



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, MNDC, MNSD, OLC, FF

Introduction

This hearing was scheduled in response to an application by the tenants for cancellation of a notice to end tenancy for unpaid / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit / an order instructing the landlord to comply with the Act, Regulation and tenancy agreement / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from September 28, 2013 to September 30, 2014. Monthly rent of \$1,395.00 is due and payable in advance on the first day of each month, and a security deposit of \$697.50 was collected.

While the tenants were away overseas, heavy rains led to backed up drains and flooding occurred in the unit on June 15, 2014. "SN," a person residing in the unit during the tenants' absence, informed the landlord of the flooding on June 16, 2014. A restoration firm contacted by the landlord attended the unit on June 20, 2014, and "SN" testified that on that same date she vacated the unit. Tenant "SJ" returned from overseas on June 22, 2014 and visited the unit on June 23, 2014, at which time the tenants' clothing and some other belongings had already been moved to the kitchen. The tenants met with the landlord on June 24, 2014. Following their return from overseas, neither tenant ever moved back into the unit, and they packed up and removed all of their possessions from the property incrementally over a period of days on June 29, July 13 & 22, and August 06, 2014.

As the tenants had not removed all of their belongings from the unit / property by the time July arrived, the landlord undertook to negotiate the tenants' rent cheque for July 2014. However, the cheque was NSF, and the landlord issued a 10 day notice to end tenancy for unpaid rent dated July 13, 2014. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. Subsequently, the tenants made no further payment toward rent, and they claim their bank assessed an overdraft fee to them of \$45.00.

The tenants claim they informed the landlord of their forwarding address by letter which was mailed on July 17, 2014. A typed copy of such a letter is included in evidence; the letter is undated and a manual notation appears on top of it which reads: "sent on July 17th." The landlord's agent could only confirm that the landlord was informed of the tenants' forwarding address at such time as the landlord was served with the tenants' application for dispute resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.gov.bc.ca/landlordtenant

Section 44 of the Act addresses **How a tenancy ends**, in part as follows:

44(1) A tenancy ends only if one or more of the following applies:

(e) the tenancy agreement is frustrated;

Residential Tenancy Policy Guideline # 34 speaks to "Frustration," and provides in part as follows:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The *Frustrated Contract Act* deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in

advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15th day of the month, under the *Frustrated Contract Act*, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.

Based on the affirmed testimony and the documentary evidence, which includes photographs, I find that through no apparent fault of either party, flooding occurred in the unit on June 15, 2014. I find that upon returning from overseas, tenant "SJ" first attended the unit on June 23, 2014 to examine the damage. As drying and related repairs to the unit were begun on June 23, 2014, and as many of the tenants' belongings had been displaced, the tenants did not return to live in the unit. I find that their belongings were ultimately all removed from the unit / property by August 06, 2014.

In the circumstances of this dispute, I find that the tenancy agreement was frustrated as a result of flooding. I find, therefore, that the tenancy effectively ended on June 23, 2014, at which time after returning from overseas tenant "SJ" inspected the unit and determined that moving back into it was not possible.

As I have found that the tenancy ended on June 23, 2014, the 10 day notice to end tenancy dated July 13, 2014 is of no force or effect and it is hereby set aside. Further, under the circumstances I find that the landlord's undertaking to negotiate the tenants' rent cheque for July 2014 was unreasonable.

As to compensation, I find that the tenants have established a claim of **\$467.00**:

\$372.00: *reimbursement of rent for the 8 day period from June 23 to 30, 2014*
 $(\$1,395.00 \div 30) \times 8$

\$45.00: *NSF fee charged for July's rent cheque*

\$50.00: *filing fee*

I find that the discarding of certain of the tenants' possessions resulted through no fault of either party; accordingly, the tenants' claim related to that loss in the amount of \$1,078.00, as well as a claim of \$157.50 for removal and disposal of some furniture, are both hereby dismissed.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenants' forwarding address in writing, the landlord must either repay the security deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenants double the amount of the security deposit.

I find there is insufficient evidence for me to conclude that the tenants informed the landlord of their forwarding address by way of undated letter which the tenants claim was mailed on July 17, 2014. However, I find that the landlord received the tenants' forwarding address by way of the tenants' application for dispute resolution. **The landlord is hereby informed that she will be deemed to have received the tenants' forwarding address on September 22, 2014, and that she has 15 days from that date to deal with the security deposit pursuant to section 38 of the Act.** In the meantime, the tenants' application for compensation reflecting the double return of the security deposit is hereby dismissed with leave to reapply.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$467.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

The application for other compensation arising from loss, and an order instructing the landlord to comply with the Act, Regulation or tenancy agreement are both dismissed.

The tenants' application for compensation reflecting the double return of the security deposit is hereby dismissed with leave to reapply.

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: September 17, 2014

Residential Tenancy Branch

