Dispute Resolution Services

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 filed by the Tenants on October 28, 2014 seeking to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; the return of double their security deposit; for other reasons; and to recover the cost of the filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by the Tenant who provided affirmed testimony, and the Tenants' Advocate, a legal articling student. No one was in attendance for the respondent Landlords. The application listed two applicant Tenants; therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

The Tenant provided a sworn affidavit of service in her documentary evidence which states that on October 29, 2014 the male Landlord, D.B. was personally served with a package consisting of copies of the Tenant's application, the hearing documents and the Tenants' evidence. A second package was served to the female Landlord, C.B. when it was left in the Landlord's mailbox on October 29, 2014.

Section 89(1) of the *Residential Tenancy Act* stipulates how an application for dispute resolution must be served to the respondent as follows:

> **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]*.

The Residential Tenancy Rules of Procedure 3.1 determines the method of service for hearing documents and stipulates that the applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of the application and all hearing documents in accordance with the Act.

In this case the package that was addressed to the female Landlord, C.B. was not served in accordance with section 89(1) of the Act, as the Act does not provide for an application and notice of hearing documents to be left in a mailbox. Therefore, I find that the request for a Monetary Order against both Landlords must be amended to include only the male Landlord, D.B. who had been properly served with Notice of this Proceeding. As the second Landlord C.B. had not been properly served the Application for Dispute Resolution as required, the monetary claim against her is dismissed without leave to reapply.

As I have found that D.B. had been served notice of this proceeding in accordance with the Act, I proceeded to hear the merits of the Tenants' application in his absence.

Issue(s) to be Decided

Have the Tenants proven entitlement to a Monetary Order?

Background and Evidence

The Tenants submitted undisputed documentary evidence that they entered into a month to month written tenancy agreement that began on October 1, 2013. Rent of $1,200.00 was due on or before the first of each month and on or around October 1, 2013 they paid $500.00 as the security deposit.

The written tenancy agreement provided in evidence listed only the Landlords' last name, the address for service states an address of the "landlord or landlord's agent", and there were no signatures on the second page of this tenancy agreement. The title on the third page of the agreement papers states "Application to Rent Landlord's Reference and Information Sheet" and was signed by each Tenant. The Landlords did not sign any of the tenancy documents.

The Tenant stated that the rental unit was the lower unit in an up and down duplex. Each unit had a different civic address and the Landlords resided in the upper duplex. The Tenant submitted that they paid their rent in cash to the male Landlord, D.B. and that they primarily dealt with him regarding any issues they had with the rental unit.

The Tenant testified that on February 17, 2014 she woke up and stepped onto soaking wet carpets. She said there were big puddles of water throughout her unit and all

around the outside of the house. She said that they saw that the perimeter drain pipe was full of water and noted that the sump pump could not pump out all the water.

The Tenant submitted that they contacted the Landlords right away and the Landlords requested that the Tenants contact a restoration company and the Landlords' insurance company because the Landlords were leaving for a six week vacation that day. The Tenant submitted that the restoration company began to remove all the flooring, toilets, the bathroom vanity and everything else that was damaged by the flood. They were told that everything had to dry out before their rental unit could be repaired and put back together so they vacated the property on February 17, 2014.

The Tenant submitted that on February 18, 2015 they were told that the Landlords had instructed the restoration company to just remove what was required and leave it without repairing the unit. She said she was told that the Landlords had informed the restoration company that the Landlords wanted to complete the repairs themselves upon their return instead of having their insurance company arrange or pay for the repairs.

The Tenant argued that they had to vacate the property on February 17, 2014 as it was uninhabitable without functioning toilets or proper flooring. They provided the Landlords with their forwarding address in writing on March 4, 2014 and requested the return of their security deposit plus $471.43 as the return of their rent for February 17 – 28, 2014. The Landlords did not return their $500.00 security deposit until May 16, 2014 and have not returned the required portion of their February 2014 rent. As a result the Tenants now seek the return of double their security deposit, the balance of February rent plus their $50.00 filing fee.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlords who did not appear despite being properly served with notice of this proceeding, I accept the undisputed evidence as discussed by the Tenant and corroborated by their evidence.

Section 13(2) of the Act stipulates that a tenancy agreement must comply with any requirements prescribed in the regulations and must include, among other things, the correct legal names of the landlord and tenant.

Section 12(1)(b) of the regulations stipulates that a landlord must ensure that a tenancy agreement is signed and dated by both the landlord and the tenant.

Section 1 of the *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

In this case the written tenancy agreement did not include the Landlords' full legal name(s) and it was not signed by a Landlord or the Landlord's agent. After consideration of the foregoing, I conclude that the terms of the written tenancy agreement submitted into evidence are still recognized and enforceable under the *Residential Tenancy Act* as they could be interpreted as being part of a verbal tenancy agreement as the Tenants were given possession of the rental unit and paid rent based on an agreement they entered into with D.B.

Section 1 of the Act defines a **landlord**, in relation to a rental unit, to include any of the following:

> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> > (i) permits occupation of the rental unit under a tenancy agreement, or
> >
> > (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
>
> (c) a person, other than a tenant occupying the rental unit, who
>
> > (i) is entitled to possession of the rental unit, and
> >
> > (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
>
> (d) a former landlord, when the context requires this;

Based on the submissions of the Tenants I find that D.B. meets the definition as landlord, as he permitted occupation of the rental unit and received rent payments, pursuant to section 1 of the Act, as listed above.

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.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 44(1)(d) of the *Act* stipulates that tenancy ends on the date the tenant vacates or abandons the rental unit. In this case I find the tenancy ended on **February 17, 2014**, which is the date the flood occurred and the rental unit became temporarily uninhabitable during the remediation period.

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.

In cases where rent is paid in advance of the month, for example rent for August is due on or before the 1st of August, if the landlord failed to provide a rental unit that was repaired and maintained in a manner that makes it suitable for occupation by a tenant then the landlord would be entitled to retain the rent paid up to the date the rental unit became uninhabitable and the tenant would be entitled to restitution or the return of the rent that was paid for the period after.

Based on the aforementioned I find the Landlords breached section 32 of the Act by failing to take immediate action to repair the rental unit and minimize the disruption to the Tenants. It is neither acceptable nor reasonable to expect that a tenant would have to wait upwards of six weeks for a rental unit to be remediated after a flood. Therefore, I find the Tenants are entitled to the return of rent paid in advance for the period of February 17, 2014 to February 28, 2014 in the amount of **$473.40** (12 days x $39.45 per day). The daily rate was calculated as $1,200.00 rent x 12 months÷365 days.

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 February 17, 2014, as noted above, and the Landlords received the Tenants’ forwarding address on March 4, 2014. Therefore, the Landlords were required to return the Tenants’ security deposit in full or file for dispute resolution no later than March 19, 2014. The Landlords did not return the $500.00 security deposit until May 16, 2014, approximately two months after the required timeframe.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are 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.

Based on the above, I find that the Tenants have succeeded in proving the merits of their claim, and I award them double their $500.00 security deposit plus interest of $0.00 in the amount of $1,000.00.

The Tenant has been successful with their application, therefore I award recovery of the **$50.00** filing fee.

Monetary Order – The Tenants have been awarded monetary compensation as follows:

Return of prepaid February 2014 rent	$ 473.40
Double Security Deposit + Interest $0.00	1,000.00
Filing Fee	50.00
SUBTOTAL	$1,523.40
LESS: Payment received May 16, 2014	-500.00
Offset amount due to the Tenants	**$1,023.40**

Conclusion

The Tenants have been successful with their application against D.B. and have been awarded $1,023.40. The application against C.B. has been dismissed without leave to reapply.

The Tenants have been issued a Monetary Order for **$1,023.40**. 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 24, 2015

Residential Tenancy Branch