Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF
MNDC FF

Preliminary Issues

The Residential Tenancy Branch Rules of Procedure 2.12 provides that a respondent may file a cross application to be heard at the same time as the applicant's application if the issues identified in the cross application are related the issues identified in the application being countered or responded to; and the cross-application is filed as soon as possible and so that the respondent can meet the service provisions stipulated in Rule 3.15.

Rule 3.15 stipulates that the respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

In this case the Landlords did not file their cross application as soon as possible as they waited until June 12, 2015 which was 7 ½ months after they were served with notice of the Tenants' application. The Landlords stated that that they were of the opinion that they could file their application along with their evidence as late as seven days prior to the hearing.

The Landlords testified that they served their application and evidence to the Tenants via registered mail on June 17, 2015, the day after their hearing documents were made available for pick up. Canada Post tracking information was provided in the Landlord's oral testimony. The Tenants testified that at the time of this June 23, 2015 hearing they had not received the Landlords' application or evidence.

Based on the above, I find the Landlords' cross application was not filed as soon as possible after they received the Tenants` application in November 2014. Furthermore, the Landlords' application was not filed in a manner that would allow the Tenants an opportunity to receive, review, or respond to the application within 7 days prior to the scheduled June 23, 2015 hearing, as required by Rule 3.15. Accordingly, I dismissed the Landlords' application, with leave to reapply.

Upon review of both applications it was confirmed that the Tenants rented a self-contained suite that was located on the lower level of the house and the Landlords

resided in the upper level of the house. Accordingly, the style of cause has been amended to include the words LOWER SUITE in the address of the rental unit, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on October 29, 2014 seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; 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 Landlords and the Tenants. Each person gave affirmed testimony and confirmed receipt of evidence served by the Tenants.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each person was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants proven entitlement to monetary compensation for the return of double their security deposit?

Background and Evidence

The Tenants submitted a copy of the written tenancy agreement into evidence which indicates they entered into a fixed term tenancy agreement that began on April 1, 2014 and was set to end on September 30, 2014. Rent of $950.00 was due on or before the first of each month and as of April 1, 2014 the Tenants paid a total of $475.00 as the security deposit. No move in or move out condition inspection report forms were completed.

The Tenants testified that despite paying rent for the full month of September 2014, they had vacated the property by September 15, 2014. They attended a walk through with the Landlords on September 16, 2014, at which time there was no mention of any damages being identified. They said they returned the rental unit keys and full possession of the rental unit back to the Landlords on September 16, 2014.

The Tenants submitted that on October 1, 2014 they received a text message from the Landlords indicating that during the Landlords' walk through inspection with their new tenants they discovered some damages.

The Tenants stated that they provided the Landlords with their forwarding address in writing on October 2, 2014. Then on October 15, 2014 they received an email money transfer from the Landlords in the amount of $300.00 which was $175.00 less than their security deposit. The Tenants argued that they were never told that the Landlords would be deducting money from their security deposit nor did they give the Landlords written permission to make the $175.00 deduction. As a result the Tenants are seeking the return of double their deposit less the $300.00 payment already received.

The Landlords testified and confirmed that they had sent the Tenants a text message regarding damage found during their new tenant's move in inspection and asserted that it was sent either September 30, 2014 or October 1, 2014. The Landlords confirmed they had deducted $175.00 from the Tenants' security deposit and argued they had authority to make the deduction based on the tenancy agreement addendum. The Landlords pointed to item 11 in the tenancy agreement addendum provided in the Tenants' evidence which states:

> *Any damage to property will be assessed and cost deducted from Deposit.*
> [Reproduced as written]

The Landlords argued that the Tenants' claim was calculated incorrectly and they did not understand why the Tenants would be seeking double their deposit instead of just the $175.00 the Landlords had deducted.

In support of their application the Tenants submitted documentary evidence which included, among other things, copies of: the tenancy agreement and addendum; a copy of the email money transfer received from the Landlords; and a copy of the letter listing their forwarding address dated October 2, 2014.

Analysis

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

Section 44(1) of the Act stipulates that a tenancy ends on the earlier date of when a tenancy agreement stipulates the end of a fixed term tenancy or on the date the tenant vacates or abandons the rental unit returning possession to the landlord.

In this case the tenancy agreement listed the end of the fixed term tenancy as September 30, 2014 and the Tenants vacated the property September 16, 2014. The Tenants returned the keys and full possession of the rental unit back to the Landlords on September 16 2014. Therefore, I find this tenancy ended **September 16, 2014,** pursuant to section 44(1) of the Act.

Section 20(e) of the Act stipulates that a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

Section 5(2) of the Act stipulates that any attempt to avoid or contract out of the Act or regulations is of no effect.

Based on the foregoing, I find that item 11 of the tenancy addendum which states "Any damage to property will be assessed and cost deducted from Deposit" is a breach of section 20(e) of the Act. Therefore, that term is of no force or effect, pursuant to section 5(2) of the Act.

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.

As noted above, the tenancy ended September 16, 2014 and the Landlords received the Tenants' forwarding address on October 2, 2014. Therefore, the Landlords were required to return the Tenants' security deposit in full no later than October 17, 2014.

The Landlords did not file an application for dispute resolution to keep the security deposit and did not return the full $475.00 security deposit within the required timeframe. Rather, the Landlords returned a portion of the security deposit on October 15, 2014.

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

As per the foregoing, I find that the Tenants have succeeded in proving the merits of their application, and I award them $950.00 as double their security deposit (2 x $475.00) plus interest of $0.00 for a total amount of $950.00. The Tenants have already received a partial refund of $300.00, therefore, their monetary order will be granted in the amount of **$650.00** ($950.00 - $300.00).

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

Conclusion

The Landlords' application was DISMISSED, with leave to reapply, as indicated in the preliminary issues.

The Tenants have succeeded in proving the merits of their Application and have been awarded $700.00 ($650.00 + $50.00). As a result, the Tenants have been issued a Monetary Order for **$700.00**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do 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