



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking a monetary order for compensation for damage or loss, unpaid rent and the recovery of the filing fee paid for this application. The landlord seeks \$10,009.00 plus a \$100.00 filing fee.

Both parties appeared at the hearing of this matter and gave evidence under oath.

The landlord testified that she served her application for dispute resolution on the tenants "...sometime in August..." 2012. The tenants testified that the landlord's application is date stamped as having been filed on October 26, 2012 and that they were served with the application sometime during the first week of November 2012.

Given that the Application is dated as having been filed October 26, 2012, I will accept the evidence of the tenants that it was served on them in November rather than in August, 2012.

Issue(s) to be Decided

Has the landlord met the burden of proving she is entitled to the Orders sought?

Background and Evidence

The parties entered into a fixed term tenancy agreement signed by the landlord on August 29, 2010 and by the male tenant on September 9, 2010. The tenancy was to commence on October 1, 2010 and continue for 2 years ending on September 30, 2012 at which time it would convert to a month-to-month tenancy or another fixed term. Rent was fixed at \$3,500.00 per month and the tenants paid a security deposit of \$1750.00 on September 23, 2010 plus \$815.00 representing pro-rated rent for September 2010 as noted in the agreement.

The landlord says there was an earlier decision of the Residential Tenancy Branch that must be overturned. The landlord submits that she was badgered and coerced into that decision and it should never have been made as it was not a real hearing.

The landlord says that the tenants vacated on July 5, 2012 prior to the end of the fixed term. The landlord says she was unable to re-rent the premises due to scratches on the hardwood floors and other damages. The landlord is therefore seeking loss of revenue to the end of the fixed term. The landlord confirmed that the tenants only paid \$709.32 in rent for July. The landlord seeks the balance of the rent for July (\$2,790.68) plus full rent of \$3,500.00 for each of August, September and October 2012. The landlord testified that she is also seeking recovery of costs for cleaning and repairs although her application seeks a total of \$10,009.00 and the rents claimed alone total \$13,290.68.

The landlord interjected again about the previous hearing and how this Arbitrator had to throw that previous Decision out.

The landlord testified that she did not secure a new tenant unit November 1, 2012 because the rental unit could not be rented because it was unclean, damaged and because the tenants engaged in a course of action to deter prospective tenants. The landlord testified that she had submitted receipts for cleaning and repairs.

The landlord testified that she did not prepare Condition Inspection Reports. The landlord says that the tenants are large people and she is only 112 pounds and she was in fear for her safety. The landlord says the tenants began to push her and she had to run out of the house and call the RCMP. The landlord stated that there was a report filed with the RCMP to prove the incident although that report was not submitted into evidence.

The landlord testified that the addendum allowing the tenants to break their lease if they were transferred was not signed by her. When the tenants objected to this statement saying it did bear her signature the landlord said it was "...just handed to me what I could do..."

The subject Addendum to the Rental Lease Agreement entitled a "Diplomatic Clause" states as follows:

The lessor and the lessee agree that in the event he lessee is transferred by the U.S. Government at any time during the said lease term for such a period of time that it would be unreasonable for the lessee to continue residing in the leased premises, then the lessee may terminate this lease by providing the lessor sixty

(60) days advance written notice and satisfactory evidence of such transfer and upon termination of the notice period, this lease shall be considered null and void and no rents shall accrue beyond the date the premises is surrendered

(reproduced as written)

This Addendum was signed on August 31, 2010. The tenants noted that the landlord did not provide this portion of the lease with her evidence package.

The landlord says the Addendum is irrelevant because she has a friend who works with Canada Customs who advised her that these tenants were not “far up enough” to be transferred by the U.S. Government.

With respect to her claim for damages the landlord submitted a letter from “Metropolitan Studios” dated July 7, 2012 entitled a “Report on the damage done by the last tenants to the property at Sunnyholme in Richmond, BC” the letter is unsigned and unsworn but it lists several repairs and notes that “...the estimate for these repairs total \$538-00 and were completed on October 10th, 2012.”

The landlord also submitted an email from “Wellington” addressed to the landlord dated November 5, 2012 saying:

This email is to confirm that I did place an ads for your property at Sunnyhome Crest in the month of July 2012. We have tried several times on renewing the ads and we were not able to rent out.

(reproduced as written)

The landlord submitted that the other reasons she could not re-rent the premises is because the tenants thwarted prospective tenants by putting notifications on Craigslist telling lies about her. The landlord submitted that she went to the police but they would not do anything. She also stated that the police did lay charges against the tenants for pushing her around at which time she had to kick the female tenant and run “...out of my own house”.

The tenants deny the landlords allegations. The tenants said that they signed a 2 year fixed term lease with the landlord with the addendum that if they were transferred they would give 60 days’ notice of their need to vacate. The landlord accepted their 60 days notice and pro-rated rent for July and the tenants vacated leaving their written

forwarding address with the landlord. The tenants testified that they were in fact transferred and are now living and working in Tampa, Florida.

The tenants submitted photographs to show the condition of the rental unit and say that it was in a clean and damage free condition when they moved out. The tenants submit that the cleaning receipt supplied by the landlord was the receipt supplied to them by the cleaning service they hired and paid. The receipt for \$420.00 is from Royal Cleaning Concept was a receipt issued in the name of the female tenant for "moving out house clean".

The tenants testified that at a hearing held September 11, 2012 which both they and the landlord attended they were awarded \$3,550.00 based on a finding that the landlord had not returned the security deposit or made a claim to retain the security deposit within the time frame set out in the *Residential Tenancy Act*. In such cases the Act allows the tenants to recover double the deposit paid and this is what was awarded to them, however, the landlord has refused to pay although duly served with the Decision and Order. The tenants say the landlord did not file her claim until they attempted to collect this award from her.

The tenants say that because the landlord has refused to pay the Order they are now seeking to enforce their Order in the Provincial Court of British Columbia. A payment hearing has been set for March 4, 2013 at 9:30 a.m. The tenants submitted the Summons with respect to the payment hearing which now shows the landlords debt to be \$3,677.55 with court costs and creditors' expenses added.

The landlord agreed she has not returned the deposit and never intends to. The landlord stated that the tenants could "...go ahead and try to get the money but it will be over my dead body..." she also said that the tenants "...are bastards..." and that they "...didn't do anything they even hired a truck and said it was the truck people who did all the damage then I find out they work for somebody who does this stuff and she will lie and she broke the lease and it was you who told me to sue them for \$10,000.00 not me, you made me do this".

The landlord went on to repeat that the previous decision awarding the tenants the security deposit as not a real hearing and she wants to discuss that decision here today.

The tenants say that the landlord was yelling hysterically at the move out just as she was doing in this hearing. The tenants reiterated that the landlord is not abiding by the law in paying what she owes them. In their frustration to collect the debt owed to them

they did place an advertisement on Craigslist on October 8, 2010 in relation to the landlord's advertisement to warn other tenants stating:

This landlord was just served a monetary order judgment to pay her former tenant double security deposit! Beware of this landlord,,,she has been taken to residential tenancy and small claims court before for same reasons!!!

(reproduced as written)

The landlord says she did attend the hearing on September 11, 2012 but she was not given an adequate opportunity to plead her case. The landlord says that she only received notice of the hearing the day before and she had just returned from attending her brother's funeral out of town. The landlord testified that she immediately called the Residential Tenancy Branch and was advised by them to call in to the hearing and seek an adjournment. The landlord says she did as instructed but the Arbitrator would not allow an adjournment even though the Residential Tenancy Branch person told her he would. The landlord testified that the arbitrator insisted on continuing with the hearing without her consent. The landlord testified that it was "...not a real hearing..." and she has no intention of paying the Order. The landlord testified that the Arbitrator "...bullied and badgered..." her and would not listen to what she had to say and still, no one is listening to her.

The landlord testified that she attended this hearing because she is concerned but she does not have time for this and she has a heart condition and she cannot take this kind of badgering by the tenants and the Residential Tenancy Branch arbitrators. The landlord went on to say that everyone knows how the Residential Tenancy Branch always decides in favour of tenants and that there have been articles in the paper how landlords are ripped off by the tenants and by the Residential Tenancy Branch every day.

Analysis

Although the landlord repeatedly raised concerns about the previous decision, I am unable to revisit that decision as it is final and binding upon the parties.

Overall I accept the evidence of the tenants, it was clear, consistent and supported by the documentary evidence supplied by both parties. In contrast, the landlord's evidence was erratic, inconsistent, often irrelevant and not supported by the documentary evidence supplied.

The tenants have supplied a tenancy agreement and addendum indicating that the parties agreed that the tenants could vacate upon 60 days notice. At first the landlord said she did not sign the addendum then she agreed she signed but noted she signed it against her will. However she gave no other testimony with respect to how the tenants coerced her into signing the addendum. I do not believe the landlord was forced to sign. I think it is more reasonable and probable that given the nature of their work and that they might be transferred the tenants sought the addendum to allow them to break the 2 year lease should they be transferred and the landlord agreed. When the tenants were transferred they supplied 60 days written notice as agreed and the landlord accepted their pro-rated rent. In so doing I find that the landlord did accept the end of the fixed term tenancy and she is not entitled to recover loss of revenue for any months thereafter. This claim is therefore dismissed.

With respect to damages the landlord's claim for loss of revenue exceeds the entire amount claimed in her Application. However, even if it had not, the landlord failed to prepare Condition Inspection Reports as is her duty as a landlord and I find that the landlord has failed to bring sufficient evidence to show that the tenants caused the damages now claimed. The landlord has tendered an invoice for plumbing repairs performed during the tenancy and a report of damages with an estimated repair cost of \$538.00 but there is no indication whether those repairs arose as a result of the tenants' conduct. With respect to the whole of this claim I find that I agree with the tenants that it is more likely than not that the landlord brought this claim in retaliation against the tenants for having obtained an Order to recover double the security deposit they paid. On this point while the landlord admits that she did not comply with the Act in handling the tenants' deposit she has also stated that she will not comply with the Order issued in that regard. I find this cavalier disregard for the law to be troubling in that it casts a shadow on her credibility. Overall I prefer the evidence of the tenants that they left the rental unit in a clean and damaged free state and I therefore dismiss the landlord's claim for damages.

Finally, with respect to the landlord's claims that she has been bullied and badgered by a previous arbitrator and by this arbitrator I note that throughout this hearing the landlord was belligerent, interruptive and disrespectful towards all the persons in attendance at this hearing.

Conclusion

The landlord's claims are dismissed in their entirety.

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 28, 2013

Residential Tenancy Branch



D. SIMPSON, Arbitrator
Residential Tenancy Branch

