



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL PACIFIC REALTY CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC FF

Introduction

The hearing convened via teleconference on May 5, 2015 and was adjourned to June 29, 2015 for written submissions. This Decision must be read in conjunction with my Interim Decision with the corrected dated of May 5, 2015. A clerical error was made regarding the date of the hearing and the date the Interim Decision was written as noted on the corrected Interim Decision enclosed with this Decision.

On May 22, 2015 the Residential Tenancy Branch (RTB) received 39 pages of documentary evidence from the Tenant plus Canada Post receipts which indicate the RTB and Landlord were sent the evidence on May 19, 2015, in accordance with my May 05, 2015 Order. (Note: pages that are printed double sided were counted as 2 pages) The evidence included copies of: a Monetary Order Worksheet; the original hearing document fact sheets; and receipts for items listed on the Monetary Order Worksheet.

The Landlord's written response was received at the RTB on June 09, 2015, within the required timeframe. The Landlord's evidence package consisted of a two page statement, two receipts that were originally submitted by the Tenants, and a Canada Post receipt indicating that registered mail was sent on June 05, 2015.

The Tenants' final submission was received at the RTB on June 23, 2015 and consisted of a 1 page written submission and a Canada Post receipt indicating registered mail was sent on June 19, 2015.

All written submissions were served to the other party and received by the RTB within the required timeframes set out in my Oral Orders on May 5, 2015. Accordingly, I have considered all written submissions provided by the Tenants and the Landlord. Following is a summary of the oral and written submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants met the burden of prove to be awarded monetary compensation for damage or loss under the Act, regulation, or tenancy agreement?

Background and Evidence

It was undisputed that on June 12, 2014, the Landlord and Tenants entered into a fixed term tenancy agreement that was scheduled to begin on August 1, 2014 and end on July 31, 2016. Rent of \$4,600.00 was due on or before the first of each month and shortly after June 12, 2014 the male Tenant provided the Landlord with a cheque dated August 1, 2014 as payment for the \$2,300.00 security deposit along with six post-dated rent cheques.

The Tenants testified that once they had secured the rental unit they returned to their home located in another province and made arrangements to move their family of 4 (the Tenants and two teenage children aged 14 and 16) out west. Towards the end of the day on July 30, 2014 the Tenants called the Landlord to make arrangements to pick up the keys for the rental unit and it was during that telephone conversation that the Landlord told them that they were having problems with evicting the existing tenants and that the process of eviction could take up to three months so the Tenants would not be able to move into the rental unit.

The Tenants argued that at the time the Landlord had told them about the problems with the previous tenants their possessions had already been loaded onto the moving truck and flights were arranged for them to fly out the next day on July 31, 2014. The Tenants stated that they were left scrambling to: change their flights for the entire family's arrival, find another home to move into, and to make arrangements for their possessions once they arrived in the new city.

The Tenants submitted that they were able to stay with friends and family back east while the Tenant(s) came back two more times trying to find a new place to live and arrange for storage of their possessions. They decided to come out to B.C. as a family on August 15, 2014 and made arrangements to stay in a hotel in a neighbouring resort town.

The Tenants testified that they later found out that the Landlord had been dealing with problems with their existing tenants at the time they viewed the property, entered into the tenancy agreement, and during the entire time they had been speaking with the Landlord making the final arrangements; however, the Landlord chose not to tell them of the problems until July 30, 2014, the day their moving truck was loaded up with all of their possessions. They argued that if the Landlord had disclosed those issues to them when they first viewed the property they would not have agreed to rent the place, as moving their family across the country was stressful enough.

The Tenants stated that they are now seeking compensation in the amount of \$6,200.20 to cover the costs incurred due to the Landlord cancelling their tenancy agreement 2 days before they were to take possession of the rental unit. Their claim includes the following:

- 1) \$534.89 for the two flights to return and find a new rental unit (\$285.89 and \$249.00) on August 5 – 7, 2014 and August 12, 2014;
- 2) \$771.66 hotel charges for August 5 – 7, 2014;
- 3) \$271.85 for change fees to change the entire family's flights that were scheduled for the end of July 2014;
- 4) \$1,773.79 costs for storage of possessions and removal from storage to their new rental home;
- 5) \$1,525.74 costs for the family to stay at a resort hotel from August 28, 2014 to September 02, 2014 while they waited for their possessions to be delivered to their new rental unit;
- 6) \$129.08 for costs to park their vehicles from August 19, 2014 to August 28, 2014 as their vehicles were shipped out west from their home;
- 7) \$116.33 Canada Post fees to forward their mail from this rental unit to their new rental unit;
- 8) \$315.82 for clothing receipts for cold rainy weather that the Tenants stated they were not prepared for due to the bulk of their clothing being in storage;
- 9) \$417.00 thank you gifts for family members who allowed them to reside with them; and
- 10) \$344.08 restaurant and grocery receipts for food purchased August 26 - 28, 2014.

The Landlord testified and confirmed that he entered into the written tenancy agreement with the Tenants on June 12, 2014 and on July 30, 2014 he told the Tenants he could not give them possession of the rental unit due to problems with their existing tenants. The Landlord confirmed that at the time he posted the rental unit on the internet as being available he had served the existing tenants an eviction notice and they had promised to move out.

During the May 5, 2015 hearing the Landlord submitted that they would pay for one night stay in a hotel, and would only pay for the storage of the possessions and not the fee to move them into the new rental unit. Then he stated that he would like to adjourn the hearing so that he could be sent copies of the Tenants' evidence again.

In his final written response the Landlord indicated that he did not accept some of the items claimed and for the others which he accepted he agreed to pay specific amounts as follows:

- 1) The Landlord did not accept the costs for two returned flights and argued that the receipt for the \$285.89 flight did not list a date and the receipt for the second flight included unexplained travel to the United States for 3 days.

- 2) The Landlord agreed to pay for 50% of the hotel costs at a reduced amount of \$385.83.
- 3) The Landlord agreed to pay the full amount claimed of \$271.85 for the flight change fees.
- 4) The Landlord agreed to pay a reduced amount for storage and final moving costs in the amount of \$1,773.79.
- 7) The Landlord agreed to pay the full amount claimed for Canada Post mail forwarding in the amount of \$116.33.

For items 5, 6, 8, 9, and 10 claimed by the Tenants, as listed above, the Landlord indicated in his written submission that these claims were “Not accepted”.

In the Tenants’ final written response they argued that the Landlord had admitted responsibility for their actions which caused significant costs and expenses for the Tenants. They noted that they did not seek compensation for the portion of their flight to the United States and the full amount claimed for storage and moving of their possessions from storage to their new rental unit were a direct result of the Landlord’s actions.

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.
- 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 16 of the Act stipulates that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director’s authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline 16 provides that in a claim for breach of contract any losses must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented and the loss incurred was as low as reasonable possible.

The undisputed evidence was the Landlord breached the written 24 month fixed term tenancy agreement by not providing the Tenants vacant possession of the rental unit on the start date of the tenancy agreement. Based on the foregoing, I conclude the Tenants are entitled to compensation for expenses incurred as follows:

While I accept the Tenant(s) would have had to return to the west coast in search of another rental unit, the Tenants did not submit evidence to prove the actual date they secured their new rental unit or the date they signed their new tenancy agreement. Therefore, there was insufficient evidence to prove that it took two trips out west before they found another place to rent. Accordingly, I grant the Tenants compensation for the first flight claimed in the amount of **\$285.89**. The second flight claimed is dismissed, without leave to reapply.

When considering the time change, flight schedules, and making appointments with various prospective landlords, I accept that the Tenant(s) were required to stay in a hotel for the three day period for August 5 – 7, 2014, while searching for another rental unit. Accordingly, I grant the full amount claimed for hotel charges of **\$771.66**.

The Landlord did not dispute the claim for fees to change the Tenants' flights. Therefore, I grant the claim for flight change fees in the amount of **\$271.85**.

I accept the Tenants' submissions that they had paid for the moving costs to bring their possessions from back East and that cost remained the same despite their possessions being moved into a storage facility instead of into the rental unit as the possessions still had to be loaded, driven across the country, and unloaded. I further accept that the cost to store and move the possession a second time were incurred as a direct result of the Landlord's breach of the tenancy agreement. Therefore, I grant the full amount claimed for storage and final movement of their possessions in the amount of **\$1,773.79**.

Upon review of the claim for \$1,525.74 for a five day stay (August 28, 2014 to September 02, 2014) in a five star resort hotel located in a different city than the rental unit, I do not accept that this expense meets the burden to prove the Landlord could reasonably have expected the resort stay would occur if the contract was breached. Furthermore, this does not meet the test that the Tenants took reasonable steps to ensure that the loss incurred for alternate accommodation was as low as reasonably

possible. While I accept the Tenants' submission that they were out west during this time and they had to pay for accommodations while they waited for possession of their new rental unit, I must also consider that the Tenants would have had to pay rent either in the rental unit they lost or in some other temporary accommodation.

While temporary accommodations can be more expensive as they tend to be furnished and rented on a short term weekly or monthly basis, the increased expense from a rental unit for a temporary accommodation is what would have been considered as a reasonable loss in this matter during this time, not a lavish weekend at a five star resort. Furthermore, I note that the receipt for the resort submitted by the Tenants indicates that there were two guests and not a family of 4. Based on the foregoing, I find this item claimed does not meet the requirements of section 7(2) of the Act and it is dismissed, without leave to reapply.

The evidence proves that the Tenant's vehicles were parked at a long term parking facility from August 19, 2014 to August 28, 2014. I accept that this cost was directly related to the fact that the Tenants did not have possession of the rental unit and therefore had no place to park their vehicles. Accordingly, I grant the claim for parking fees in the amount of **\$129.08**.

The Landlord accepted the Tenant's claim for Canada Post fees to forward the Tenants' mail from this rental unit to their new rental unit. Therefore, I grant the claim for mail forwarding charges in the amount of **\$116.33**.

With respect to the claims for clothing, thank you gifts for family members, and food at restaurants and grocery stores between August 26 and September 2, 2014, I find that the Tenants have chosen to incur those costs which cannot be assumed by the Landlord. The dispute resolution process allows an Applicant to claim for compensation or loss incurred as the direct result of a breach of Act. Costs incurred for personal clothing because a Tenant did not pack their clothes properly is not a direct result of the Landlord's breach. The Tenants made a personal choice to purchase gifts which are not costs denominated by the Act and cannot be claimed. While meals during the initial trip back out West to secure the new rental unit would be considered as a loss directly related to the Landlord's breach of the Act, meals or food purchased several weeks after that time period are not the responsibility of the Landlord. Accordingly, the amounts claimed here for clothing, gifts, and food are dismissed without leave to reapply, as they could not reasonably have been expected to occur as required by Residential Tenancy Policy Guideline 16.

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 primarily succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Tenants have primarily succeeded with their application and have been awarded monetary compensation in the amount of **\$3,448.60** (\$285.89 + \$771.66 + \$271.85 + \$1,773.79 + \$129.08 + \$116.33 + \$100.00).

The Tenants have issued a Monetary Order for **\$3,448.60**. 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 29, 2015

Residential Tenancy Branch

