Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on September 30, 2014 seeking to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for the return of their security deposit; and to recover the cost of the filing fee from the Landlord for this application.

The initial hearing was scheduled to be heard on May 04, 2015 at 1:00 p.m. Due to an administrative error the hearing did not proceed and it was rescheduled to be heard for this session on June 4, 2015 at 2:00 p.m. The Residential Tenancy Branch (RTB) record indicates that the RTB staff contacted each party and informed them of the scheduling of the subsequent hearing. The RTB record further indicates that on May 6, 2015 each party was sent copies of the Notice of Rescheduled Dispute Resolution Hearing.

The hearing proceeded on June 4, 2015 at 2:00 p.m. via teleconference, as scheduled, and was attended by both Tenants who gave affirmed testimony. The Tenants submitted that the Landlord was served notice of their application and the initial notice of hearing by registered mail, in early October 2014.

Evidence was received on file from the Landlord on May 25, 2015 after the notices for the rescheduled hearing were sent out. That being said, no one was in attendance at the June 4, 2015 hearing on behalf of the Landlord.

Based on the foregoing, I conclude that there was sufficient evidence to prove the Landlord was sufficiently served notice of the June 4, 2015 rescheduled hearing. Therefore, I continued in absence of the Landlord.

Issue(s) to be Decided

Have the Tenants met the burden of proof to be awarded monetary compensation?

Background and Evidence

The Tenants submitted testimony that they entered into a written fixed term tenancy agreement that began on December 01, 2012 that switched to a month to month tenancy after the first 12 months. Rent of $1,650.00 was due on or before the first of each month. No move in or move out condition inspection report forms were completed or signed by the Landlord.

The Tenants submitted that the Landlord had crossed out the requirement for a pet deposit and wrote “N/A” in that section of their tenancy agreement and that he also wrote on the tenancy agreement that the Tenants had paid $1,650.00 as the security deposit. The Tenants submitted a copy of the receipt dated December 10, 2012 where they paid the Landlord $3,300.00 cash which was comprised of $1650 damage deposit plus $1650 rent for December 2012.

The Tenants asserted that on June 14, 2014 the Landlord sent them a text giving them sixty days’ notice to end their tenancy because the rental property had sold as of August 16, 2014. The Tenants stated that shortly afterwards the Landlord’s real estate agent delivered a printed copy of the text message to the Tenants. The Tenants confirmed that they were not issued an official 2 Month Notice to end tenancy for landlord’s use.

The Tenants testified that they vacated the property as of August 1, 2014 after giving the Landlord 10 days’ notice that they would be vacating early; prior to the effective date of the Landlord’s notice. The Tenants submitted that they had vacated by August 1, 2014 and met with the Landlord on August 2, 2014. They submitted that after the first walk around the Landlord wanted them to clean the ceiling fan and the carpets. Once those two items were cleaned the Landlord returned around 4:00 p.m. that same day and possession of the rental unit and keys were returned to the Landlord.

The Tenants stated that on approximately September 14, 2014 they personally served the Landlord with their forwarding address in writing, in the presence of a witness. On August 5, 2014 the Tenants deposited a cheque for $993.00 which had been issued to them from the Landlord. They asserted that the $993.00 was comprised of the return of $825.00 of their damage deposit plus $168.00 which the Landlord owed them for the hydro bill.

The Tenants now seek compensation of $2,715.00 which is comprised of $1,650.00 for the last month free rent they are entitled to because the Landlord sold the house and ended the tenancy; $825.00 for the return of their remaining security deposit; and lost

wages of $190.00 to cover five hours the Tenant had to take off of work to go to the RTB to learn about the *Residential Tenancy Act* and this dispute resolution process.

Analysis

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

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement.

Section 52 of the Act stipulates as follows:

> **52** *In order to be effective, a notice to end a tenancy must be in writing and must*
>
> *(a) be signed and dated by the landlord or tenant giving the notice,*
> *(b) give the address of the rental unit,*
> *(c) state the effective date of the notice,*
> *(d) except for a notice under section 45 (1) or (2)* [tenant's notice]*, state the grounds for ending the tenancy, and*
> *(e)* ***when given by a landlord, be in the approved form.*** [My emphasis added by bolding].

Section 51 of the Act provides as follows:

> ***51*** *(1) A tenant* ***who receives a notice to end a tenancy*** *under section 49* [landlord's use of property] *is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*[My emphasis added by bolding]

The undisputed evidence in this matter was the Tenants were sent a text message advising them the rental house had been sold and they had to vacate the rental unit on

or before August 16,2 014. Despite the Tenants not being issued a 2 Month Notice to end tenancy in the approved form they vacated the property, instead of disputing the text message notice. Therefore, as the Tenants were not in receipt of a notice to end tenancy in accordance with the Act, the Tenants are not entitled to compensation pursuant to section 51(1) of the Act. Accordingly, the Tenants' request for one months' free rent is dismissed, without leave to reapply.

Section 23 of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and complete a condition inspection report form in accordance with the Regulations. Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Section 14 of the Regulation stipulates that the condition inspection must be completed when the rental unit is empty of the tenant's possessions, unless the parties agree on another time.

At the start of any tenancy, the Landlord has the responsibility to ensure the requirements of the *Act* and regulations are met with respect to completion of the move in condition inspection report. That being said the Landlord is in full control as they hold the keys to the rental unit. Simply put, if a tenant refuses to complete and sign a move in inspection report the Landlord can refuse the tenant access to the unit.

Section 35 of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit at the end of the tenancy and before anyone else begins to occupy the rental unit, on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. The landlord and tenant must complete and sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Sections 24(2) and 36(2) state that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete condition inspection report forms in accordance with the Act and Regulations.

In this case the undisputed evidence was that despite the parties walking through the rental unit to view the condition of the unit, the Landlord did not complete condition inspection report forms and did not provide copies to the Tenants to sign or for their records.

Based on the above, I conclude that the Landlord extinguished his right to retain any portion of the Tenants' security deposit and was required to return the full $1,650.00 in accordance with section 38 of the Act, as indicated below.

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 deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

This tenancy ended August 1, 2014, as noted above, and the Landlord received the Tenants' forwarding address in writing on approximately September 14, 2014. Therefore, the Landlord was required to return the Tenants' security deposit in full no later than September 29, 2014.

In this case, the Landlord returned $825.00 to the Tenants on August 05, 2014 which was only a portion of the $1650.00 deposit paid by the Tenants. The evidence was that the Landlord retained $825.00 of the security deposit without the Tenants' permission and without an order issued by the Residential Tenancy Branch authorizing the Landlord to retain money from the security deposit.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

I find that the Tenants have succeeded in proving the merits of their claim, and I award them double their security deposit plus interest. The Tenants have already received and cashed the initial refund which included $825.00 of the security deposit; therefore, their monetary award here will be for the balance owed of **$2,475.00** (2 x $1,650.00 + $0.00 interest - $825.00 received August 5, 2014)**.**

In regards to the claim for five hours of lost wages incurred so the Tenant could learn this process and file his application at the Residential Tenancy Branch, I find that the Tenant has chosen to incur that loss which cannot be assumed by the Landlord. The burden lies with a tenant to know their rights and obligations under the Act. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Costs incurred due to an education method such as in person instruction rather than reading printed materials available for free on the internet, or the time to file and serve an application for dispute resolution, are not a breach of the Act.

Therefore, I find that the Tenants may not claim lost wages as they are costs which are not denominated, or named, by the *Residential Tenancy Act.* Accordingly, the claim for $190.00 lost wages is dismissed, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have partially succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Tenants have been awarded a Monetary Order for **$2,525.00** ($2,475.00 + $50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the 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: June 05, 2015

Residential Tenancy Branch