



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD O FF

Introduction

This hearing dealt with an Application for Dispute Resolution signed on April 22, 2014, and stamped received by the *Residential Tenancy Branch* on April 29, 2014, by the Tenants to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; the return of their security and pet deposit; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord and all three Tenants. The parties gave affirmed testimony and confirmed receipt of evidence served by the other. 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, and respond to each other's testimony. 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

1. Have the Tenants met the burden of proof to be granted an Order to end their fixed term tenancy early?
2. Have the Tenants proven entitlement to compensation for moving costs?
3. Are the Tenants entitled to the return of their security and pet deposit?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on April 2, 2014 and was scheduled to end after March 31, 2015. The Tenants were required to pay rent of \$980.00 on the first of each month and on April 2, 2014, the Tenants paid \$480.00 as the security deposit plus \$200.00 as the pet deposit.

The Tenants testified that their relationship broke down in April 2014, a few days prior to them vacating the unit. They appeared at this hearing divided into two groups with N.D. being alone, and her sister H. D. with B.G. being a separate group. H.D. and B.G. filed the application for Dispute Resolution at the Service BC office on April 22, 2014, listing all three Tenants as applicants.

H.D. and B.G. submitted that they had asked N.D. not to speak with the Landlord about their concerns with the rental unit until they were able to get things organized and compile all of their evidence against the Landlord. However, N.D. went ahead and told the Landlord about their concerns. They stated that it was that situation that caused the Tenants' relationship to break down.

N.D. said that when the Landlord failed to resolve their concerns she attended the Landlord's house on April 20, 2014 and requested that the Landlord resolve their issues. When she returned home on April 20, 2014, she found out that some of H.D. and B.G.'s bedding had been moved out, so she decided to move out immediately and was gone that day.

H.D. and B.G. testified that they had entered into a tenancy agreement that provided all utilities for a unit that was ready for occupation; however, the Landlord did not inform them of all of the problems they found when they moved in. They stated that they had sent an email on April 8, 2014, to the Landlord, as provided in evidence, listing most of their repair requests. They argued that when they rented the unit the Landlord told them it was clean and ready to go. When they moved in they found out that there was no thermostat in their basement suite to control the natural gas furnace; the only source of heat was a plug in electric heater; the dryer did not work; there was a pile of garbage in the driveway that was supposed to be removed sooner; electrical breakers kept popping off; the fridge was leaking; and the stove and oven would not work properly.

H.D. and B.G. testified that they spoke with the Landlord regularly to inform her of their concerns. They told her that the infrared heater was not providing enough heat so the Landlord turned on the natural gas furnace. Their unit became too hot so they asked the Landlord to turn off the heat. They argued that the Landlord simply asked that they move things around and plug them into different outlets but that did not resolve the electrical problem. A new dryer was provided however the stove and fridge were not repaired.

H.D. and B.G. stated that they put their concerns in writing, for the first time in a letter dated April 21, 2014, which was also their notice to end tenancy. A copy was provided in the Landlord's evidence. They said they hand delivered that letter to the Landlord around 8:30 a.m. on April 22, 2014, and then began packing their possessions. They had fully vacated the unit by 9:00 p.m. the evening of April 22, 2014.

The Landlord testified and confirmed that N.D. attended her house on April 20, 2014. It was during that meeting that the Landlord and N.D. returned to the rental unit to attempt to resolve the Tenant's concerns. The Landlord pointed to her evidence which included

a sheet with notes she had written during that meeting, listing the Tenant's concerns. When she entered the unit she found that the Tenants had a lot of items that would put a heavy draw on the electrical breakers. She noted that they had a large aquarium, a second portable electric heater, and a hairdryer plugged into one circuit so she told them to try and move them around and plug them into different circuits.

The Landlord submitted that she has owned this rental property since 2007 at which time she hired an electrician to separate the basement suite electrical panel from the upstairs panel, giving each unit a separate 100 amp service. This unit has been rented out for over five years and these Tenants were the only ones who complained that the infrared heat, along with the natural gas heat, was not enough to heat their space properly.

The Landlord pointed to the emails she provided in evidence, at page C2, C3, C4 which was the string of emails when the Tenants first sent their concerns. She noted that she had responded to their concerns immediately, in verbal conversations, and again by email on April 11, 2014, as a follow up to see if things were getting resolved. The Landlord clarified that the natural gas heat was set at 20 degrees and when the Tenants complained they were cold she turned the heat up, but then the Tenants requested that she turn it down because they were too hot.

The Landlord argued that she responded to the Tenants' concerns, getting them a new dryer and attending the unit with N.D. immediately when she came to the Landlord's home. Then, after receiving the Tenant's April 21, 2014 letter, she posted a notice of entry so she could attend to their repair concerns. When she entered the unit on April 23, 2014 she found out the Tenants had already vacated.

The Landlord indicated that she provided additional documentary evidence which included a letter from the electrician who had done the electrical work back in 2007, as well as receipts for work performed.

The Landlord argued that by the Tenants' own testimony their own relationship broke down and they were working to compile evidence to get out of their lease. She noted that N.D. was the person who was funding this rental agreement, as noted in their April 21, 2014 letter. The Landlord said she was of the opinion that N.D. got fed up with the other two and decided to forget it and get out of the rental unit, leaving the other two without a means to pay for the unit.

In closing, the Tenants confirmed that they had a fish tank in the kitchen area, and their hair dryer and additional heater was not plugged into an outlet. The Tenants stated that prior to filing their application for Dispute Resolution they had not provided the Landlord with a forwarding address. Each Tenant provided their new address at the end of this proceeding.

Analysis

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*.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 45(2) of the *Act* provides that a tenant may end a fixed term 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; is not earlier than the date specified in the tenancy agreement as the end of the tenancy, 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.

Section 45(3) of the *Act* provides that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation ***within a reasonable period after the tenant gives written notice of the failure***, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice [my emphasis added].

In this case it was undisputed that the parties had been communicating verbally and by email since April 8, 2014, regarding the Tenants' concerns about the condition of the rental unit. The evidence supports that the Landlord had been working on resolving the issues and that the first time the Tenants put their concerns in writing was April 21, 2014, which was served upon the Landlord April 22, 2014, the same day the Tenants vacated the rental unit, ending the tenancy.

Based on the above, I find the Tenants have not met the requirement of section 45(3) of the *Act*, to end their tenancy prior to the end of their fixed term, as they did not provide the Landlord with a reasonable period of time to resolve the issues, after issuing the Landlord the letter. Furthermore, I accept the Landlord's submission that the Tenants had an ulterior motive in ending this tenancy due to the relationship breakdown amongst the Tenants themselves. Accordingly, I find the Tenants ended this fixed term tenancy, in breach of section 45(2) of the *Act*, by abandoning the rental unit on April 22, 2014, prior to the end of the fixed term agreed upon in the tenancy agreement.

As this tenancy ended due to the Tenants' breach, I dismiss the Tenants' claim for moving costs equal to one month's rent (\$980.00) and I decline to issue an Order granting authority to end their tenancy early, without leave to reapply.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in

writing, the landlord must repay the security and pet deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

The undisputed evidence was that at the time the Tenants filed their application for Dispute Resolution, they had not provided the Landlord with their forwarding address in writing. Therefore, it is my finding that, at the time that the Tenants applied for dispute resolution, the Landlord was under no obligation to return the security deposit or pet deposit, and therefore this application is premature.

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

Conclusion

I HEREBY DISMISS the Tenants' application, for monetary compensation, without leave to reapply.

The Tenants application for the return of their security and pet deposit was premature. Accordingly, the Tenants are at liberty to reapply for the return of their deposits.

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: August 29, 2014

Residential Tenancy Branch

