Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit and pet damage deposit plus compensation equal to the amount of the deposits due to the Landlords' alleged failure to return them as required by the Act, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

The Tenants said they served the Landlords with the Application and Notice of Hearing (the "hearing package") by registered mail on April 3, 2012. The Tenants said the hearing packages were sent to the address for service of the Landlords set out on their tenancy agreement. According to the Canada Post online tracking system, the Landlord, C.S., received the hearing package on April 4, 2012 and that although the Landlord, K.V. received two notices to pick up the mail, she did not do so. The Tenants claim the Landlord, K.V. advised them at the end of the tenancy that she would not return their deposits or accept service of any documents. Based on the evidence of the Tenants, I find that the Landlords were served with the hearing packages as required by s. 89 of the Act and the hearing proceeded in the Landlords' absence.

Issue(s) to be Decided

1. Are the Tenants entitled to the return of a security deposit and pet damage deposit and if so, how much?
2. Are the Tenants entitled to other compensation?

Background and Evidence

This tenancy started on January 1, 2012 and ended on January 15, 2012 when the Tenants moved out. Rent was $1,200.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit and pet damage deposit of $600.00 each at the beginning of the tenancy.

The Tenants said when they moved into the rental unit, the Landlord, K.V., advised them that they could not unpack their belongings because the Landlords were still doing

renovations. The Tenants said they had to store all of their belongings in a storage room and had the use of only one bedroom. The Tenants said they were not given a key to the rental unit but had to share one with the Landlord, K.V. and her spouse who came and went at will. The Tenants said on January 3, 2012, they received a text message or e-mail from K.V. advising them that the rental property had been sold and that the new owners were taking possession on February 1, 2012. The Tenants said K.V. told them that if they moved out by January 15, 2012, she would return their rent payment for January 2012, reimburse them for ½ of their moving expenses and would return their pet deposit and security deposit.

The Tenants said they were out of the province for part of the tenancy and when they returned the Landlord, K.V., accused them of scratching a floor and would not give them a key to access the rental unit to remove their belongings until they agreed to pay for the damage. The Tenants said they believed the scratch was likely caused by tools lying around the rental unit during the renovations but in any event, the Tenants said floors were worn and a condition inspection report had not been completed. The Tenants said they were able to gain access to the property through a window and removed their belongings. The Tenants said they were aware that the Landlords were required to give them proper notice to end the tenancy but with the ongoing renovations was not fit for occupation. The Tenants also said it had become very difficult to deal with K.V. and her spouse who would swear and yell at them and hang up. The Tenants said they were concerned that if they demanded proper notice, the Landlords would simply throw their belongings outside.

The Tenants said they did not have other accommodations to move into and had to stay with family members in Oroville, Washington and leave their belongings in storage. The Tenants said the inconvenience, stress and financial expenditures of moving within such a short period of time resulted in them having 2 hour commutes across the border to get to work, having to take unpaid days from work and self-employment and missing other personal obligations. The Tenants said they gave the Landlord, K.V., their forwarding address in writing via regular mail on January 20, 2012 and by text message on January 25, 2012.

Analysis

The Tenants said they paid their rent and deposits to the Landlord, K.V. The Tenants said although they had no direct dealings with the Landlord, C.S., his name appeared on a copy of the (unsigned) tenancy agreement given to them by K.V. and they believe he is or was an owner of the property. Section 1 of the Act defines a Landlord (in part) as follows:

> "the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy

> agreement, or exercises powers and performs duties under the Act or tenancy agreement."

In the absence of any evidence from the Landlords to the contrary, I find that K.V. and C.S. fall within the definition of a Landlord under the Act and are therefore properly named as parties in these proceedings. In particular, I find that K.V. and C.S. were (and may still be) registered owners and that K.V. accepted rent and the security deposit and pet deposit from the Tenants and presented them with the tenancy agreement.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he or she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit and pet damage deposit or to make an application for dispute resolution to make a claim against them. 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 or pet damage deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

I find that the tenancy ended on January 15, 2012 when the Landlord, K.V. locked the Tenants out and the Tenants moved out. In the absence of any evidence from the Landlords to the contrary, I find that the Tenants sent the Landlords their forwarding address in writing on January 20, 2012 and again on January 25, 2012. Consequently the Landlords had until February 11, 2012 at the latest to either file an application for dispute resolution to make a claim against the security deposit and pet damage deposit or to return them to the Tenants. I find that the Landlords did not return the Tenants' security deposit of $600.00 and pet damage deposit of $600.00, did not have the Tenants' written authorization to keep the security deposit or pet damage deposit and did not file an application for dispute resolution to make a claim against the deposits. As a result, I find that pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit ($1,200.00) and double the amount of the pet damage deposit ($1,200.00) to the Tenants.

RTB Guideline #16 – Claims in Damages describes "aggravated damages (in part) as follows at p. 3:

> "These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering."

In addition to s. 38, I find that the Landlords breached the following additional provisions of the Act:

- In failing to provide the Tenants with vacant possession of the rental unit throughout the tenancy, I find that the Landlords breached s. 28 of the Act;
- In failing to provide the Tenants with a key to gain access to the property and later denying them access to the property, I find that the Landlords breached s. 30 of the Act;
- In failing to provide the Tenants with a 2 Month Notice to End Tenancy for Landlord's Use of property in the prescribed form, I find that the Landlords breached s. 49(2) of the Act.

I find the Tenants endured significant inconvenience in their own home when they were denied the use of it so that the Landlords could carry out renovations. I also find that the Tenants endured significant inconvenience when they were advised on the 3rd day of the tenancy that they would have to vacate because the Landlords had sold the property. I further find that the Tenants suffered mental distress and inconvenience when they tried to move out only to find that the Landlords had locked them out of the rental unit.

In summary, I find that the Landlords (and in particular the Landlord, K.V.,) acted willfully and indifferent to the suffering that her breaches of the Act had on the Tenants. As stated above, I find that the Tenants moved out on January 15, 2012 due to the condition of the rental unit, to being denied access to the rental unit and because it had become futile to speak with K.V. or her spouse. I find that the Tenants had to move out before finding other accommodations with the result that they had to endure long commutes to work and lost wages. As a result, I award the Tenants aggravated damages of $1,200.00 which amount represents the compensation the Landlords would have had to pay the Tenants had they complied with the Act and given the Tenants proper notice.

In the absence of any evidence to the contrary, I also find that the Tenants are entitled to recover a portion of their moving expenses from the Landlords. At the hearing the Tenants sought compensation of their actual expenses of $607.32 however, I find that K.V. agreed only to compensate the Tenants for one half of their moving expenses if they moved out by January 15, 2012 and therefore I award them the amount of $303.66. As the Tenants have been successful in this matter, I also find that they are entitled pursuant to s. 72 of the Act to recover from the Landlords the $50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **$3,953.66** 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: June 04, 2012.

Residential Tenancy Branch