and they signed the document. The Landlord did not leave the Tenants with a copy, even though they offered to take it away and copy it for him, so he took it away and never gave them a copy. Then he shows up and says he changed his mind and later issued the rent increase.

At first the Landlord stated that there never was a second agreement and after a discussion he changed his testimony to say that the Tenants were after him to enter into a new lease that would allow them to sublet the unit. He said that he was not sure of the implications of subletting so he contacted the *Branch* and after finding out the details he chose not to sign the new document. He says the Tenants provided him with a document to sign and he took it away to consider it and chose not to sign it.

The Tenant disputed the Landlord's testimony pointing out that he is referring to the document so clearly he knows it exists. She argued that he brought the new tenancy agreement to the rental unit and it had his name already typed in so he created it not them. She was insistent that they all signed the new tenancy agreement. When asked was she did not seek a remedy through dispute resolution when they were first issued the notice of rent increase she replied that it was a very busy time in their life so they just set it aside and paid the increased amount.

Analysis

Landlord's application

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the Landlord was issued three fines by the Strata Corp. and there was no evidence to support complaints were issued against the Tenants. After careful review of the evidence and testimony there is insufficient evidence to prove that the Tenants signed and agreed to the terms set out in the Strata Form K and there is no evidence to support the Tenants were given a copy of the Strata rules and regulations. A tenant must have advance knowledge of rules and regulations before they can be considered in breach of such rules. Based on the aforementioned, I find the Landlord has provided insufficient evidence to prove the Tenants breached the Act, regulation or tenancy agreement and therefore has not met the burden of proof for the test for damage or loss listed above. Therefore, I dismiss the Landlord's claim, without leave to reapply.

As the Landlord has not been successful with his application he must bear the burden of the filing fee.

Tenants' application

I have carefully considered all of the testimony and evidence before me. A significant factor in my considerations is the credibility of the testimony. I am required to consider it not on the basis of whether the testimony "carried the conviction of the truth", but rather to assess the evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. I find that the Landlord contradicted his own testimony pertaining to the existence of a second tenancy agreement during the hearing. That being said, while I find that on a balance of probabilities there was a second tenancy agreement in the works, I have insufficient evidence to prove that all three parties actually signed the agreement. Therefore, in the absence of such evidence I must rely on the tenancy agreement which has been proven to be signed by all parties on May 13, 2008.

Having found the original tenancy agreement to be in effect, I find the Notice of Rent Increase dated June 23, 2009 to be in compliance with section 42 of the Act. Therefore I must dismiss the Tenant's monetary claim for reimbursement of the rent increase, without leave to reapply.

Having dismissed the Landlord's application above, the Landlord has no entitlement to withhold the security deposit. The evidence supports the tenancy ended August 31, 2010 and the Tenant provided her forwarding address in writing on August 31, 2010.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than September 15, 2010. His application for dispute resolution was filed September 13, 2010.

Based on the above, I find that the Landlord has not failed to comply with Section 38(1) of the *Act* and that the Landlord is not subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant is entitled to the return of her original security deposit of \$675.00 plus interest of \$6.45 for a total amount of **\$681.45**.

I find that the Tenant has partially succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant's copy of this decision will be accompanied by a Monetary Order in the amount of **\$731.45** (\$681.45 + 50.00). This Order must be served on the Landlord and may be filed in Provincial Court 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 18, 2011.

Residential Tenancy Branch