Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, for the return of double their security deposit, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Tenants proven the Landlord breached the Act, regulation and/or tenancy agreement?
2. If so, have they met the requirements to obtain a Monetary Order as a result of that breach, pursuant to sections 7 and 67 of the Act?

Background and Evidence

The parties agreed they entered into a written month to month tenancy agreement that began on January 1, 2012. Rent was payable on the first of each month in the amount of $1,300.00 and on January 1, 2012 the Tenants paid $650.00 as the security deposit. The parties attended the move out inspection February 29, 2012 and the Tenant refused to sign the report and no copy of the report was provided to the Tenants.

The Tenants affirmed they amended their application to seek the return of double their deposit as well as compensation of $1,300.00 to cover their moving costs. They advised they vacated the property as of February 29, 2012 based on the 1 Month Notice to End tenancy they were served on January 24, 2012.

The Tenants allege their relationship with the Landlord and her Agents continued to deteriorate within the first month of their tenancy over issues surrounding them being

able to have a dog and over shared space in the garage. They are of the opinion that the garage was to be used solely by them and was not a shared unit with the downstairs tenants. Furthermore the Landlord's father had tools stored inside the garage and they did not feel comfortable with him being in and amongst their possessions.

The Landlord's Agent (the Agent) affirmed she provided the move-in condition inspection report form for the Tenants to look over and that they were to get back to her to let her know when they could conduct the walk through but they never did. She advised she was in attendance with the Landlord at the move out walk through on February 29, 2012 and that the male Tenant refused to sign the inspection form and he refused to provide them with his forwarding address so they could send him a copy of the form.

The Landlord affirmed that when they met with the Tenants to view the rental unit and to go over the tenancy agreement they had discussed that the tenancy included only half of the garage, as noted on the tenancy agreement, and that her father would be at the unit regularly during the time he was repairing the drainage system in the back yard and once completed they would have a nice new lawn to enjoy in the back yard. She is of the opinion that the garage is common area so her father did not need to provide written notice of entry plus the Tenants knew at the outset of his attendance at the unit to do the repairs and they had agreed to that.

The Landlord said they also had a conversation with the Tenants regarding no pets being allowed in this unit. The Landlord stated the Tenants mentioned they babysit a family member's dog from time to time and had requested permission to bring the dog into the unit to which the Landlord explained it would not be permitted as this was a no pet unit.

The Landlord advised that the problems began when the Tenants called her in mid January 2012 to say they were "gifted" a dog and requested permission to bring it into the unit. She reminded the Tenants that pets were not allowed and told them the dog needed to be removed. She provided them with written notices on January 20th and January 22, 2012 to have the dog removed and when they failed to do so the 1 Month Notice was issued.

The Landlord confirmed the Tenants were provided a copy of their signed tenancy agreement on approximately January 2, 2012 when they attended her home, which is across the street from their rental unit, to pay their first month's rent. She argued that the Tenants new very well the terms of their tenancy agreement.

The male Tenant disputed the Agent's testimony and claims he provide his forwarding address in writing at the time of the move out inspection. He stated he had a copy of the letter on his computer which I asked him to read into evidence. I instructed the Tenant to read the letter, word for word, exactly as it was written and during this the Tenant read out the information stating that the letter was written "January 22, 2012". The Tenant continued his testimony and argued that the notation on the tenancy agreement about only getting half the garage was not initialled and therefore he is of the opinion that it was added to the agreement after they had signed it. I brought the tenant back to his forwarding address letter and had him read the beginning again to which he confirmed the date it was written was "January 22, 2012", I asked him to confirm the date again at which time he did and stated he wrote it early in anticipation of serving it to the Landlord.

At the conclusion of the hearing I questioned the Landlord about why she did not submit documentary evidence to dispute the Tenants' claim. It was at this time she informed me that both of the Tenant's applications (original and amended) show the rental unit as his address and both were sent to her at an incorrect address so they hung around the post office for several days before someone wrote on the envelopes "try this address". She argued that the Tenant ought to have known her address as it was written on the tenancy agreement and he lived right across the street so she questioned why it was written incorrectly. She was insistent that they did not have the Tenants' forwarding address until she received the Tenants' amended application and she saw it written on the envelope which is the address she used when she filed her application for dispute resolution the day before this hearing.

Analysis

I have carefully considered the aforementioned and the Tenants' documentary evidence which included, among other things, copies of: the tenancy agreement; the two warning letters issued by the Landlord, and the 1 Month Notice to end tenancy.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and

4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 1 of the Act defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. I find that based on the above definition, oral terms contained in, or form part of, tenancy agreements and may still be recognized and enforced.

In making my decision I favor the evidence of the Landlord and her Agent, who stated they were never given the Tenant's forwarding address in writing which prevented them from sending him a copy of the move out inspection report; over the evidence of the Tenants who stated they did give the Landlord their forwarding address in writing on the day of the move out inspection. I favored the evidence of the Landlord over the Tenants, in part, because the Landlord's evidence was forthright and credible. The Landlord readily acknowledged that they did not provide written notice of entry into the garage as they thought this was a common area. In my view the Landlord's willingness to admit fault when they could easily have stated they did provide written notice but did not keep copies of the notice, lends credibility to all of their evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Tenants' explanation of why they did not provide a copy of the letter with their forwarding address into evidence to be improbable. After having the Tenant read this alleged letter I note that on several occasions he says the letter was dated January 22, 2012 which is two days prior to the issuance of the 1 Month Notice and over a month before the end of their tenancy. Furthermore I find that the Tenants' explanation why they should be allowed to have a dog and their testimony that they did not agree to share the garage as common space resulting in them having to move to be improbable, not to mention does not meet the requirement under section 7 of the Act for mitigation. Rather, I find the Landlord's explanation that the parties had verbal discussions at the

time the tenancy agreement was entered into which included clarification that no pets were allowed in the unit; that the Landlord's father would be at the rental unit repairing the drainage problem in the back yard; and the Tenants ought to have known which address to put on their application for dispute resolution, to be plausible given the circumstances presented to me during the hearing.

For all the aforementioned reasons, I find the Tenants have provided insufficient evidence to prove the existence of a loss or that they mitigated their loss. Had they had concerns about the Landlord's father attending the unit they ought to have provided their concerns to the Landlord in writing and if that did not resolve the issue they could have sought resolution with the *Residential Tenancy Branch* and filed an application for dispute resolution to have the issues resolved.

Furthermore, I find their application for monetary compensation to cover their costs to move to be premature, as it was filed January 26, 2012, one month prior to the end of their tenancy, and I further find it to be retaliatory to receiving the 1 Month Notice for cause. Therefore I dismiss their claim for monetary compensation for having to move relating to issues surrounding pets, the garage, the fence, and moving costs, without leave to reapply.

As I have favored the Landlord's evidence over the Tenants', as noted above, I find that at the time of this hearing, March 27, 2012, the Tenants have not yet provided the Landlord with their forwarding address in writing, as required by section 39 of the Act.

With respect to the amended application seeking return of double their security deposit, After considering the aforementioned, I find the Tenants have provided insufficient evidence to prove they provided the Landlord with their forwarding in writing on February 29, 2012 and therefore their application for the return of their security deposit is premature. Accordingly I dismiss their request for the return of their deposit, with leave to reapply.

The Tenants have not been successful with their application; therefore I find they must bear the burden of the cost to file this application.

Conclusion

The Tenant's application for monetary compensation for damage or loss is HEREBY DISMISSED, without leave to reapply.

The Tenant's application for monetary compensation for the return of their security deposit is HEREBY DISMISSED, with leave to reapply.

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: March 29, 2012.

Residential Tenancy Branch