Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Narod Properties Corp. (Agent)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

The landlord applied requesting compensation for damage or loss under the Act, damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied requesting compensation for damage or loss under the Act, to cancel a Notice ending tenancy issued for landlords' use, return of the security deposit and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The parties confirmed receipt of the documents supplied by each.

Preliminary Matters

The original application supplied by the tenants included a claim to cancel a Notice ending tenancy for landlords' use. The tenants confirmed that they have vacated the rental unit and that a Notice ending tenancy does not need to be cancelled.

The tenants applied on September 15, 2015 and on September 19, 2015 the application was amended to change an address and to remove the claim disputing an additional rent increase. The landlord was served with a copy of the amended application.

The tenants said that the application was amended at the request of Residential Tenancy Branch staff. The tenants said that they received an email telling them they must amend the application. The tenants could not explain why they proceeded with removing that portion of their claim and that they wished to proceed with the claim. The tenants did not have a copy of the email sent by the RTB staff and could not recall what reason the email may have given for the amendment.

As the landlord was served with the amended application removing the claim for compensation related to an additional rent increase I determined that the application would not be amended at the hearing to include an additional claim totaling $4,503.36. The landlord came to the hearing not expecting to respond to a claim for an additional rent increase and to require the landlord to do so without prior notice would breach the standard of fairness.

The tenants' application was reviewed further. The tenants included a claim in the sum of $48,000.00; reduced to $9,600.00 as compensation for increased rent received by the landlord after the tenancy was ended. This portion of the claim was declined as any increase in income that may flow to a landlord after a tenancy ends is not contemplated by the legislation and outside the jurisdiction of the Act.

The tenants confirmed understanding that the balance of their claim for loss of quiet enjoyment, return of the security deposit, compensation that follows a two month notice ending tenancy and moving expenses would proceed.

The spelling of the tenants' names on the landlords'' application was corrected.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $785.00 for damage to the rental unit?

Is the landlord entitled to compensation in the sum of $1,573.65 for loss of September 2015 rent revenue?

Are the tenants entitled to compensation in the sum of $5,876.00 for loss of quiet enjoyment and moving expenses?

Are the tenants entitled to compensation in the sum of $3,146.00 pursuant to section 51 of the Act, when a two month Notice to end tenancy for landlords' use of the property is issued?

Is the landlord entitled to retain the security deposit or should the landlord be ordered to return double the $700.00 deposit to the tenants?

Background and Evidence

The tenancy commenced on October 1, 2011 for a 12 month fixed-term. Rent was due on the first day of each month. A copy of the tenancy agreement supplied as evidence indicated that the agreement could be renewed at the owner and tenants' discretion. There was debate regarding what occurred on an annual basis in relation to the term of the tenancy; however the landlord agreed that in August 2015 the tenancy had converted to a month-to-month term.

A move-in condition inspection report was completed and a copy supplied as evidence.

The parties agreed that on July 29, 2015 the landlord issued a letter to the tenants; received by the tenants on August 3, 2015. The landlord explained that she would not be renewing the tenancy agreement at the end of the current term, September 30, 2015. The landlord asked the tenants to vacate by the end of the tenancy term.

On August 12, 2015 the tenants sent the landlord an email explaining they had contacted the Residential Tenancy Branch (RTB) and established that the tenancy was currently month-to-month and that the notice given by the landlord was not a valid two month notice to end the tenancy. The tenants explained that they could ignore the letter and continue the tenancy.

On August 19, 2015 the tenants wrote the landlord, giving 10 days' notice to end the tenancy based on a two month Notice ending tenancy. The tenants explained they had accepted the July 29, 2015 letter as a two month notice to vacate by September 30, 2015. The tenants vacated the rental unit on August 31, 2015.

The tenants confirmed that the landlord scheduled a move-out condition inspection on August 31, 2015 at 7:00 p.m. The tenants left the keys in the rental unit and did not attend the inspection. They said they had been too stressed and overwhelmed to attend.

The tenants stated that since they were issued a two month notice to end tenancy they are entitled to the equivalent of two months' rent as compensation based on monthly rent in the sum of $1,573.65. There was no dispute that the landlord re-rented the rental unit effective October 1, 2015.

As the tenants were forced to vacate the rental unit due to an illegal notice ending tenancy that have claimed compensation for moving costs in the sum of $1,156.00.

The tenants said that from June to August 2015 they suffered a constant loss of quiet enjoyment. The landlord completed renovation to the exterior of the home by enclosing the carport and replacing the deck. The tenants lost use of one-half of the backyard, the deck, carport and driveway. They were told that the improvements would be to their benefit. The landlord did not make proper arrangements for entry to the property and contractors were constantly intruding on the tenants. Exterior lights were removed and

not replaced until the tenant installed them. The windows were replaced which resulted in workers coming and going from the home. The tenants were disrupted and had to clean up after the workers. The work on the property occurred Monday to Friday until three or five in the afternoon. The tenants said the on-going renovation was extremely stressful and disruptive and caused them to lose use of the property and privacy.

When asked what contact they had with the landlord regarding the disruptions the tenants said they had just accepted the situation. The tenants were told that the improvements would result in a better rental. Then the landlord asked the tenants to vacate. The tenants believe they were left to put up with the inconvenience of the renovation work only to then have the landlord evict them and obtain a higher rent.

The tenants have claimed total rent paid from June to August 2015, inclusive, in the sum of $4,720.00; as compensation for the loss of quiet enjoyment.

The landlord said that the tenants gave written notice on August 19, 2015, for August 31, 2015. The tenants had told the landlord they were not required to vacate and understood that a proper notice ending the tenancy had not been issued. Then the tenants took the stance that a two month notice had been issued and gave 10 days' notice to end the tenancy. The landlord received the August 19, 2015 letter shortly after it was issued and at that point hired an agent to act on her behalf sometime around the end of August 2015.

The agent immediately began advertising the unit at market rent of $2,200.00 per month. Within two days the rent requested was reduced to $1,950.00. The unit was rented effective October 1, 2015. The landlord said it would have been unreasonable to request rent below market and that they were able to rent the unit quickly. The landlord has claimed the loss of rent for September 2015 in the sum of $1,573.65.

The tenancy agreement required the tenants to have the carpets professionally cleaned at the end of the tenancy. The carpets were not professionally cleaned. On September 9, 2015 the landlord had the rugs cleaned at the cost of $210.00 plus GST.

The landlord withdrew the claim for rug stain repair in the sum of $250.00.

The landlord has claimed the cost of yard work that the tenants failed to complete. The tenants had not cut around the edge of the lawn and pruning was needed. The landlord had an invoice issued on October 31, 2015 but could not establish when this work was completed.

A door knob was broken at the end of the tenancy. The landlord said it was five or six years old. Parts of the door knob were missing so a new unit was purchased. The tenants failed to replace four lights bulbs. The landlord provided a September 15, 2015 invoice in the sum of $189.00 that included a $10.00 charge for lightbulbs; $65.00 for the door knob lockset and $100.00 labour plus taxes. The landlord paid the cost of the time for the worker to purchase the door know and bulbs.

The tenants said they had their own rug cleaner and did clean the rugs at the end of the tenancy.

The tenants said that there was a four month water restriction and that the lawn went yellow and could not be watered. The tenants did not have access to the yard during the summer. The lawn had been weeded and maintained in good condition. The tenants said this portion off the claim is unjustified.

The male tenant said that one night he got up to leave the room and the door knob was locked and could not be opened. The tenant had to take the door off the hinges to get out of the room. They did not report the door knob problem to the landlord as the tenancy was ending. The tenants said the door knob was likely 30 years old.

The tenants disagreed with the claim for lightbulbs. They had to replace lightbulbs on the exterior of the home as they had been removed during renovation. No bulbs were left not working at the end of the tenancy.

The landlord responded to the tenants claim. The tenants were aware that the notice given to them dated July 29, 2015 was not proper notice and they understood they did not have to vacate. This was set out in the tenants' August 12, 2015 email. The tenants had been correct in telling the landlord her letter was not a valid notice to end the tenancy. Since the tenants were not required to move and they were aware of that fact, they are not entitled to moving costs. The tenant are contradicting themselves, as they knew a valid notice had not been issued but they then attempted to rely on a two month notice when they ended the tenancy.

Since a two month notice ending tenancy was not issued by the landlord there is no right to compensation as a result of the landlord re-renting the unit.

In relation to the loss of quiet enjoyment, the tenant never made any complaint to the landlord to indicate they were suffering a loss. The landlord was not advised and the tenants did not complain. Had the tenants complained and contacted the landlord the landlord would have taken steps to address the concerns.

There was agreement that the landlord had the tenants' written forwarding address prior to the end of the tenancy.

Analysis

In relation to the end of the tenancy I find that the tenants ended the tenancy in breach of section 45 of the Act. The tenants were correct when they sent the August 12, 2015 email to the landlord explaining that a valid notice ending tenancy had not been issued. The July 29, 2015 letter issued by the landlord was not in the approved form and was not a valid notice and the tenants obtained advice to that effect, which they passed on to the landlord.

I find that when the tenants gave only 10 days written notice to end the tenancy they were relying on a section of the Act that they had understood did not apply to their situation. The tenants knew there was no valid notice ending tenancy yet they proceeded as if there was a notice.

Section 45 of the Act allows a tenant to end a month-to-month tenancy by giving written notice the day before the day in the month rent is due. Notice given on August 19, 2015 would have been effective September 30, 2015. This is the date the landlord had attempted to end the tenancy, in the absence of a valid notice.

As the tenants vacated the rental unit I find, pursuant to section 44(f) that the tenancy ended effective August 31, 2015.

As the landlord claimed against the security deposit on September 13, 2015 I find that the application was made claiming against the deposit within 15 days of the end of the tenancy, in accordance with section 38(1) of the Act. Further, pursuant to section 36(1) of the Act, I find that as the tenants failed to attend the move-out condition inspection report that the tenants extinguished their right to claim requesting return of the security deposit.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

A breach of the Act does not confer an automatic right to compensation and in this case when the landlord attempted to rent the unit for $624.00 more than what the tenants had paid, I find the landlord did not mitigate the claim sufficiently. Even though the rent was quickly reduced it was still $374.00 more than what the tenants had paid. The landlord has a right to seek market rent and did succeed, at rent of $1,950.00. However, mitigation would have included an attempt to seek a tenant by advertising the unit as soon as the April 19, 2015 notice was given to the landlord. There was no attempt to mitigate the loss; rather, I find on the balance or probabilities, that the initial rent sought was so high it may well have resulted in a delay in renting the unit.

Therefore, I find, in the absence of an attempt to fully mitigate the loss of rent revenue that the landlord is entitled to compensation in the sum of $788.32 for loss of rent revenue from September 15 to September 30, 2015. If the landlord had immediately commenced offering the unit at the reduced rent it is highly likely a tenant could have been located for earlier occupancy. The balance of this portion of the claim is dismissed.

I find that the tenant failed to comply with the term of the tenancy agreement requiring them to have the carpets professionally cleaned at the end of the tenancy. The tenants

have confirmed they cleaned the carpets themselves. Therefore, I find that the landlord is entitled to compensation in the sum claimed; $210.00.

There was no evidence before me setting out the state of the yard at the end of the tenancy; the parties disputed the work that was required to the yard. I find, on the balance of probabilities that the tenants are correct; that they had partial use of the yard and that there were watering restrictions that would have affected the state of the yard. Further, Residential Tenancy Branch (RTB) policy #1 suggests that a landlord is responsible for pruning. In the absence of information setting out the date the work was completed and a breakdown of the claim without the cost of pruning, I find that the claim for yard work is dismissed.

In the absence of evidence of the age of the door knob I find that the claim is dismissed. I found the tenants testimony in relation to the age of the door knob believable. The landlord has a responsibility to bring forward evidence of the age of fixtures. The landlord estimated the age, during the hearing, but no evidence of the age of the door knob was provided. Therefore, I find that the claim for the door knob is dismissed.

I find on the balance of probabilities that the tenants did not leave light bulbs that were burned out. The landlord did not dispute that the tenant replaced bulbs on the exterior of the home. If the tenants took the time to replace those bulbs I find it just as likely they did not leave bulbs burned out. Therefore, I find that portion of the claim is dismissed.

In relation to the tenants claim for compensation based on section 51 of the Act and for moving costs, I find that as a two month Notice ending tenancy for landlords' use was not issued, there cannot be any compensation. The tenants confirmed on August 12, 2015 that they understood a proper notice ending tenancy had not been issued and that they were not required to vacate. When the tenants issued their notice to end the tenancy they did so contrary to section 45 of the Act and that they chose to vacate. The tenants may have been dissatisfied with the tenancy, but they were not required to vacate. As the tenants chose to vacate, without any proper notice issued by the landlord, I find that the claim for compensation under section 52 of the Act and for moving costs is dismissed.

I have considered section 7 of the Act, which provides:

Section 7 of the Act provides:

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.*

> *(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.*

Residential Tenancy Branch policy suggests that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. Policy suggests that when steps are not taken to minimize the loss, an arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

In the absence of any evidence that the tenants made any enquiry or complaint to the landlord regarding the disturbance caused by the renovation, I find they denied the landlord an opportunity to respond. However, the landlord did not dispute the fact that renovations did take place over a three month period, using a portion of the yard, deck and carport.

Section 28 of the Act provides:

Protection of tenant's right to quiet enjoyment

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
> *(b) freedom from unreasonable disturbance;*
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference*

Taking into account section 28 of the Act, I find it is reasonable to expect the landlord would have known the work could reduce the value of the tenancy and affect the tenants use of the residential property. Therefore, I find that the tenants are entitled to compensation in the sum of $300.00; for the three months that the renovations occurred and the resulting loss of quiet enjoyment. In the absence of attempts to mitigate the claim they have made I find that the balance of the claim is dismissed.

Therefore, the landlord is entitled to compensation in the sum of $998.32 and the tenants are entitled to compensation in the sum of $300.00. The balance of each claim is dismissed.

As each application has some merit I find that the filing fee costs are set off against the other.

I find that the landlord is entitled to retain the security deposit in the amount of $700.00**,** in partial satisfaction of the monetary claim. The landlord is owed a balance in the sum of $298.32.

As the tenants are entitled to compensation in the sum of $300.00; I find that the tenants are entitled to a monetary Order for the balance of $1.68**.** A monetary Order has been issued to the tenants. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of $788.32 for loss of rent revenue and $210.00 for carpet cleaning. The balance of the claim is dismissed.

The tenants are entitled to compensation in the sum of $300.00 for the loss of quiet enjoyment; the balance of the tenants' claim is dismissed.

The landlord may retain the security deposit in partial satisfaction of the claim. The balance of $298.32 owed to the landlord is set off against the $300.00 sum owed to the tenants.

The tenants are entitled to the balance of $1.68.

The filing fees are set off against each other.

This decision is final and binding and 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 18, 2016

Residential Tenancy Branch