Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, OPR, MND, FF

Introduction

A hearing was conducted by conference call in the presence of the applicant and one of the respondents. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Preliminary Matter:

The landlord testified that she served the Application for Dispute Resolution to all of the respondents by placing it in a large envelope and sending it by registered mail addressed to the respondent DK. She further testified that she served the Amended Application for Dispute Resolution in a similar matter. DK testified the other respondents do not live with him and he does not know where they reside.

Section 89(1) of the Residential Tenancy Act provides as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

I determined the landlord has failed to sufficiently serve all of the respondents with the exception of DK. **As a result I ordered that the application against BE, BC, AO, MA and MR be dismissed with liberty to re-apply.**

The landlord testified that she served the Amended Application for Dispute Resolution on DK by mailing, by registered mail to where he resides. DK testified that he did not receive it. A search of the Canada Post tracking service indicates a package was sent by the landlord on September 22, 2014 and it was signed for by someone who used the initials DK on September 23, 2014. I determined there was sufficient service of the Amended Application for Dispute Resolution on DK.

The Application for Dispute Resolution seeks an Order for Possession. The landlord has regained possession. As a result it is no longer necessary to consider the landlord's application for an Order for Possession.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the landlord is entitled to a monetary order and if so how much?
b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

On July 26, 2009 the tenant and 4 others entered into a one year fixed term tenancy agreement in writing the provided the tenancy would start on August 1, 2009 and end on July 30, 2010. The fixed term tenancy agreement provided that it would end after the expiry of the fixed term. However, the parties continued in a tenancy relationship for a number of years. The rent was $3000 per month payable on the first day of each month.

Since then all of the tenants but the respondent have given notice and vacated the rental unit. In April 2014 the respondent gave the landlord written notice that he was vacating the rental unit on May 31, 2014. The respondent vacated on that date and the tenancy came to an end on May 31, 2014. The rent at the time the tenancy ended was $3330 per month payable in advance on the first day of each month.

Other people have occupied the rental unit starting June 1, 2014. They have deposited $3300 in the landlord's account for rent for June, $2100 being rent for July and $2100 being rent for August. The landlord has engaged in discussion with the residents as to the need to sign a tenancy agreement and whether the residents are renting their room only on an individual basis or the group is renting the entire house. She provided them with a form of tenancy agreement but they have refused to sign it.

The landlord regained possession of the rental unit in early September as all of the residents vacated after the landlord served a 10 day notice. The landlord seeks a claim against the respondent DK and all other residents for non-payment of rent for July and August, damage to the rental unit and the cost of removing all of the belongings. The landlord has since sold the rental property with the closing and possession date set for the end of October.

The landlord and DK appeared before me in a hearing on August 19, 2014 when I rendered a decision the included the following determinations and orders which are binding on the parties:

- "The respondent was the only tenant remaining. In April he gave notice in writing that he was vacating on May 31, 2014. The tenancy came to an end on that date on May 31, 2014."

- "I determined the tenants presenting living in the renting unit and having paid the rent in full for June and partial rent for July are not sub tenants of the respondent and they have not gained possession through the respondent. One of the fundamental principles of our legal system is that a respondent must have notice of a claim against him and a fair opportunity to respond. The landlord has not given those individuals a Notice to End and they were not a party to this hearing. The landlord must first serve those individuals with Notices and file a claim naming them as respondents in order for an arbitrator to determine it is appropriate for the issuance of an Order for Possession."

- "I determine the landlord is entitled to $850 for the non-payment of rent for the period April 2013 to November 2013. The landlord testified she served a Notice of Rent Increase on one of the co-tenants. However, the tenants failed to deposit the full rent increase in her account and it took a period of time before she realized this. She further testified the respondent agreed the landlord could take this sum from the security deposit. At the hearing the respondent testified he was uncertain whether one of his co-tenants actually received the Notice of Rent Increase. He did not produce any evidence from that co-tenant. The law provides that service on one co-tenant is sufficient service on all. I determined the Notice of Rent Increase was sufficiently served on the co-tenant and the landlord is entitled to the $850 claims."

- "After hearing the disputed evidence I determined the landlord has established a claim against the tenant in the sum of $400 for the cost of cleaning including carpet cleaning, the cleaning of the blinds and general cleaning."

- **"In summary I granted the landlord a monetary order in the sum of $1500 plus the sum of $50 in respect of the filing fee for a total of $1550."**

"Security Deposit

- **I determined the security deposit/pet damage deposit totals the sum of $1920. I ordered the landlord may retain the sum of $1550. I further ordered that the landlord pay to the respondent the balance of the security deposit/pet damage deposit in the sum of $370."**

The Amended Application for Dispute Resolution filed by the landlord claims the following:

- $1230 arrears of rent for July
- $1230 arrears of rent for August

- $274.57 for the cost of changing locks
- $400 for the cost of labour to remove belongings
- $475.65 for the cost of a container
- $3530.03 for the cost of replacing the carpets
- $98 for the cost of photographs
- $785 for the cost of replacing the stove

The principle of res judicata applies to residential tenancy hearings. This principle provides that a matter which has already been conclusively decided by a court is conclusive between the parties. Final judgments prevent any re-examination or re-trial of the same dispute between the same parties. The Supreme Court of British Columbia in Jonke v, Kessler, Vernon Registry, Docket No. 3416 dated January 16, 1991 held that the principle of res judicata applies to residential tenancy arbitration. The policy reasons in favor of the principle are set out in a decision of Hardinge L.J.S.C., in Bank of B.C. v. Singh 17 B.C.L.R. (2d) 256 as follows:

> "…While people must not be denied their day in court, litigation must come to an end. Thus litigants must bring their whole case to court and they are not entitled to relitigate the same issues over and over again. Nor are litigants entitled to argue issues that should have been before the court in a previous action…"

The principle of res judicata prevents a party from bringing to litigation not only a matter that was previously heard, but also a matter that should have been heard at that previous arbitration. Mr. Justice Hall of the Supreme Court of British Columbia, in the case Leonard Alfred Gamache and Vey Gamche v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd., Prince George Registry, Docket No. 28394 dated November 15, 1996, quoted with approval the following passage from the judgment of Henderson v. Henderson, (1843), 67 E.R. 313

> "In trying this question I believe I state the rule of the court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under

special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have

Analysis

With respect to each of the landlord's claims I find as follows:

a. I dismissed the landlord's claim against DK of $1230 for arrears of rent for July and $1230 for arrears of rent for August. The tenancy with DK ended on May 3, 2014. He did not reside in the rental unit after that date. While the landlord may have a claim against the other respondents for loss of rent but the landlord does not have a claim against DK for loss of rent for that period.
b. I dismissed the landlord's claim against DK of $274.57 for the cost of changing the locks. DK was not longer a tenant when the landlord incurred this expense.
c. I dismissed the claim against DK for the cost of labour to remove belongings and $475.65 for the cost of a container as the tenancy ended 3 months prior. DK testified the belongings were not his. The landlord may have a claim against the other respondents but she does not have a claim against DK for the removal of belongings that occurred 3 months after her tenancy with DK came to an end. The landlord failed to provide sufficient proof that the belongings that were disposed were owned by DK.
d. I dismissed the landlord's claim of $3530.03 for the cost of replacing the carpets. The landlord testified that someone entered the rental unit and further damaged the carpets after the August 19, 2014 decision was rendered. The landlord failed to prove that DK caused further damage to the carpets. Any damage that may have occurred prior to that period is barred by the principle of res judicata. Further, the landlord has sold the rental property and has not replaced the carpets. She testified she sold it at a discounted price but failed to present sufficient proof to establish this allegation.

e. I dismissed the claim against DK for the cost of replacing the stove as that claim is barred by res judicata.
f. I dismissed the claim of $98 for the cost of photographs as an arbitrator does not have jurisdiction to award such a claim. That claim is a cost of preparing for litigation. The only jurisdiction relating to the cost of litigation that an arbitrator has is an award for the cost of the filing fee.

Conclusion:

In summary I determined the landlord's claim against DK should be dismissed without leave to re-apply. The landlord's claim against the other respondents is dismissed with liberty to re-apply.

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: October 22, 2014

Residential Tenancy Branch