Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' application (filed August 21, 2013): MND, MNR, MNSD, FF

Tenants' application (filed November 22, 2013): MNDC, MNSD, FF

Introduction

This Hearing was convened to consider cross applications. The Landlords filed an Application for Dispute Resolution seeking a monetary award for unpaid rent and damages to the rental unit; to apply the security deposit and pet damage deposit towards partial satisfaction of the Landlords' monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenants filed an Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; return of the security and pet damage deposits; and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlords served the Tenants with their Notice of Hearing documents by registered mail sent to the Tenants' new address on August 26, 2013.

It was also determined that the Tenants served the Landlord with their Notice of Hearing documents by registered mail sent November 22, 2013.

Both parties provided late evidence to the other. Despite the late service of documents and the Tenants' Notice of Hearing documents, both parties indicated that they wished to proceed with the Hearing. Neither party sought an adjournment.

Issues to be Decided

1. Are the Landlords entitled to unpaid rent for the months of August and September, 2013 and a monetary award for damage to the floors at the rental unit, missing items and cleaning charges?

2. Are the Tenants entitled to return of the security and pet damage deposit, and compensation for the cost of moving and day care for their dog?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. On April 14, 2013, the parties entered into a one year lease, expiring May 1, 2014. At the end of the fixed term the tenancy could continue on a month-to-month basis or for another fixed term. The Tenants moved into the rental unit on April 17, 2013. The Landlord did not require the Tenants to pay pro-rated rent for April, 2013.

Rent was $1,650.00 a month, due on the first day of each month. The Tenants paid a security deposit and a pet damage deposit in the total amount of $1,650.00.

No condition inspection report was completed at the beginning of the tenancy; however on April 28, 2013, the Tenants e-mailed the Landlords a list of deficiencies, a copy of which was provided in evidence.

The Tenants ended the tenancy at the end of July, 2013, and gave the Landlords their forwarding address via e-mail on August 14, 2013.

The Landlords gave the following testimony regarding their claim:

The Landlords testified that the Tenants sent them an e-mail on June 29, 2013, indicating that they were ending the tenancy at the end of July, 2013. A copy of the e-mail was provided in evidence. The Landlords stated that they attempted to re-rent the rental unit for August 1, 2013, but were unsuccessful. They stated that on July 4, 2013, they advertised the rental unit on-line with a popular website. The Landlords testified that when they had not re-rented the rental unit for September 1, 2013, they decided "sometime in September" that they would sell it. The Landlords seek loss of revenue for the months of August and September in the total amount of **$3,300.00**.

The Landlords testified that the Tenants signed the Form K (Strata form acknowledging receipt of the Strata Bylaws) on April 16, 2013. A copy of the Form K was provided in evidence.

The Landlords testified that the Tenants did damage to the hardwood floors, which were 4 years old. The Landlords seek compensation for repairing the floors in the amount of **$1,997.52**. They stated that they replaced the existing hardwood, but are not seeking the full price of replacing it. The Landlords provided an invoice in the amount of $3,202.50 for the cost of removing the damaged hardwood and installing new flooring.

The Landlords testified that the Tenants did not leave the rental unit reasonably clean at the end of the tenancy and seek to recover the cost of cleaning in the amount of **$160.00**.

The Landlords stated that several items were missing from the rental unit at the end of the tenancy and that the Tenants had not returned the mail key. The Landlord seeks a monetary award for these items, calculated as follows:

Missing shelves and poles from closet	$350.00
Missing fire extinguisher	$103.47
Missing step stool	$44.85
Missing closet doors in spare bedroom	$319.00
Cost to replace mailbox key	$33.35
TOTAL	**$850.67**

The Landlords provided photographs of the rental unit in evidence.

The Tenants gave the following reply to the Landlord's claim

The Tenants acknowledged signing the Form K on April 16, 2013. They stated that they were not provided with a copy of the Strata Bylaws until after they had signed the tenancy agreement. The Strata Bylaws include the following provision:

> 1 (one) dog and 1 (one) cat or one of each. The height at the shoulder of any dog will not exceed 16 inches when fully grown and any pet must not weigh more than 35 lbs.

The Tenants testified that they have a large dog but that they and the Landlords thought it would be "an OK size". The Tenants testified that on the day their moving truck arrived, they met with the Landlords in the lobby of the rental property and agreed that there might be a problem with the dog.

The Tenants submitted that they should not be held to the tenancy agreement. The Tenants stated that they believe that the rental contract was "frustrated". They submitted that the Landlords should have been aware of the Bylaws regarding pets and that they had told the Landlords that their dog was 100 pounds and 28 inches at the shoulders. The Tenants stated that they had a friend who was willing to take over the lease and that they had advised the Landlords.

The Tenants submitted that the Landlords made little attempt to re-rent the rental unit and that there were no showings for the month of July, 0213.

The Tenants denied damaging the floors, which they submitted were laminate and not hardwood. They stated that the floors were scratched when they moved into the rental unit and referred to the e-mail they sent the Landlords with respect to deficiencies.

The Tenants stated that they hired a cleaner to clean the rental unit at the end of the tenancy and that it was left in reasonably clean condition.

The Tenants stated that they believe the photographs provided by the Landlords were taken before the Tenants moved in and that the pictures are not how they left the rental unit. The Tenants stated that they left the closet shelves in the closet; that they never saw a fire extinguisher or stool; that they were never given a mail box key; and that there were no doors on the closet in the spare bedroom when they moved into the rental unit.

The Landlords gave the following reply:

The Landlords stated that the scratches on the floor that the Tenants refer to in their e-mail of deficiencies were “nothing major”; however, there were deep gouges in the floor at the end of the tenancy.

The Landlords agreed that there were discussions with the property manager in the lobby of the rental unit and that the property manager stated that the dog was likely too large; however, the Tenants agreed to go ahead with the lease and move into the rental unit.

The Landlords acknowledged that the Tenants advised that they had a friend who would be interested in taking over the lease, but stated that the Tenants’ friend did not contact them to make an application. They stated that the Tenants were obstructive by commenting on their July 4th on-line ad that the Landlord was seeking $50.00 more a month in rent than the Tenants were paying. The Landlords testified that they increased the rent because strata fees went up.

As a result of the Tenants’ comments and the fact that they had not been provided with due notice to end the tenancy, the Landlords testified that they made enquiries and were advised that they should not advertise the rental unit until the Tenants had vacated the rental unit.

The Tenants gave the following testimony with respect to their claim:

The Tenants stated that they put their dog in day care for the three months that they lived at the rental unit because their dog was not allowed in the building. The Tenants seek reimbursement for that cost, in the amount of **$3,534.30**. The Tenants provided a copy of the invoice in evidence (99 days at $34.00 a day).

The Tenants also seek to recover the cost of their moving expenses in the amount of **$729.75**. A copy of the invoice was provided in evidence.

The Tenants also seek return of the deposits because they do not agree that they or their dog caused damage to the rental unit.

The Landlords gave the following reply to the Tenant's claim:

The Landlords stated that they had no idea that the Tenants were boarding their dog until they received the Tenants' application for dispute resolution. They stated that the Tenants had not indicated that there was any issue with the dog living in the rental unit until the Tenants told the Landlords that they were ending the lease and the Landlords told the Tenants that they would be enforcing the terms of the lease. The Landlords submitted that the Tenants initially told them that they were moving because the Tenants had received notice from their own tenants that they were moving out. The Tenants had decided to move into their own property.

The Landlords stated that the Tenants advised that they were going to try to "sneak under the radar" with their dog and that they were aware of another occupant at the rental property who had a large dog but there were no issues with the Strata.

Analysis

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Respondents pay for the loss requires the Applicants to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondents in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicants followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Regarding the Landlords' claim:

Section 52 of the Act states:

> **52 In order to be effective**, a notice to end a tenancy **must be in writing and must**
>
> **(a) be signed and dated by the landlord or tenant giving the notice,**
>
> **(b) give the address of the rental unit,**
>
> (c) state the effective date of the notice,
>
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
>
> (e) when given by a landlord, be in the approved form.
>
> (my emphasis added)

I find that e-mails do not comply with the provisions of Section 52 of the Act. In other words the Tenants' notice to end the tenancy was not a valid notice and therefore the Landlords could not rely on it. I accept the Landlords' submission that they would have been unwise to advertise the rental unit until such time as the Tenants had given up possession of the rental unit. I find that the Landlords are entitled to loss of revenue for the month of August, 2013, in the amount of **$1,650.00**.

On August 14, 2013, the Landlords confirmed that the Tenants had moved out of the rental unit. I find that the Landlords provided insufficient evidence of attempts made to re-rent the rental unit after August 14, 2013 (for example, copies of on-line ads).

Therefore I find that the Landlords did not provide sufficient proof that they followed Section 7(2) of the Act with respect to loss of revenue for the month of September, 2013. In any event, the Landlords testified that in September they decided to sell the rental unit. The Landlords' application for loss of revenue for the month of September is **dismissed without leave to reapply.**

With respect to the remainder of their claim, I find that the Landlords provided insufficient evidence to meet the test for damages as set out above. No Condition Inspection Reports were completed that meet the requirements of Section 20 of the regulation. Condition Inspection Reports are evidence of the state of repair and condition of the rental unit at the beginning and at the end of a tenancy unless either party has a preponderance of evidence to the contrary. A Condition Inspection Report also indicates the number of keys provided at the beginning of the tenancy. I find that the Landlords did not provide sufficient evidence that the Tenants damaged the floors, or sufficient evidence that the closet doors, shelves, poles and fire extinguisher and step stool were present at the beginning of the tenancy and missing at the end of the tenancy. Therefore the remainder of the Landlords' claim is also **dismissed without leave to reapply.**

Pursuant to the provisions of Section 72(2) of the Act, the Landlord may apply the security and pet damage deposits in total satisfaction of their monetary award.

The Landlords have been partially successful in their application and I find that they are entitled to recover **$50.00** of their filing fee from the Tenants. The Landlords are provided with a Monetary Order in that amount.

Regarding the Tenants' claim:

Based on the documentary evidence provided and the oral testimony of both parties, I find that the Tenants agreed to occupy the rental unit on April 17, 2013, even though they were aware that the Strata Bylaws did not allow larger dogs. The following is an excerpt from the Tenants' e-mail dated April 28, 2013, and provided in evidence:

> "There are tons of big dogs in the building and we are hoping to simply squeek under the radar as long as possible. Just please make sure strata has a forwarding address so if someone does have an issue, and you get a warning letter, we can deal with Jack instead of missing it and a fine incurring."

Section 44 of the Act provides the only ways a tenancy can end in British Columbia. The Tenants allege that the tenancy was frustrated and therefore ended under the provisions of Section 44(e) of the Act. I find that the principle of frustration does not

apply to this tenancy. A tenancy agreement is frustrated where, without fault of either party, the agreement becomes incapable of being performed because of an unforeseeable event (for example a catastrophic flood, earthquake or fire which renders the rental unit unliveable). I find that both parties knew at the beginning of the tenancy that the Strata Bylaws did not allow large dogs.

I find, on the balance of probabilities that the Tenants ended the tenancy for reasons other than the dog issue. On June 8, 2013, the Tenants e-mailed the Landlords, indicating that they were having problems with neighbours making a lot of noise. The Tenants also write, "No dog issues yet, like the place otherwise. ☺ " The Tenants also advised the Landlords that they were intending to move into a property that the Tenants own after receiving notice from their own tenants.

Section 45 of the Act provides the ways in which a tenant may end a tenancy. A fixed term tenancy may not be ended by a tenant before the end of the term, except in limited circumstances. Section 45(3) of the Act states that a tenant may end a fixed term tenancy if a landlord has failed to comply with a term of the tenancy agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure. I find that Section 45(3) does not apply to this tenancy.

For the reasons set out above, I dismiss the Tenants' claim for the cost of boarding their dog, or for the cost of moving expenses. The security and pet damage deposits have been extinguished pursuant to the provisions of Section 72(2) of the Act.

The Tenants' application is dismissed and therefore I find that they are not entitled to recover the cost of the filing fee from the Landlords.

Conclusion

The Landlords are entitled to a monetary award of $1,650.00. The Landlords may apply the security and pet damage deposits in complete satisfaction of their monetary award. The Landlords are hereby provided a Monetary Order in the amount of **$50.00**, representing partial recovery of their filing fee, for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (small claims) and enforced as an Order of that Court.

The Tenants' application is **dismissed.**

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: December 16, 2013

Residential Tenancy Branch