Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for unpaid rent or utilities, for authorization to retain all or part of a security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenants, the landlord, and counsel for both parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party.

The parties agreed that they received the evidence package from the other party and had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the *Act.*

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act,* and if so, in what amount*?*
- What should happen to the tenants' security deposit under the *Act?*

Background and Evidence

A fixed term tenancy began on July 1, 2012 and was to expire on June 30, 2013, with the tenants to provide vacant possession of the rental unit on June 30, 2013. Monthly rent in the amount of $4,500.00 was due on the first day of each month. A security deposit of $2,250.00 was paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The landlord is claiming $14,000.00 comprised of the following:

1. Loss of April 2013 rent	$4,500.00
2. Loss of May 2013 rent	$4,500.00
3. Loss of June 2013 rent	$4,500.00
4. Legal costs	$500.00
Total	**$14,000.00**

The tenants referred to page 14 of the landlord's evidence, an e-mail from tenant MM to the landlord dated January 7, 2013 which reads in part:

> "Happy New Year...(We)..just wanted to let you know that our new home will be ready for us to move into March 1st. We know our contract with you is until June 30 and we will honour that. However, we were hoping that you would try to re-lease it to new tenants sooner than June 30th and to help facilitate that we are happy to make the house available for showings while we are still in it. Please let us know your thoughts on this and get back to us at your convenience."

Tenant MM testified that her intent of the above e-mail was to see if the landlord was open to the idea of re-leasing the rental unit to new tenants. On January 21, 2013, at 11:13 a.m. the tenants wrote another e-mail to the landlord requesting to change the proposed March 1, 2013 date to April 1, 2013 to give them more time to move into their new home, and asked the landlord for approval, referred to as page 15 in the landlord's evidence. Below the tenants' e-mail, the landlord responded on January 21, 2013 at 11:14 a.m., one minute later, with "Ok".

The landlord testified that she contacted a company, U.A., to assist her with finding a new tenant to rent the rental unit. The landlord confirmed that she e-mailed the tenants on March 3, 2013 at 1:49 p.m, which was submitted in evidence on page 17 of the landlord's evidence. In the March 3, 2013 e-mail the landlord wrote that the company, U.A., "has found a tenant to start April 1. Please let me know the width and height of the dishwasher. Please note the observation about the carpet. Thank you". On page 17 of the landlord's evidence, the tenants wrote in their reply e-mail dated March 3, 2013 at 3:33 p.m. "…That's great that those people want to lease the house" and they provided the dishwasher information the landlord requested. The tenants further wrote "…As for the carpet, the stairs and top of the stairs are in bad shape. I have had them professionally steam cleaned twice since we have lived here, and they look pretty good

right afterwards but the carpets are old and the age starts to show through pretty quickly. We will have the carpets professionally cleaned before we go."

Tenant MM testified that based on the March 3, 2013 e-mail response from the landlord, the tenants had the carpets professionally cleaned, booked a moving company, booked a professional cleaner to clean the rental unit, arranged for a transfer of their utilities to their new home, began packing and began to move their furniture to their cabin as they were still completing the finishing in their new home. Tenant MM testified that half of their furniture was moved out of the rental unit by March 21, 2013 and that 70% of the rental unit had been packed up and physically moved out of to ensure they could vacate the rental unit by March 31, 2013. Tenant MM stated that if they had not received the March 3, 2013 e-mail from the landlord, they would not have moved out of the rental unit.

The landlord testified that on March 11, 2013 she was advised by the company, U.A., by e-mail that the new tenant would not be signing the lease and was backing out of the tenancy. The March 11, 2013 e-mail was submitted in evidence on page 18 of the landlord's evidence. The landlord testified that she asked the company, U.A., to forward the March 11, 2013 e-mail to the tenants and "assumed it was done", however later found out that the company, U.A. did not forward the e-mail to the tenants. The parties agreed that the tenants were not advised that the new tenants had backed out of the lease until March 21, 2013, when the tenants received an e-mail from the company, U.A.

The landlord stated that on March 22, 2013 she called tenant MM to advise there had been a miscommunication and to pay April rent. Tenant MM testified that there was no agreement to pay April or May 2013 rent and had not offered to split May 2013 rent as claimed by the landlord either. Tenant MM stated that she was shocked to get an e-mail on March 21, 2013 from the company, U.A. as the March 3, 2013 e-mail confirmed a new tenant had been found and they relied on that information before preparing to move since March 3, 2013.

The landlord testified that she offered to find new tenants by hiring the company, U.A. in "good faith" and that she assumed that U.A. had advised the tenants on March 11, 2013 which she later determined was not done.

The landlord confirmed during the hearing that it would be "reasonable to assume" the tenants were required to vacate on March 31, 2013 based on the e-mail of March 3, 2013, which stated that new tenants had been found for April 1, 2013.

The parties confirmed that they communicated by e-mail and by phone during the tenancy.
Regarding the landlord's mitigation of their loss, on page 16 of the landlord's evidence, there is a letter from company, U.A. which indicates that they were asked by the landlord on April 26, 2013 to lower the asking rent to $4,400.00 and on May 23, 2013 were asked to lower the asking rent to $4,000.00.

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.

Analysis

Based on the documentary evidence, the oral testimony of both parties, and on the balance of probabilities, I find the following.

Test for damages or loss

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 landlord 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 tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I will first deal with the landlord's claim for legal fees. The *Act* does not provide for a remedy for the landlord's legal fees related to making an application for dispute resolution under the *Act.* Given the above, **I dismiss** the landlord's claim for $500.00 for legal fees, without leave to reapply.

I will now deal with the landlord's claim for the loss of rent for April 2013, May 2013 and June 2013 in the amount of $13,500.00. There is no dispute that the landlord sent an e-mail to the tenants on March 3, 2013 indicating that a new tenant had been found for April 1, 2013. The tenants responded to that e-mail on the same date confirming that they received the landlord's response. According to the landlord's own testimony, the landlord assumed incorrectly that the company she hired to find a new tenant, U.A., had advised the tenants on March 11, 2013 that the new tenant backed out of the rental agreement for the rental unit. It was not until March 21, 2013 that the tenants were advised by e-mail from U.A. that the new tenant would not be moving into the rental unit. Both parties confirmed that they used e-mail to communicate during the tenancy.

I find that it was reasonable for the tenants to rely on the e-mail from the landlord on March 3, 2013, which clearly indicated that a new tenant had been found for April 1, 2013. Therefore, **I find** the tenancy ended on March 31, 2013 by the mutual agreement of the parties arranged by e-mail on March 3, 2013.

I find that the miscommunication between the landlord and the company she hired, U.A., was not the fault of the tenants, and that there is no jurisdiction under the *Act* to consider a dispute between the landlord and the landlord's agent for loss of rent. As a result, **I find** that the landlord has failed to prove that the tenants violated the *Act*, regulation or tenancy agreement. Therefore, **I dismiss** the landlord's claim in full due to insufficient evidence, without leave to reapply.

As the landlord was not successful with her claim, I **do not** grant the landlord the recovery of the filing fee.

As the landlord's claim has been dismissed, **I order** the landlord to return the tenants' full security deposit of $2,250.00 to the tenants within 15 days of receiving this decision. Should the landlord fail to return the tenants' security deposit, **I grant** the tenants a monetary order in the amount of **$2,250.00** which may be served on the landlord and enforced in the Provincial Court of British Columbia (Small Claims).

Conclusion

I dismiss the landlord's application due to insufficient evidence, without leave to reapply.

I order the landlord to return the tenants' full security deposit of $2,250.00 to the tenants within 15 days of receiving this decision. Should the landlord fail to return the tenants' security deposit, I grant the tenants a monetary order in the amount of $2,250.00 which may be served on the landlord and enforced in the Provincial Court of British Columbia (Small Claims).

This decision is final and binding on the parties, unless 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: July 10, 2013

Residential Tenancy Branch