Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

The tenants applied on January 6, 2015 requesting return of double the $350.00 security deposit and to recover the filing fee cost. The application was corrected on January 7, 2015.

On January 20, 2015 the landlord applied requesting compensation for damage or loss, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

The tenant confirmed receipt of the landlord's digital evidence that contained an audio recording of their meeting at the end of the tenancy.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of $750.00 as double the security deposit paid?

Is the landlord entitled to compensation in the sum of $441.97 for damage or loss under the Act?

May the landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy commenced on October 1, 2012. Rent was $700.00 per month due on the first day of each month. A security deposit in the sum of $375.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The landlord has made a claim for the following:

½ August 2014 rent	$350.00
One day rent over holding	22.50
Advertising costs	56.72
Digital evidence cost	12.75
TOTAL	$441.97

There was no dispute that when paying July 2014 rent on the first day of July the tenants told the landlord they would vacate the unit at the end of the month. The landlord said that the tenants were required to provide written notice. The landlord confirmed they did not request written notice and that the landlord proceeded, accepting the tenancy was going to end.

The parties met on August 1, 2014 to complete a move-out inspection of the rental unit. The landlord confirmed that at this time the tenant gave her forwarding address to the landlord. The landlord wrote the address down. The tenant could not recall the postal code and was to provide that to the landlord. The tenant said they were told the landlord would be returning the security deposit.

On August 2, 2014 the tenant called the landlord's home and gave the postal code to the male landlord's mother. The landlord said they did not receive a postal code.

When asked why the landlord did not return the deposit to the address they had been given they said that they did not want to send a cheque to an address that was not complete. The landlord's application and written submissions state that the tenants did not supply a forwarding address in writing and that the first time they saw the address was when they received the tenant's application on January 12, 2014. The landlord then applied claiming against the deposit within the required 15 days.

The landlord said that the female tenant refused to allow entry for showing to potential renters. The landlord obtained advice on their right to enter the unit and on July 3, 2014 they issued a letter to the tenants, a copy of which was submitted as evidence. The letter references a conversation the landlord had with the tenant the day prior. The tenant told the landlord that if they entered the home they would be breaking and entering and that it was illegal to do so. The landlord explained the provisions of the legislation allowing entry to show the home. The tenant was told that if a prospective

renter called, the landlord would contact the tenants to arrange a showing within 24 hours.

The landlord said that they then gave the tenants a written notice of entry but the tenants told the landlord this time did not work for them and that the landlord could go into the unit five days later. The landlord spoke to the potential renter who agreed to meet on the later date. By the time the tenants would allow entry the potential renter had found another unit. On other occasions the landlord would call to ask for entry and the tenants would ignore the request or refuse entry within a reasonable period of time.

The landlord then stopped expecting to enter as they did not want to cause a scene that could result in the police being called. As a result of the tenant's lack of cooperation the landlord was not able to rent the unit until August 15, 2014. A receipt for the last two weeks of rent was supplied as evidence that a new renter had moved in August 15, 2014. The landlord has claimed the loss of one half of August rent revenue in the sum of $350.00 as a result of the tenant's refusal to cooperate with showings.

The tenant said that the landlord would tell them they would have a potential renter to view the property and then the landlord would cancel. When the landlord issued the written notice of entry it was the landlord who cancelled. The tenant said they wanted potential renters to view the home. The tenant said they had a right to privacy but when they received the written notice they did give permission allowing the landlord to enter. On three other occasions the landlord cancelled showings.

The landlord submitted a copy of a statement showing they had paid for advertisements during July 2014. A copy of one ad was supplied as evidence.

The landlord's digital evidence was not played during the hearing. I explained that I had been able to listen to a very short audio recording of the tent giving the landlord the keys to the unit. During the recording the landlord can be heard saying the tenant was late. No other evidence was available on the memory stick supplied. The landlord claimed the cost of the memory stick.

The landlord said the audio recording was made on August 1, 2014. The tenant was to have been ready to meet at 1 p.m. and she did not arrive until 6 p.m. The tenants were to vacate by the end of July 31, 2014 but over-held into August 1, 2014. The landlord has claimed a one day per diem for over-holding.

The tenant's had a moving truck arrive on August 1, 2014 and over-held by one day. The landlord is claiming the cost of per-holding. The tenant did not dispute this testimony. The tenant had paid rent to July 31, 2014.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 45 of the Act requires a tenant to end a periodic tenancy by giving signed, dated and written notice. That did not occur in this case. However, I find that the landlord accepted the tenant's verbal notice given on July 1, 2014. The landlord proceeded to advertise the unit and to attempt to show the unit; all indications that the landlord did not doubt the tenants would vacate.

Even though notice was not given in accordance with the legislation that failure does not confer an automatic right to compensation. The landlord was required to mitigate any loss by advertising and showing the unit. From the evidence before me I find that the landlord did advertise sufficiently; copies of an ad and proof of payment was supplied. However, I find that this was a cost that would be incurred by the landlord regardless of when the tenancy ended. Even though the tenants did not give notice in compliance with the legislation they were entitled to end the periodic tenancy.

The landlord did not request written notice and they proceeded as if they had accepted the notice given verbally. During the hearing I explained that a request for proper written notice would provide assurance the tenancy was ending; although in this case there is was no evidence the landlord expressed any doubt the tenants would vacate. No matter how the tenancy ended the landlord would still have been in a position to advertise and pay for those ads. Therefore, I find that the claim for advertising is dismissed.

From the evidence before me I find, on the balance of probabilities that the landlord was thwarted from showing the unit to potential renters. This is supported by the July 3, 2014 letter to the tenants explaining the landlord's rights. I gave this letter considerable weight as it records problems the landlord had experienced and reflected an effort by the landlord to educate the tenants on their obligations. The tenant did not respond to the landlord's submission that the tenant's would give permission but delay the date of entry. The tenants may have agreed to entry but I find that the delays resulted in at least one case of a potential loss of a renter.

I find that rather than engage with the tenants and cause conflict the landlord reasonably felt they must wait to show the unit. They did not have time to seek a remedy other than to wait until the tenants vacated as the end of the month was fast approaching. Therefore, I find that the landlord is entitled to the loss of one half of August 2014 rent revenue in the sum of $350.00.

The landlord has claimed the cost of purchasing a memory stick for digital evidence. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but "costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied and the landlord is at liberty to write it off as a business expense.

As the tenant's remained in the rental unit one day beyond July 31, 2014 I find that the landlord is entitled to per diem compensation in the sum claimed, $22.50.

In relation to the security deposit, section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

I find the landlord's submission that the tenant failed to give the address in writing does not take into account the fact that the landlord wrote the address down on August 1, 2014. The landlord did not disclose this information in their written submission or application. The landlord's submission that the address was not given in writing as the landlord wrote it down versus the tenant writing it, resulted in the landlord believing they could sidestep the requirement of the legislation.

Section 38 of the Act does not provide direction as to who must write the address; only that the landlord must receive a written address. Therefore, I find that the landlord received the written forwarding address on August 1, 2014 when the landlord recorded the address given to them by the tenant. It is reasonable to accept that if the landlord had not written the address down the tenant would have done so. To find otherwise would ignore the basic principles of fairness.

The fact that a postal code was missing from the address is not relevant. The address given by a tenant is the address the landlord should rely upon. Within 15 days of August 1, 2014 the landlord was required to either make a claim against the deposit or return the deposit to the address that was provided. The landlord did not return the deposit and only applied against it once they received an application requesting return of the deposit.

Therefore, pursuant to section 38(6) of the Act, I find that the tenants are entitled to return of double the $375.00 security deposit less $377.50.

As each claim has merit the filing fees are set off against the other.

Based on these determinations I grant the tenants a monetary Order for the balance of $377.50**.** In the event that the landlord does not comply with this Order, it may be

served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation for loss of rent revenue and one day per diem rent. The balance of the claim is dismissed.

The tenants are entitled to return of double the security deposit less the sum owed to the landlord.

Filing fee costs are set off against each other.

This decision is final and binding and 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: April 23, 2015

Residential Tenancy Branch