Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNDC, FF

Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act ("Act"). The tenants applied for a monetary order for a return of their security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The tenants and the landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord confirmed receipt of the tenants' application by registered mail on December 17, 2014. The tenants denied receiving the landlord's evidence, which he claimed was sent by email to the tenants.

Thereafter all participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-

In this case, the tenant's evidence was received by the Residential Tenancy Branch ("RTB") on December 18, 2014, and was also served on the landlord with their application.

Section 3.15 of the Rules requires that a respondent serve their evidence as soon as possible and served so that it is received no later than 7 days prior to the hearing. In this case, I find the landlord failed to serve the tenants with their evidence in a manner complying with section 88 of the Act, which does not recognize email transmission as an acceptable method of delivery of documents. Additionally, the landlord failed to provide proof as to why their evidence was not filed as soon as possible, as it was received by the Residential Tenancy Branch ("RTB") on July 6, 2015.

Section 88 of the Act provides the methods of service of documents to the other party; email transmission is not an acceptable method of delivery.

As the landlord failed to submit their evidence as soon as possible and in a manner complying with the Act, due to this, the tenants' denial of receiving the evidence, and lack of independent confirmation that the tenants received the landlord's evidence, I have excluded the landlord's documentary and photographac evidence from consideration in this matter.

The landlord was allowed to read from the evidence and testify about the contents of the excluded evidence.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to a return of their security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that this 1 year, fixed term tenancy began on March 1, 2014, actually ended on November 30, 2014, monthly rent was $1000.00, and the tenants paid a security deposit of $500.00 and a pet damage deposit of $100.00. The landlord has returned the pet damage deposit to the tenants.

The tenant's monetary claim is comprised of the following: $500.00 for the security deposit; $1000.00 due to flooding; $500.00 due to black water; $200.00 for reduced lawn space; $300.00 for violating the Act and unreasonably restricting their guests; and $500.00 for moving expenses.

The tenants' relevant documentary evidence included, but was not limited to, a written tenancy agreement and an extensive amount of email transmission between the parties, much of which was repetitive.

In support of and in response to the tenants' application, the parties provided the following evidence-

Security deposit-

The tenants submitted that they are entitled to their security deposit as the landlord has failed to return it.
In response, the landlord submitted that the landlords are retaining the security deposit because the tenants removed a large wall hanging carpet valued at $250.00 and a bookcase valued at $275.00, in addition to removing a smoke detector.

Flooding-

The tenants submitted that on or about May 20, 2014, the nearby river began to rise, ultimately reaching their steps, resulting in water in the rental unit. The tenants submitted further that the water in the rental unit caused them to be displaced for at least two weeks, and even though the landlords had the tenants move to their basement suite, they still were required to travel back and forth to take care of their property, bring food, and look after their cats.

The tenants submitted further that they were entitled to compensation equal to one month's rent as the landlords would be aware that the home floods and the tenants were not made aware of that fact. The tenants submitted further that the landlords did not take proper precautions such as purchasing sub-pumps.

The tenants confirmed that they did not carry renter's insurance.

In response, the landlord submitted that the landlords provided the tenants a fully functional and private residence during their time of displacement, as well as transportation to and from their rental unit.

Black water-

The tenants submitted that they incurred black water from the plumbing in their rental unit, of which the landlords were informed in an email on May 27, 2014, along with subsequent emails in July and August. The landlord finally fixed the problem on August 8, 2014, according to the tenants. The tenants submitted they are entitled to compensation equal to ½ month's rent for this issue.

In response, the landlord submitted that there was an issue with the septic system after the flood, and that the landlord issued precautions to the tenants until the septic field was clear, such as keeping showers short and flushing to a minimum. The landlord submitted further that the landlord was in the process of installing a new well to resolve the issue.

Reduced lawn space-

The tenants submitted that in the process of the landlord replacing the well, a portion of their lawn was removed. The tenants submitted further that the amount of space that was lost was approximately 50' x 10'.

The tenants submitted that the loss of a portion of their yard devalued the tenancy, for which the landlord should be responsible.

In response, the landlord submitted the space in the lawn which was dug out in order to install the new well was 60' x 10', but that area was no more than 5% of the total lawn used by the tenants.

Violating the Act and unreasonably restricting tenants' guests-

In support of this claim, the tenants submitted that they had planned to host a BBQ for the local the local fire hall; however, the landlord informed them that they could not do so without

disclosing the guest list. As a result, the tenants submitted that they did not have the BBQ at their home.

The tenants submitted further that the workers doing construction on the well also entered their rental unit as the electrical panel for the residential property was located in their rental unit, resulting in a loss of quiet enjoyment.

In response, the landlord submitted the tenants were notified of the workers going into the rental unit, as to dates and a range of time, via email, and in an email on August 8, 2014, the tenants gave consent to the entries.

The landlord submitted further that the landlord requested the names of the parties attending the BBQ for purposes of insurance liability.

Moving costs-

The tenants submitted that they are entitled to moving costs as they believed they were harassed by the landlord and that they were forced to leave. The tenants submitted further that they paid to have people help them move.

In response, the landlord submitted that the tenants decided themselves to move out of the rental unit.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

Security deposit-

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

In this case, the undisputed evidence shows that the tenancy ended on November 30, 2014, and the landlord confirmed receipt of the tenants' application claiming a return of their security deposit on December 17, 2014, by registered mail. At that point, the landlords could very well have made their own application for dispute resolution to claim against the deposit, choosing not to as they believed the tenants had removed personal property and a smoke detector at least equal to the value of the security deposit.

A legal definition of writing refers to a printed or scripted document, as opposed to spoken word.

I therefore find that the landlords received the tenants' written forwarding address in their printed application on December 17, 2014, the landlord had 15 days from that date to return the tenants' security deposit, and the landlords failed to do so.

I therefore find the tenants are entitled to a return of their security deposit of $500.00 and that this amount should be doubled, pursuant to section 38(6) of the Act.

Flooding-

I find the tenants have not shown that the landlords were negligent or have violated the Act as I find that the water from the rising river was unforeseen, natural, weather related event.

I therefore find that the tenants have not proven that the landlords failed to comply with the Act or their tenancy agreement or that they took reasonable steps to mitigate their loss with the purchase of tenant's insurance, which generally covers expenses for damage to contents, storage, hotel, gas, moving, and food costs.

I therefore dismiss the tenants' claim for compensation due to flooding.

Black water-

In reviewing the evidence, I find that the dark water which may have been entering the tenants' home was as a result of the flood from the rising water and was a temporary event. I find the tenants failed to submitted sufficient evidence to show that the landlords violated the Act or their tenancy agreement in this instance, and I therefore dismiss their claim for compensation.

Reduced lawn space-

I find the tenants submitted insufficient evidence to show what percentage of the lawn for which they lost the use, or how that lost footage negatively impacted their tenancy. I also relied upon the evidence showing that the digging of the yard was necessary due to the required work of replacing the well, in order to correct some of the issues regarding water to the rental unit.

I therefore dismiss the tenants' claim for reduced lawn space.

Violating the Act and unreasonably restricting tenants' guests-

In this instance, I find the tenants have submitted insufficient evidence to show that the landlords violated the Act when he asked for a guest list for the BBQ. I find that although the landlords did ask for a guest list, I could not determine that the tenants would not have been able to have the BBQ, even without providing the guest list. In other words, I determined that despite the demand, it was the tenants' choice to not have the BBQ.

As to the tenants' claims for a loss of quiet enjoyment by the entries into the rental unit, the email evidence shows that on at least one occasion, the tenants agreed to the entries despite not receiving a 24 hour notice.

Residential Tenancy Branch Policy Guideline 6 establishes the rights to quiet enjoyment, such as the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession, subject to the landlord's right of entry under the Act, and use of common areas for reasonable and lawful purposes, free from significant interference.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I find that that in this instance, the entries to the rental unit were a temporary discomfort, designed to improve the rental unit and residential property.

I find the tenants submitted insufficient evidence to establish that they are entitled to compensation for their claim that the landlord unreasonably restricted their guests or that the landlord is responsible for a loss of quiet enjoyment.

This claim is dismissed.

Moving costs-

I find that the tenants are not entitled to compensation for electing to vacate the rental unit early. In the event that a tenant has concerns about issues during the tenancy, a tenant has the option of ending the tenancy in accordance with legislation, communicating with the landlord in attempt to resolve the concerns, or filing an application for dispute resolution to resolve the dispute. In these circumstances the tenants did not file an application to resolve their dispute while the dispute was ongoing and later the tenants opted to end the tenancy early. As the tenants did not take appropriate measures to address their concerns at the time of the occurrence, I therefore find that the tenants are not entitled to compensation arising from their decision to end the tenancy early.

Their claim for moving costs is dismissed.

As I have found merit with at least a part of the tenants' application, I grant them recovery of their filing fee of $50.00.

Due to the above, I find the tenants are entitled to a total monetary award of $1050.00, comprised of their security deposit of $500.00, which has been doubled to $1000.00, and recovery of the filing fee of $50.00.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of $1050.00, which is enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

Conclusion

The tenants' application for monetary compensation is successful in part as I have granted them a monetary award of $1050.00.

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: July 22, 2015

Residential Tenancy Branch