



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords – OPR, MNR, MNSD, MNDC, FF

For the tenants – CNR, CNL, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for Order of Possession for Unpaid Rent or Utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities and to cancel a Notice to End Tenancy for Landlords Use of the Property; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; for a Monetary Order for the return of their security deposit; and to recover the filing fee from the landlords for the cost of this application.

At the outset of the hearing the parties advised that the tenants are no longer residing in the rental unit, and therefore, the landlords withdraw their application for an Order of Possession and for a Monetary Order for money owed or compensation for damage or loss. The tenants also withdraw their application to cancel the 10 Day Notice to End Tenancy and the Two Month Notice to End Tenancy.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants testified that they did not receive the landlords' evidence package. The landlord's testified that they made many attempts to serve their evidence to the tenants but received no response and did not have a forwarding address for the tenants. I refer the parties to rule 3.1 of the Rules

of Procedure concerning the service of evidence which states: that the applicant must serve the each respondent with copies of their application, notice of dispute resolution and dispute resolution proceeding information package and any evidence submitted to the Residential Tenancy Branch within three days. Therefore, I find the landlords did not serve their evidence package to the tenants when the tenants were served the landlords' hearing package. In considering whether to accept the landlords' evidence, I find that the landlords delayed in sending their evidence even after they received the tenants' address for service on their hearing documents; however, I have accepted the portion of the landlords' evidence which also submitted by the tenants and which is relevant to the findings in this Decision. I have excluded the reminder of the landlords' documentary evidence.

I have reviewed all admissible oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords permitted to keep all or part of the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to recover the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on January 01, 2015 although the tenants were allowed early occupancy of the unit on December 29, 2015. Rent for this unit was \$1,650.00 per month due on the 1st of each month. The tenants paid a security deposit of \$825.00 on December 27, 2015.

The landlords' application

The landlord MV testified that the tenants had signed a mutual agreement to end tenancy. This was signed on January 27, 2016 and had an effective date of February 27, 2016. However, after signing this agreement the tenants changed their minds and the landlords agreed to set it aside and serve the tenants with a Two Month Notice to

End Tenancy for cause instead. The Two Month Notice was served on January 27, 2016 and had an effective date of March 31, 2016.

MV testified that the tenants failed to pay rent for February, 2016 of \$1,650.00. A 10 Day Notice was served to the tenants on February 02, 2016. This Notice had an effective date of February 15, 2016. MV testified that the tenants moved from the rental unit; however, the landlords are not sure of the date the tenants vacated as no prior notice was given to the landlords. MV testified that as they are not sure they would receive anything from the tenants they are just asking to recover the amount of \$825.00 for February's rent and seek an Order to permit them to keep the tenants' security deposit for this amount. The landlords also seek to recover the filing fee of \$100.00.

The tenants disputed the landlords' claim. The tenants testified that the landlords put the tenants in a position which forced them to end their tenancy early. The landlords did not comply with the *Act* with regard to the tenants' guests. The landlord SC sent a text to the tenants when they had guests over one evening saying they were not allowed guests after 8.00 p.m. The next day SC showed up at the tenants' door on the afternoon of January 24, 2016 at 2.50 p.m. SC was banging on their door and when the tenant SH answered the door SC was drunk, weaving, and entered their unit, swearing in front of the tenants' children. SS had ask SC to leave their unit and they both went outside to talk. SS testified that SC was very aggravated and was yelling and swearing. SH came out and started to record him with her cell phone and he turned on her and told her to turn her fucking phone off. He then said he wanted to slap that little bitch in the face. At this point the tenants called the police.

The tenant SH testified that they felt unsafe in their unit not knowing if SC would come back up as they landlords lived downstairs. There was also excessive noise such as banging pots and slamming doors and the landlord SC was smoking in his unit which caused the smoke to filter upstairs into the tenants' unit.

SS testified that the police came and went to speak to SC. The police officer came back and told the tenants that she had told SC he could not speak to the tenants in that way but as SC had been drinking in his own house they could not arrest him. The tenants testified that due to the landlord's behaviour they felt they could no longer stay in their unit and so on January 28, 2016 they vacated their unit. SS testified that they had verbally informed the landlord MV when she came to apologise to the tenants on behalf of SC. At that time MV presented the tenants with a mutual agreement to end tenancy or the option of a Two Month Notice to End Tenancy. At first the tenants signed the mutual agreement but then asked MV to disregard that as they needed a Notice to End

Tenancy that they could dispute. Due to the above the tenants felt the landlords did not comply with the *Act* and so they vacated the rental unit.

The tenants' application

The tenants testified that as they had to vacate the rental unit sooner, they incurred costs to move their belongings from the unit. The tenants had applied to recover \$400.00 but during the hearing calculated this to be \$326.31. This includes the following costs:

U-Haul rental truck - \$85.23

Gas for the U-Haul truck - \$31.08

Loan of a friend's truck - \$50.00

Gas for friend's truck - \$35.00

Use of another truck - \$50.00

Gas for that truck - \$40.00

Gas paid to a friend who helped tenants move - \$35.00

No receipts or invoices have been provided in documentary evidence for the above moving costs.

The tenants testified that as they had paid rent for the entire month of January, 2016.

Due to the landlords' behaviour during part of January and because they had to move out before the end of January the tenants seek to recover the rent paid for January of \$1,650.00.

SS testified that he lost two days of work when they had to pack up and move. The tenants seek to recover \$220.00 in lost wages.

The tenants seek to recover their security deposit but agree they have not provided their forwarding address in writing to the landlords. The tenants also seek to recover their filing fee of \$100.00.

The landlords disputed the tenants' claim in its entirety. The landlord MV testified that they did not tell the tenants they could not have guests after 8.00. MV testified that the text message sent to the tenants one evening was sent after the tenants were being loud and referred to the tenants previous text message sent to the landlords on another night they were loud in which they had said they don't have guests after 8.00p.m. as their children go to bed at 7.00 p.m. This text was not sent as a way to prevent the tenants having guests but just to remind them what they had said in their text.

SC testified that he did go to the tenants' door to speak to them about noise the previous evening. SC denied that he entered their unit but agreed that he had had a

couple of drinks. SC testified that words were exchanged outside the tenants' unit and the tenants called the police. SC testified that he did not say he was going to slap that little bitch in the face and the tenants have no evidence that this was said. SC testified that the police spoke to him and said it was an RTB matter and they had no concerns about the tenants' safety. SC testified that he does not smoke in his house. SC testified that later he and MV left to go to a prearranged evening with friends. MV was the designated driver but SC came home ahead of MV in a cab. SC agreed he did go to the tenants' door to ask them if he could borrow money for his cab fare as he had left his wallet in the car with MV. The tenants did not want to talk to SC so he waited with the cab until MV came home.

The tenants testified that they did have some of the heated exchange between SC and SS recorded on SH's cell phone but had turned the recording off prior to SC saying he was going to slap that little bitch in the face.

MV testified that she went to apologise to the tenants for SC behaviour and told the tenants to come to her with any issues in the future instead of SC. The tenants did say at that time that they did not want to stay but did not say when they were moving out and nothing was put in writing. MV testified the tenants signed the Mutual agreement to end the tenancy which they later asked MV to ignore and so she gave the tenants a Two Month Notice instead as she thought they needed two months to find alternative accommodation and expected them to move out at the end of March, 2016.

The tenants disputed the testimony of SC. The tenants testified that he said he had only had a couple of drinks but was swaying and then went home to have a shower to get rid of the smell of alcohol before the police arrived. He was clearly intoxicated and was standing on the rug inside their door. The tenants agreed that MV did tell them not to contact SC and to deal directly with her or her lawyer.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords; application; I refer the parties to s.50 of the Act which states:

50 (1) *If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by*

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

It is clear that an altercation took place between the landlord SC and the tenants. The tenants clearly requested a Two Month Notice to End Tenancy from the landlord after this altercation took place as they wanted a Notice that they could dispute and subsequently did file an application to dispute it.

Under s. 50 of the *Act* the tenants could have given 10 days written notice and ended the tenancy earlier than the effective date of the Notice but the tenants failed to do so and failed to pay rent for February, 2016. In accordance with s. 51 of the *Act* when a Two Month Notice is issued the tenants would have been entitled to compensation equal to their last month's rent or in this case rent for March, 2016; however, the tenants decided to vacate the rental unit on January 28, 2016 just two days after the Two Month Notice was served upon them without proper notice. What I must decide is if the tenants had cause to end the tenancy sooner than the *Act* allowed due to the landlords non-compliance with the *Act*. To this end I have considered both arguments in this matter and find there is insufficient evidence to show that the landlords were attempting to restrict the tenants' guests after 8.00 p.m. at night and I find this text message sent by the landlord to be reasonable in the context of the previous text message sent by the tenants saying they did not have guests after 08.00 p.m. when clearly they did have guests over on the evening of January 23, 2016 past 8.00 p.m. which resulted in further disturbance to the landlords. While I accept the landlords could have handled this matter in a more positive and professional manner there is nothing to show that they were restricting the tenants' guests and in non-compliance with s. 30(1)(b) of the *Act*.

With regarding the altercation between the parties, I am satisfied that the landlord SC did come to the tenants' unit in a state of intoxication on January 24, 2016 and this resulted in a heated exchange of words with the police being called to attend the property; however, this standing alone, would not warrant the tenants ending the tenancy without proper notice. The landlord MV came and apologised to the tenants

and told the tenants that they should only deal with her and at this point the tenants signed the mutual agreement to end tenancy a month later. The tenants then withdrew this agreement and asked for a Two Month Notice to End Tenancy. I am not satisfied that the tenants were fearful of the landlord SC to the extent that they could not have provided 10 days' Notice to end the tenancy during February, 2016. Furthermore, there is insufficient evidence that the landlord smoked in his unit which affected the tenants' use of their rental unit above. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails. There are remedies under the *Act* to deal with a tenants' right to quiet enjoyment which the tenants could have pursued instead of ending their tenancy without proper notice.

Due to the above I find the tenants should have given proper notice to end the tenancy pursuant to s. 50(1) of the *Act* and as they failed to do so I find in favor of the landlords' claim to keep the security deposit of **\$825.00**, pursuant to s. 38(4)(b) of the *Act*, in satisfaction of the landlords' claim to recover half the unpaid rent for February, 2016.

With regard to the tenants' claim for moving costs and loss of wages; I find the tenants made the decision to vacate the rental unit prior to the effective date of the Two Month Notice. The purpose for compensation equivalent to one month's rent under s. 51 of the *Act* is to provide tenants with an amount to help them with their moving costs after the landlord has issued a Two Month Notice to End Tenancy for landlords' use of the property. If the tenants vacate prior to the effective date of the Notice and do not provide proper notice to end the tenancy earlier; then the tenants are not entitled to be compensated for their moving costs. These sections of the tenants' claim are dismissed.

With regard to the tenants' claim to recover rent paid for January, 2016; the tenants moved into the unit on December 29, 2015 and vacated the unit on January 28, 2016. The tenants seek to recover the rent paid for the entire month of January due to the altercation that took place on January 24, 2016 and because they had to end their tenancy before the end of the month. I find the tenants' claim to be unreasonable and find there is no provision under the *Act* for me to allow the tenants to recover rent for January, 2016 because they choose to end their tenancy. This section of the tenants' claim is dismissed.

As the landlords' application has merit I find the landlords are entitled to recover the filing fee of **\$100.00** from the tenants pursuant to s. 72(1) of the *Act*.

The tenants must bear the cost of filing their own application.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. I Order the landlords to keep the security deposit of **\$825.00** in satisfaction of their claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$100.00** for the filing fee. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The tenant's application is dismissed without leave to reapply.

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: March 31, 2016

Residential Tenancy Branch