DECISION

Dispute Codes MNDC, MNSD, O

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking monetary orders for the return of double the security deposit and for money owed or compensation under the Act or tenancy agreement.

Only the Tenant and his Advocate appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified he served each of the Landlords individually with the Application and Notice of Hearing by registered mail, sent on October 26, 2012. Under the Act, such mail is deemed served five days after sending. Refusal or neglect to accept registered mail is not a ground for Review under the Act. I find the Landlords have been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties were involved in one prior Dispute Resolution Hearing, conducted on August 8, 2012, before a different Arbitrator (the "Previous Hearing"). The Tenant had applied to cancel a one month Notice to End Tenancy in the Previous Hearing.

Although the Tenant's Application was dismissed as he had not provided a copy of the Notice in evidence, the Arbitrator for the Previous Hearing took testimony on the Notice. (I note the Landlord did not request an order of possession when the Application was dismissed at the Previous Hearing.)

It is clear that the Landlord's Notice did not set out a cause as required under the Act, and the Arbitrator found the that one month Notice to End Tenancy was, "... not

compliant with section 52 of the Act and as such would be invalid and not enforceable.", as described in the written reasons.

Issue(s) to be Decided

Is the Tenant entitled to double the security deposit?

Is the Tenant entitled to monetary compensation from the Landlords?

Background and Evidence

This tenancy began on January 1, 2012, with the parties entering into a written tenancy agreement. The Tenant was required to pay $350.00 per month in rent, and paid the Landlords a security deposit of $175.00 on January 2, 2012. The initial term of the tenancy agreement was for six months, then it became a month to month agreement and required the parties to give, "... proper notice to terminate." [Reproduced as written.]

The rental unit is a basement suite in the residential home below the floor occupied by the Landlords. The Tenant testified that he had a separate bathroom and kitchen facility from the Landlords, which he shared with another renter. The testimony of the Tenant was that he did not share the kitchen and bathroom in the rental unit with the Landlords.

In regard to the tenancy agreement, I note the Landlords have included several unenforceable terms which are contrary to the Act. For example, there is a list of provisions such as no smoking in the rental unit, and no pets in the rental unit, and below this list there is a clause that states,

> "IMMEDIATE EVICTION WILL FOLLOW AT THE END OF THAT PARTICULAR MONTH IF ANY OF THE ABOVE IS BREACHED."
>
> [Reproduced as written.]

While the Landlords are allowed to have terms in the agreement regarding no smoking or no pets, I note that the "immediate eviction" clause is not valid or enforceable, as the Landlords must use the provisions of the Act to end a tenancy, which would require a valid one month Notice to End Tenancy in this particular example.

Furthermore, under section 5 of the Act, the parties may not avoid or contract out of the Act or the regulations. Simply put, a landlord and tenant may not agree to avoid or not follow the Act.

As described above, the Landlord had given the Tenant an invalid Notice to End Tenancy in August of 2012. At the end of August or on September 1, 2012, the Tenant went to pay the Landlord the rent for September 2012. The Landlords refused to take the rent and told the Tenant he had to move.

The Tenant returned to the Landlords' residence and recorded the conversation that took place between him and the female Landlord. I have listened to the recording provided in evidence by the Tenant. I will paraphrase the contents below.

In the recording the female Landlord is offered the rent money by Tenant. The female Landlord refuses the rent money and tells the Tenant he must move because they gave him a notice. The female Landlord informs the Tenant that if he does not move the Landlords will call the police.

When the Tenant explains to the female Landlord that they have to give him a proper Notice to End Tenancy, the female Landlord tells the Tenant that they do not want him living in the basement anymore. The female Landlord tells the Tenant that she does not want rent, because the Landlords gave the Tenant a notice.

The female Landlord then informs the Tenant that the Landlords will just force him out, because it is their house. The female Landlord then informs the Tenant that she will call the police to, "...drive him out".

When the Tenant informs the Landlord he is aware of his legal rights as a tenant, the female Landlord laughs at the Tenant. I do note that otherwise the recorded conversation was quite business like and neither party was overtly acrimonious.

On September 1, 2012, a Saturday, the Tenant received a telephone call from the police on his cell phone while he is studying at school. I note the Tenant is a foreign student, studying in British Columbia, and has a limited facility with English. The Tenant took a taxi cab to the rental unit to rush to discuss this situation with the police officers present at the rental unit.

The Tenant testified that the police at the rental unit informed the Tenant that he must move out the rental unit immediately. The Tenant testified that he informed the police that the Landlords had no order of possession and therefore, they could not evict him.

According to the testimony of the Tenant the police officer ignored this and seemed to be under the impression that this tenancy had no jurisdiction under the Act, as the police officer stated that the Tenant was sharing a bathroom and kitchen.

During the hearing, the Tenant alleged that the Landlords wrongly informed the police that the Tenant was sharing the rental unit with them and the Act did not apply.

According to the testimony of the Tenant the police officer also informed the Tenant he had contacted the Residential Tenancy Branch and had been informed there was no jurisdiction under the Act, as the Tenant was sharing a kitchen and bathroom with the Landlords. I note that this occurred on a Saturday and no offices of the Residential Tenancy Branch are open on weekends.

The Tenant testified that he became frightened that any serious trouble with the police would cause him to be deported and he could not continue his studies. The Tenant further alleged that during these conversations he was informed that he could be charged with assault or other charges if he did not vacate the rental unit.

Apparently the Tenant was informed he had to move out the next day. I note the Tenant provided photographic evidence and alleged that his belongings had been packed for him and were put out of the rental unit for him to remove by the Landlords.

The Tenant also recorded a conversation he had with a second police officer on the day the Tenant was vacating the rental unit. I am not including this conversation in my weighing of the evidence, as it appears throughout the recording that this police officer is relying on information he was provided second hand by the parties and possibly the officers who attended in the first instance.

The Tenant removed his luggage from the rental unit property on September 2, 2012, and the rest of his property was removed before the end of September 2012. The Tenant had to use taxi cabs to move.

The Tenant testified he had paid August 2012 rent, and he has provided evidence that the Landlord refused payment of September 2012 rent.

The Tenant is claiming $1,348.15 in compensation from the Landlords. This is comprised of loss of quiet enjoyment, the cost of finding alternative accommodations on an emergency basis, the cost of taxi cabs to travel to the rental unit on an emergency basis and to remove his belongings, and for an additional $175.00 as a doubling of the security deposit.

The Tenant gave his forwarding address in writing to the Landlords to return the security deposit to on September 21, 2012. The Landlords initially returned an incorrect amount.

Then on October 17, 2012, the Landlords returned to the Tenant $175.00, and the Tenant has apparently cashed this cheque.

Analysis

Based on the uncontradicted evidence and testimony, and on a balance of probabilities, I find the following.

I find that the Act has jurisdiction in this matter. I find that the Landlords and the Tenant were not sharing kitchen or bathroom facilities; that the Landlords had used a tenancy agreement and the rental unit was a separate suite; and that the Landlords did not put forward or make any submissions at the Previous Hearing that there were any issues of jurisdiction. For all of these reasons, I find that this matter is under the jurisdiction of the Act, and I have the authority to proceed.

I find that the Landlords have breached the Act and the tenancy agreement.

A tenancy in British Columbia may only end in accordance with section 44 of the Act and the Landlords had no right or authority under the Act here to have the Tenant removed from the rental unit or to take possession of the rental unit.

The Landlords have breached the Act in one of the most serious ways possible. They have forcibly removed the Tenant from the rental unit without an order of possession.

Furthermore, even if the Landlords had obtained an order of possession, which they did not, the only persons authorized to remove the Tenant from the rental unit would have been a Bailiff appointed by the Supreme Court of British Columbia, acting under a Writ of Execution for the order of possession.

It is not evident to me what authority the police had in this situation to require the Tenant to vacate the rental unit. However, the Tenant stated during the hearing that this particular issue was being investigated and accordingly, I leave this to the proper authorities to determine.

I find it is more probable than not that the Landlords intentionally misinformed the police as to the living arrangements, and intentionally misinformed the police as to the issue of jurisdiction, in order to have the Tenant "*driven out*" of the rental unit as they had threatened. It is certain the Landlords knew that the Notice given in August was invalid and not enforceable, as that is written in the decision given at the Previous Hearing. Furthermore, according to the testimony of the Tenant, the Arbitrator at the previous

hearing had orally informed the Landlords that they would have to issue a new and valid Notice to End Tenancy, in order to end the tenancy.

Based on the above factors, I find that the Landlords acted in a high-handed fashion when they intentionally ended this tenancy contrary to the Act.

I also find that the breaches of the Act and the tenancy agreement by the Landlords caused the Tenant to suffer a total loss of quiet enjoyment of the rental unit pursuant to section 28 of the Act, and I find this loss is equivalent to one month of rent.

The Landlords are also cautioned that further types of these breaches may subject them to administrative penalties under the Act, which could result in the Landlords paying fines of $5,000.00 per day or per instance of breach. Nonetheless, this was not an administrative penalty proceeding and I only include this as a strong caution to the Landlords to carefully follow the Act.

There was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38. Therefore, I find the Landlords have breached section 38 of the Act by failing to return the security deposit to the Tenant as required.

The Landlords are in the business of renting and therefore, have a duty to abide by all the laws pertaining to Residential Tenancies. Overall I find they failed to exercise this duty and intentionally acted in contravention of the Act.

As to compensation for the Tenant, a party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

As described above, I have found that the Tenant has proven that the Landlords breached the Act and tenancy agreement. I find that the breaches of the Act by the Landlords have caused the Tenant to suffer losses.

The Tenant has provided receipts for finding emergency alternate accommodation in the amount of $480.00, for use of taxis for emergency attendance at the rental unit and for moving purposes in the amount of $168.15, and a rent receipt for payment of rent to the Landlords in the amount of $350.00. I find the Landlords must also compensate the Tenant an additional $175.00 in compensation for the doubling of the security deposit. I find that the Tenant has proven the value of these losses. I also find that there is no evidence that the Tenant did not act properly to mitigate his losses.

Having made the above findings, I must order, pursuant to sections 7, 38 and 67 of the Act, that the Landlords must pay the Tenant the sum of **$1,173.15**, comprised of $480.00 for alternate emergency accommodations, $350.00 for one month of loss of quiet enjoyment of the rental unit, $168.15 in taxi fares, and $175.00 for ½ the doubling of the security deposit, as the Tenant had already received $175.00.

Conclusion

The Tenant has established a monetary claim against the Landlords, due to their various breaches of the Act and tenancy agreement.

The Tenant is given a formal monetary order for **$1,173.15**, and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: February 1, 2013

Residential Tenancy Branch