Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 10, 2014, by the Landlord to obtain a Monetary Order for: unpaid rent or utilities, to keep all of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. It was undisputed that the tenancy agreement listed two Landlords and two Tenants; however, the application listed only one Landlord and one Tenant. Evidence was received on file from the Landlord who was not listed as an applicant to this dispute. Therefore, for the remainder of this decision, terms or references to the Landlords or Tenants importing the singular shall include the plural and vice versa.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on March 1, 2013 and was scheduled to end March 1, 2014.

The Tenants were required to pay rent of $1,600.00 on the first of each month plus an additional $100.00 per month which the parties mutually agreed would be attributed to the pet and security deposits of a combined amount of $1,200.00. No condition inspection report form was completed at move in and the parties attended a move out inspection on February 28, 2014.

The Landlord testified that they had decided to sell the rental property and listed it near the end of November 2013. They had entered into an agreement with the Tenants that if the property sold prior to the end of their lease the Tenants could move into the Landlords' other property at a reduced rent.

The Landlord submitted that on February 2, 2014 they received a text message from the Tenant advising that the text was the Tenants' notice to end their tenancy effective February 28, 2014. She said that she responded, via text, and requested that the Tenants' notice be provided in writing. She indicated that she had sent a confusing text message initially because she had thought the tenancy agreement went from the 15th to the 15th of each month, but she later found out that was incorrect. The Landlord argued that they did not get a written notice from the Tenants and the next thing they knew the Tenants contacted them around February 26th, 2014, to find out if they could drop the keys off and arrange a move out inspection.

The Landlords have filed a claim for one month's rent for March 2014 because the Tenants did not provide a proper one month's notice. She said the Tenants March 1,, 2014 cheque was returned non-negotiable so the Landlords have lost rent for March 2014. The Landlord could not provide testimony as to why they cashed the March 1, 2014 rent cheque when they had regained possession of the unit on February 28, 2014, once the move out inspection was completed.

The Landlord stated that she had checked with people she knew on social media to see if they could get other renters but it was very difficult to rent the house when it was up for sale. The flyers referenced in their written submission were advertising for selling the house not renting it. Then on March 12, 2014 they accepted an offer to sell the property and the property remained vacant until the sale closed and title transferred on May 2, 2014.

The Tenant testified that they had spoken with the Landlords several times about the Tenants searching for another place that was less expensive. He argued that the Landlords were the ones who set the precedence of using text messaging for communicating. He noted that the Landlords always communicated with them by text message, even when arranging access to the rental unit for showings of the property to real estate agents and prospective buyers.

The Tenant submitted that the Landlords knew all along that they were vacating the unit at the end of February 2014 and it was not a surprise to them when he contacted them to make arrangements to return the keys and schedule the move out inspection. He argued that it was the Landlord who was confused as was clearly indicated in her text

message about their tenancy going from the 15th of each month. It was her spouse, the male Landlord, who called them to clarify that the tenancy went from the 1st of each month and confirmed that the Tenants were moving out. The Tenants were disputing that they owed the Landlords another month's rent as the Landlords were happy that they were moving out because it would be easier for the Landlords to sell the house when it was vacant.

In closing, the Landlord confirmed that she was initially confused about the terms of the tenancy agreement requiring notice by the 15th of the month, but argued that despite her confusion proper written notice to end this tenancy was not provided in writing by the Tenants, as required by the Act. She confirmed that the flyers and advertising were to sell the property and they only sought renters through people they knew on social media or other realtors, after the Tenants moved out. She argued that without the Tenants' written notice, they did not know that the Tenants were moving for certain. The Landlord submitted that they did not "advertise" the property for rent, only contacted people they knew, and they stopped looking for renters once they accepted the offer of purchase on March 12, 2014.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

A claim for damage or loss is proven only when all four criteria have been met.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the foregoing, the Tenants would have had to provide their notice to end tenancy no later than January 31, 2014 to end their tenancy as of February 28, 2014. Accordingly, I find the Tenants ended their tenancy, in breach of section 45(1) of the Act.

The Landlord submitted a claim that indicates that due to the Tenants breach of ending their tenancy without proper notice, they lost rent for the month of March 2014 in the amount of $1,600.00.

The evidence supports that the Landlords had the property listed for sale and they did not embark on advertising the unit for rent; rather, once the Tenants moved out the Landlords began to speak to people they knew on social media to see if someone wanted to rent the house. The Landlords made no efforts to re-rent the unit from March 12, 2014, the date they accepted the offer to purchase, to May 2, 2014, when the sale completed.

Based on the above, I find the Landlords did not do what was reasonable to mitigate any loss of rent resulting from the Tenants ending their tenancy with short notice. I make this finding in part because the Landlords were advised on February 2, 2014, via text message, an established form of communication between the parties, that the Tenants would be moving out of the unit at the end of February 2014; however, the Landlords made no effort in February to advertise to find new tenants. Notwithstanding the Landlord's submission that she contacted people she knew on social media to find new tenants, beginning in March 2014, in the absence of documentary evidence to prove the contrary, there is insufficient evidence to prove the Landlord made any effort in advertising the unit for rent; rather, the evidence supports that the Landlords' focus was not on renting the property; rather it was on selling it; and once they accepted an offer of purchase on March 12, 2014, the Landlords made no effort to find renters and the unit remained vacant until title transferred on May 2, 2014.

As per the forgoing, I find the Landlords have not provided sufficient evidence to prove they did what was reasonable to mitigate their loss. Accordingly, the Landlords have not met all 4 criteria of the test for damage or loss, as listed above, and their claim is hereby dismissed, without leave to reapply.

The Landlord has not succeeded with their application; therefore, I decline to award recovery of the filing fee.

As the Landlord has not been successful with her application; I Order the Landlord to return the Tenants' security deposit of $1,200.00 plus interest of $0.00, forthwith.

Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

The Tenant has been issued a Monetary Order for **$1,200.00.** If the Landlord fails to return the security deposit to the Tenant, forthwith as Ordered above, the enclosed Monetary Order may be served upon the Landlord. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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: July 2, 2014

Residential Tenancy Branch