



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application filed September 11, 2013: MND; MNR; MNSD; MNDC; FF; 0

Tenants' application filed October 21, 2013: MNDC; MNSD

Introduction

This Hearing was scheduled to be heard on December 19, 2013, on consider cross applications. The Landlord seeks a monetary award for damages and unpaid rent and utilities; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards her monetary award; for "other" orders; and to recover the cost of the filing fee from the Tenants.

The Tenants KA and KM seek a monetary award in the equivalent of double the amount of the security deposit; and compensation for damage or loss under the Act, regulation or tenancy agreement.

These matters were adjourned to January 14, 2014. An Interim Decision was issued on December 19, 2013, which should be read in conjunction with this Decision.

The parties gave affirmed testimony at the Hearings.

The Landlord testified that she served the Tenants KA and KM with the Notice of Hearing documents by registered mail sent to the Tenants' new address on September 16, 2013. The Landlord provided the Canada Post tracking numbers and stated that the Tenant KA's copies of the documents were returned unclaimed. The Landlord stated that she did not have a forwarding address for the Tenants MH and AD and therefore was not able to serve them at their new address.

I find that the Tenants KA and KM have both been served in accordance with the provisions of Section 89(1)(c) of the Act. Failure to accept delivery of documents does not change the service provisions of the Act. I find that the Landlord did not serve the Tenants MH and AD in accordance with the provisions of the Act and therefore her application against MH and AD is dismissed without leave to reapply.

It was determined that the Tenants KA and KM served the Landlord with their Notice of Hearing documents and documentary evidence by registered mail sent October 22,

2013. The Tenants provided the registered mail receipt and tracking number in evidence. The Landlord acknowledged receipt of the documents.

Preliminary Matters

The Landlord's Application for Dispute Resolution indicates that she is seeking "other" relief; however, she did not provide sufficient details in her Application with respect to what other relief she is seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Landlord's application is dismissed.

Issues to be Decided

1. Is the Landlord entitled to compensation against the Tenants KA and KM for loss of revenue, unpaid utilities and damages to the rental unit?
2. Are the Tenants KA and KM entitled to return of the security deposit and compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The parties agreed on the following facts:

- This tenancy started on September 1, 2012.
- Monthly rent was \$2,000.00, due on the first day of each month.
- The Tenants paid a security deposit in the amount of \$1,000.00 at the beginning of the tenancy.
- The Landlord is holding the security deposit.
- No Condition Inspection Report that complies with the requirements of Section 20 of the Regulation was completed at the beginning or the end of the tenancy.

The Landlord and her agent gave the following testimony and submissions:

- The Landlord testified that this tenancy was a fixed term lease which was to end on August 31, 2013, but the Landlord could not locate a copy of the tenancy agreement. The Landlord submitted that because she could not locate the tenancy agreement, the tenancy became a month to month tenancy at the end of August, 2013.
- The Landlord stated that the Tenants did not give proper written notice to end the tenancy and moved out on September 1, 2013.
- The Landlord testified that the Tenants filed an application to cancel some notices to end the tenancy. That matter was scheduled to be heard on

September 4, 2013, but on the day of the scheduled hearing the Tenants advised the Arbitrator that they had already moved out, so the Arbitrator did not hear the Tenants' application. Neither party provided copies of the notices in evidence.

- The Landlord submitted that the Tenants owe her compensation for loss of revenue for the month of September, 2013; unpaid utilities in the amount of \$280.00; and the cost of repairing damage to walls and cleaning the rental unit at the end of the tenancy. The Landlord's total claim is \$2,880.00.

The Tenants gave the following testimony and submissions:

- The Tenants stated that the Landlord never gave them a copy of the tenancy agreement, but the Tenants remember that it was a one year term lease and that the parties would have to agree to a new tenancy at the end of the term.
- The Tenants testified that they moved out of the rental unit on September 1, 2013, after being given notice by the Landlord that the tenancy would not be continuing.
- The Tenants testified that the Landlord also gave them a notice to end the tenancy on June 30, 2013, but it was not on the correct form. The Tenants stated that they "misfiled an application to cancel the notice" and never intended to cancel it because they wanted to move out, but not until the end of August. The Tenants found new accommodation effective September 1, 2013.
- The Tenants stated that the Landlord also provided three 10 day notices: for having a cat; for having a barbeque; and for neglecting to mow the lawn.
- The Tenants submitted that they knew that they were responsible for paying utilities, but the Landlord never gave them copies of utility bills so they eventually put the utilities into their names. The Tenants dispute that they owe the Landlord money for utilities.
- The Tenants stated that they left the rental unit reasonably clean and undamaged at the end of the tenancy. The Tenants testified that they may have left one item in the fridge by mistake. The Tenants stated that there was a hole in the wall, which they had told the Landlord about, because the Landlord's husband replaced the door in February, 2013, and the original door stopper was not long enough to stop the door handle from banging into the wall. The Tenants submitted that therefore they were not responsible for this damage to the wall.
- The Tenants submitted that the Landlord was harassing them by issuing invalid notices to end the tenancy and attending at their work to serve them with papers.
- The Tenants stated that they provided their forwarding address to the Landlord on September 4, 2013. The Tenants seek double the amount of the security deposit and compensation for harassment, for a total of \$4,000.00.

The Landlord gave the following reply:

- The Landlord submitted that she did not issue 10 day notices for cats, barbeques

and failure to mow the lawn. She stated that the notices she gave were cautionary notices only and were issued because the Tenants were in breach of the tenancy agreement.

- The Landlord testified that she gave the Tenants copies of the utility bills by e-mail.
- The Landlord denied harassing the Tenants. She stated that she went to the Tenants' place of work to serve them with a notice to end the tenancy, and that when she found that they were not there, she left quietly. The Landlord submitted that no one at the Tenants' place of work knew who she was or why she was looking for the Tenants.

Analysis

Is the Landlord entitled to compensation for loss of revenue for September, 2013, unpaid utilities, and for damages to the rental unit?

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 Tenants pay for the loss requires the Landlord 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 Tenants 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 Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case neither party has a copy of the tenancy agreement. The Landlord stated that she cannot locate her copy. The Tenants stated that they were never given a copy. In any event, I find that the parties both agreed that the tenancy agreement was a term tenancy. I also find that the Landlord indicated that she was not interested in continuing the tenancy at the end of the term and that the Tenants acted accordingly. I do not find that the Tenants were required to provide written notice to end the tenancy because the tenancy ended on August 31, 2013, pursuant to the tenancy agreement. However, I do find that the Tenants over-held to September 1, 2013, and that the Landlord is entitled to one day's rent in the amount of **\$66.67** (\$2,000.00/30 days).

With respect to the remainder of the Landlord's application, I find that she has not provided sufficient evidence to prove her claim for the following reasons:

1. The Landlord did not provide sufficient documentary evidence with respect the amount of utilities that the Tenants owed; for example, a copy of the utility bills.
2. Section 21 of the Residential Tenancy Regulation provides that a condition inspection report completed in accordance with Part 3 of the regulation is evidence of the state of repair and condition of the rental unit at the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. The Landlord did not prepare a Condition Inspection Report at the beginning or the end of the tenancy. The Tenants agreed that the wall was damaged, but disputed being responsible for the damage. In addition, the Landlord provided no documentary proof with respect to the cost of repairing the wall or cleaning the rental unit. Therefore, I find that the Landlord has failed to meet parts one, two and three of the test for damages.

The Landlord's application has been largely unsuccessful, and therefore I allow partial recovery of the filing fee in the amount of **\$10.00**.

A landlord forfeits the right to claim against the security deposit for **damages** if the landlord fails to complete Condition Inspection Reports. However, in this case the Landlord claimed against the security deposit for **unpaid rent** and for damages. Further to the provisions of Section 72 of the Act, the Landlord may deduct her monetary award for unpaid rent from the security deposit. The balance of the security deposit, in the amount of \$923.33, must be returned to the Tenants forthwith.

Are the Tenants KA and KM entitled to compensation for damage or loss?

The Landlord has been awarded a total of \$76.66, which may be deducted from the security deposit. The remainder of the security deposit, **\$923.33**, must be returned to the Tenants forthwith.

The Landlord filed against the security deposit within 15 days of the end of the tenancy and therefore, I find that the Tenants are not entitled to compensation pursuant to Section 38(6) of the Act. Therefore, this portion of their claim is dismissed without leave to reapply.

I find that the Tenants provided insufficient evidence that the tenancy was devalued as a result of the Landlord's actions. More specifically, I find insufficient evidence that the Landlord harassed the Tenants by issuing caution notices and attempting to serve them personally with documents at their place of work. The Landlord has a right to serve the Tenants in person as long as the Landlord does not disrupt the Tenants' workplace and is there for a lawful purpose.

The Tenants' application for compensation for harassment in the equivalent of one month's rent is also dismissed without leave to reapply.

Conclusion

I find that the Landlord is entitled to one day's rent (for September 1, 2013) and partial recovery of the filing fee in the total amount of **\$76.67**. The remainder of the Landlord's application is **dismissed without leave to reapply**.

Further to the provisions of the Act, the Landlord may deduct \$76.67 from the security deposit. The remainder of the security deposit must be returned to the Tenant forthwith. The remainder of the Tenants' application is **dismissed without leave to reapply**.

I hereby provide the Tenants with a Monetary Order in the amount of **\$923.33**, for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (small claims) 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: January 20, 2014

Residential Tenancy Branch

