



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC MNSD OPR OPN FF
 MNDC MSD FF

Preliminary Issues

At the time the Landlords filed their application for Dispute Resolution the tenancy had ended and the Landlords had regained possession of the rental unit. Therefore, I find the Landlords' requests for Orders of Possession to be moot. Accordingly, the requests for Orders of Possession are dismissed, without leave to reapply.

Introduction

This hearing convened on July 28, 2015 to hear matters pertaining to cross applications for Dispute Resolution. After 66 minutes the hearing time expired and an Interim Decision was issued July 29, 2015. Accordingly, this Decision must be read in conjunction with the July 29, 2015 Interim Decision.

The Landlords filed their application on June 29, 2015 seeking to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or Utilities; to keep all or part of the security and or pet deposit; 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 Tenant for this application.

The Tenant filed his application on March 9, 2015 for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, for the return of double their security deposit; and to recover the cost of the filing fee from the Landlords for this application.

Service and receipt of evidence was confirmed during the July 28, 2015 session.

During the hearing each party 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

1. When did this Tenant's tenancy end?
2. Have the Landlords proven entitlement to monetary compensation from this Tenant?
3. Has the Tenant proven entitlement to monetary compensation from the Landlords?

Background and Evidence

The undisputed evidence was the Tenant and his co-tenant J.J. entered into a written fixed term tenancy agreement that began on August 1, 2014. The tenancy agreement was written listing the two male Tenants on the front page; however, the two male Tenants and a female Tenant each signed the tenancy agreement as tenants in the signature blocks on the last page of the agreement.

The Tenants were given possession of the rental unit on July 31, 2014. Rent of \$1,800.00 was due on or before the first of each month and on August 1, 2014 the Tenants paid a combined total of \$900.00 as the security deposit. The Landlords had been occupying the rental unit at the time the Tenants viewed the property. The Landlords vacated the property leaving their Agent to manage the property and give possession to the Tenants, in their absence. No move in or move out condition inspection reports were completed.

On January 23, 2015 the Landlords' Agent was served with a written notice to end the tenancy effective February 28, 2015. That notice was issued by the Tenant S.H. and included the Tenant's forwarding address. The Landlords began showing the rental unit and after a showing on February 7, 2015 the Landlords requested the Tenant S.H. move out by February 15, 2015 as they had found a new tenant who wished to take his place as co-tenant with the other Tenants.

On February 8, 2015 the male Landlord and Tenant engaged in a conversation via text messaging during which they mutually agreed the Tenant, S.H. would vacate the property no later than February 15, 2015. In exchange for the early end of tenancy the Landlord would return \$300.00 of the \$600.00 rent the Tenant had previously paid for February 2015.

The Tenant had also requested the return of his security deposit during the text message conversations. Copies of the text messages were submitted in the Landlords' evidence and included, in part, as follows:

[Tenant's name] So your going to give me my half months rent if I move out on the 15th?

[Landlord's name] Yes I told u that and I just text [co-tenant's name] and told him he has to give u your portion of the damage deposit.

[Reproduced as written]

The Tenant testified that he had fully vacated the property and returned his keys to the Landlords' Agent on February 14, 2015. The Agent signed receipt of the keys as provided in the Tenant's documentary evidence.

The Tenant asserted that he never agreed to recover his security deposit from the other tenants. He argued he attempted to recover the deposit from the Landlords because he had paid it to the Landlords and not to the other tenants. The Tenant now seeks a monetary order for the \$300.00 February 2015 rent the Landlord had agreed to return and the return of double the security deposit of \$1,800.00 (2 x \$900.00).

The Landlord testified that they did not return the \$300.00 for rent and did not return any amount of the security deposit due to issues they experienced with the other tenants. She confirmed that they did not have written permission to keep the security deposit; however, she argued that the female Tenant verbally told them they could keep the deposit to apply against the unpaid rent. The Landlord stated they did not file an application to keep the security deposit, prior to their application filed on June 29, 2015, and they did not possess an order issued by the Residential Tenancy Branch (RTB) to keep the security deposit.

The Landlord submitted that after the Tenant, S.H. gave his notice to vacate the rental unit; the remaining two tenants were trying to arrange to stay. This is when the Landlords agreed that if they found another tenant they would proceed in allowing the remaining tenants to stay. The Landlords found another tenant who wished to take possession as of February 15, 2015 which is why they requested the Tenant S.H. to move out early.

The Landlord argued that sometime in February the remaining co-tenants had not paid their February 2015 rent so the Landlords told them they would not be proceeding with allowing them to stay in the rental unit. The Landlord said they told the co-tenants they had to be moved out of the rental unit by February 16, 2015. Upon further clarification the Landlord stated that this conversation may have happened after S.H. had already vacated the rental unit but she could not say for certain as she was not there. The Landlord argued that the new tenants were to take possession of the rental unit by February 17, 2015. The Landlord asserted that those tenants were not able to move into the unit as they had to clean up the mess left behind from the previous tenants.

The Landlords' evidence included photographs which were taken by their Agent and Daughter during the new tenant's move in inspection. The Landlord was not able to provide the exact date but assumed they were taken on February 16, 2015.

At the outset of the October 9, 2015 proceeding the Landlord requested that her claim be determined based on her 71 pages of documentary evidence. She submitted that she did not have anything further to add and that she wished to proceed with her claim as detailed in schedule "B", page 3, of her evidence.

Upon review of the twelve (12) items claimed by the Landlords, totalling \$7,247.50, the Tenant disputed each and every item claimed.

The Tenant argued that he paid his rent, he gave proper and fair notice to end the tenancy, and he cleaned the inside of the house prior to him vacating the unit.

The Landlord argued that the Tenants entered into a one year agreement to rent the entire house. However, this Tenant appears to think he rented only one room. The Landlord stated that although all of the issues came up after everyone moved out all of the Tenants are responsible.

The Landlord gave evidence regarding the missing mail key. She argued that three full sets of keys (house and mail) were given to the Tenants and at the end of the tenancy they only received two full sets back.

The Landlord acknowledged that there had been no condition inspections completed during the tenancy. She argued that her mother, their agent, resided on the same property in the back yard so she was there to see how things were going.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 44 of the *Act* stipulates that a tenancy ends on the earlier of the following: the date the tenant vacates or abandons the rental unit or the date the landlord and tenant mutually agree to end the tenancy.

Residential Tenancy Policy Guideline 13 provides, in part, that if a co-tenant gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

Residential Tenancy Policy Guideline 13 also states, in part, that a security deposit or pet damage deposit is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may apply for arbitration for return of the deposit.

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.

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.

The *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.

Section 21 of the *Regulations* provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

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

- 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 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.

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

Tenant's Application

On January 23, 2015 the Tenant served the Landlords written notice to end his tenancy effective February 28, 2015. The Tenant's forwarding address was listed in that January 23, 2015 document.

On February 08, 2015, via text message, the parties mutually agreed to end this tenancy effective February 15, 2015. The Tenant vacated the rental unit and returned the keys to the Landlords' Agent on February 14, 2015; therefore, ending the tenancy agreement effective February 14, 2015, pursuant to section 44 of the *Act*.

In exchange for the early end of tenancy the parties further agreed that the Landlord would return to the Tenant half of the \$600.00 (\$300.00) he had previously paid for February 2015.

The \$300.00 was never returned to the Tenant S.H. as previously agreed. Accordingly, I find there to be sufficient evidence to prove the Tenant's claim for the return of half his February 2015 rent and I grant his application in the amount of **\$300.00**.

Based on the above, the tenancy ended February 14, 2015 and the Landlords received the Tenant's forwarding address on January 23, 2015. Therefore, the Landlords were required to return the \$900.00 security deposit to the Tenant, as requested, or file for dispute resolution no later than March 1, 2015.

I find it unconscionable that the Landlords expected the Tenant to retrieve the security deposit from another tenant while the Landlords were the ones holding that deposit. The Landlords did not return the \$900.00 security deposit and they did not file their application for dispute resolution until June 29, 2015, over three months after the required 15 days.

As per the foregoing, I conclude that the Landlords have failed to comply with Section 38(1) of the *Act* and the Landlords are now subject to the doubling provision stipulated in Section 38(6) of the *Act*.

As per the above, I find the Tenant submitted sufficient evidence to prove the merits of his application. Accordingly, I award the Tenant monetary compensation for the return of double the security deposit (2 x \$900.00) plus interest of \$0.00 for the total amount of **\$1,800.00**, pursuant to sections 38(6) and 67 of the *Act*.

The Tenant has primarily succeeded with his application. Therefore, I award recovery of his **\$50.00** filing fee.

Landlords' Application

I find there to be sufficient evidence to prove the co-tenancy which included S.H. and two other co-tenants ended effective February 14, 2015, pursuant to section 44 of the

Act and Policy Guideline 13. In addition, there is undisputed evidence that the Landlords entered into a verbal tenancy agreement with the remaining two tenants and a third person who had originally agreed to move into the rental unit as of February 15, 2015.

No move out condition report forms were completed on February 14, 2015 with respect to the tenancy agreement which included S.H. and ended when S.H. returned his keys. Therefore, I find S.H.'s responsibility to the tenancy or the rental unit ended at the time he returned his keys on February 14, 2015.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Based on the totality of evidence before me, I find there to be insufficient evidence to prove the Landlords' claim against the Respondent S.H. Furthermore, I conclude the Landlords brought their claim against a previous Tenant who had no legal responsibility to tenancy at the time the remaining occupants had ended their newly formed tenancy. Accordingly, I dismiss the Landlords' claim in its entirety, without leave to reapply.

Conclusion

As indicated in the preliminary issues, the Landlords' requests for Orders of Possession were dismissed, without leave to reapply. The Landlords were not successful with their claims and their application was dismissed in its entirety.

The Tenant was successful with his application and was awarded monetary compensation of **\$2,150.00** (\$300.00 + \$1,800.00 + \$50.00).

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: October 09, 2015

Residential Tenancy Branch

