Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, OLC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on, or about, September 20, 2015 she personally served the Landlord with the Application for Dispute Resolution and the Notice of Hearing. The Landlord stated that he believes he received these documents in the mail sometime in September of 2015. Regardless of whether the documents were mailed to the Landlord or personally served to him, I find that they have been served in accordance with section 89 of the *Residential Tenancy Act (Act).*

On September 30, 2015 the Landlord submitted 8 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the Tenants on, or about, September 30, 2015. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On March 08, 2016 the Tenants submitted 82 pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was posted on the Landlord's door in early March of 2016. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On March 09, 2016 the Landlord submitted 7 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the Tenants on, or about, March 09, 2016. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were not permitted to introduce evidence that was not relevant to the issues in dispute at these

proceedings. Specifically, the Landlord was not permitted to introduce evidence of damage to the rental unit, as these proceedings do not include a claim for compensation for damage to the rental unit.

Preliminary Matter

In the evidence package submitted to the Residential Tenancy Branch on March 08, 2016, the Tenants provided an Amendment to an Application for Dispute Resolution and a Monetary Order Worksheet, which increases the amount of the monetary claim from $3,142.00 to $8,890.00. I note that these documents were located deep within an evidence package of 82 pages and that they were not "clearly identifiable".

I find that the Tenants did not amend the Application for Dispute Resolution in accordance with Rule 2.11 of the Residential Tenancy Branch Rules of Procedure. Rule 2.11 stipulates that a copy of the amended application, which must be clearly identifiable and provided separately from all other documents and must be served on the other party at least 14 days before the scheduled date of the dispute resolution hearing and must be served separately from all other documents.

In this case the Application for Dispute Resolution was not clearly identifiable and it was not provided separately from all other documents, as it was submitted within a large evidence package. I find that the manner in which the Tenants notified the Landlord of the amendment made it difficult, if not impossible, for the Landlord to prepare an adequate response to the new claims and I therefore find that it would be prejudicial to the Landlord to allow the increased claim. I therefore decline to amend the Application for Dispute Resolution.

In determining that the Application for Dispute Resolution should not be amended I was influenced, in part, by the Landlord's testimony that he did not really understand the additional claims.

In determining that the Application for Dispute Resolution should not be amended I was influenced, in part, by the fact that the Tenants filed this Application for Dispute Resolution in September of 2015 and they had ample time to provide the Landlord with more time to consider the additional claims, which are significantly different than the original claims.

The issues in dispute at these proceedings are limited to the issues outlined in the original Application for Dispute Resolution. The Tenants retain the right to file another Application for Dispute Resolution.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit and to a rent refund?

Background and Evidence:

The Landlord and the Tenants agree that:

- the tenancy began on December 01, 2012;
- a security deposit of $725.00 was paid;
- a pet damage deposit of $725.00 was paid;
- in a letter, dated June 18, 2015, the Landlord informed the Tenants that he is moving back into the rental unit on September 01, 2016 and that they must vacate by that date;
- in a letter, dated July 02, 2015, the Tenants informed the Landlord that he did not serve them with legal notice to vacate the rental unit and that they will not be moving out on September 01, 2015;
- sometime later in July of 2015 the Tenants informed the Landlord, via text message, that they would be vacating the rental unit by August 31, 2015;
- the Tenants provided a forwarding address, in writing, on September 20, 2015.
- the Tenants did not authorize the Landlord to retain any portion of the security deposit/pet damage deposit;
- the Landlord did not return any portion of the security deposit/pet damage deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the deposits.

The female Tenant stated that:

- most of their property had been moved out of the rental unit by August 26, 2015;
- they still had some property inside of the rental unit and on the residential property on August 27, 2015;
- they still intended to clean the rental unit after August 26, 2015;
- they had not returned the keys to the rental unit by August 27, 2015; and
- on August 27, 2015 the Landlord sent them a text message advising them he was living in the rental unit, that they should not enter the rental unit, and that they can leave the key and garage door opener at the front door of the unit.

The male Tenant stated that he removed all of the property from the residential property on August 30, 2015; that the Landlord would not let him enter the rental unit on August 30, 2015; and that on August 30, 2015 the Landlord gave him the property the Tenants had left in the rental unit.

The Landlord stated that:

- he drove by the rental unit on, or about, August 22, 2015, August 23, 2015, and August 24, 2015 days and did not see any signs of occupancy;
- he looked inside the rental unit after the third day and determined there was no personal property left in the rental unit;

- he was concerned that his house insurance would be invalid if the home was left vacant;
- there was a notice on the door that indicated gas service had been terminated;
- there was an “abandoned car” and a trampoline left on the residential property;
- prior to moving back into the rental unit a person living near the rental unit told him the Tenants had moved out “quite a while ago”;
- he determined the rental unit was abandoned so he moved into the rental unit on August 25, 2015;
- the Tenants had not returned the keys when he moved back into the rental unit on August 25, 2015;
- on August 26, 2015 he was away from the home and when he returned he found cleaners in the home that had been hired by the Tenants;
- after finding the cleaners in the rental unit he sent the Tenants a text message advising them he was living in the rental unit, that they should not enter the rental unit, and that they can leave the key and garage door opener at the front door of the unit;
- on August 30, 2015 the male Tenant recovered property that had been left on the residential property; and
- on August 30, 2015 he did not give the male Tenant any property that had been left inside the house, because no property was left inside the house.

The Landlord and the Tenants agree that the Landlord sent the Tenants a text message, dated August 19th, in which he asked if he could move back in on the 29th with the understanding that he would return “three days rent”. The parties agree that the Tenants responded to this message by advising the Landlord they “need the month”.

The Tenants are seeking a rent refund of $192.00 for the days the Landlord occupied the rental unit and they are seeking return of double the security deposit/pet damage deposit.

Analysis:

On the basis of the undisputed evidence I find that the parties agreed that this tenancy would end on August 30, 2015.

Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
(i) the purpose for entering, which must be reasonable;
(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
(d) the landlord has an order of the director authorizing the entry;
(e) the tenant has abandoned the rental unit;
(f) an emergency exists and the entry is necessary to protect life or property.

There is no evidence that the Tenants gave the Landlord permission to enter or occupy the rental unit anytime during the latter portion of August of 2015 and I therefore find that he did not have the right to enter the unit in accordance with section 29(1)(a) of the *Act.*

There is no evidence that the Landlord gave the Tenants proper notice of his intent to enter or occupy the rental unit anytime during the latter portion of August of 2015 and I therefore find that he did not have the right to enter the unit in accordance with section 29(1)(b) of the *Act.*

There is no evidence that the Landlord provided housekeeping or related services under the terms of a written tenancy agreement and I therefore find that he did not have the right to enter the unit in accordance with section 29(1)(c) of the *Act.*

There is no evidence that the Landlord had authority from the director to enter the unit and I therefore find that he did not have the right to enter the unit in accordance with section 29(1)(d) of the *Act.*

I find that the Landlord did not have reasonable grounds to conclude that the Tenants had abandoned the rental unit when he moved into the unit on August 25, 2015 and I therefore find that he did not have the right to enter the unit in accordance with section 29(1)(e) of the *Act.*

In determining that the Landlord did not have reasonable grounds to conclude that the rental unit was abandoned on August 25, 2015 I was influenced by:

- the undisputed evidence that both parties understood the tenancy was officially ending on August 30, 2015;
- the undisputed evidence that the Tenants still had property left on the residential property;
- the undisputed evidence that the keys had not yet been returned to the Landlord; and
- that on August 19, 2015 the Tenants clearly informed the Landlord that they would need the entire month of August to vacate the rental unit.

I find that the Landlord did not have reasonable grounds to conclude that an emergency existed when moved into the unit on August 25, 2015 and I therefore find that he did not have the right to move into the unit in accordance with section 29(1)(f) of the *Act.*

In determining that the Landlord did not have reasonable grounds to conclude that an emergency existed I considered the Landlord's testimony that he found a notice that gas service had been shut off. I can find no reason to conclude that termination of gas service places a rental unit at risk during the summer months.

In determining that the Landlord did not have reasonable grounds to conclude that an emergency existed I considered the Landlord's testimony that his house insurance would not be valid if the house was left empty. I find that the Landlord submitted no evidence to support this submission and, given that homes are often vacant for short periods of time either due to vacations or due to a move, I find his submission lacks credibility.

I find that the Landlord breached section 29(1) of the *Act* when he entered and occupied the rental unit in August of 2015.

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant if the tenant suffers a damage or loss arising from the landlord not complying with the *Act*, the regulations or a tenancy agreement.

I find that the Tenants have submitted insufficient evidence to establish that they suffered loss as a result of the Landlord moving into the rental unit during the latter portion of August of 2015. In reaching this conclusion I was heavily influenced by the absence of evidence to show that the Tenants incurred any costs as a result of the Landlord moving into the rental unit early, such as storage costs or the costs of alternate accommodation. If anything, the Tenants benefitted from the Landlord moving in early, as they could not be required to clean the rental unit after he moved in.

As the Tenants have not established that they suffered a loss as a result of the Landlord moving into the rental unit during the latter portion of August of 2015, I dismiss their claim for $192.00.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit/pet damage deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy officially ended on August 30, 2015 and the forwarding address was received in September of 2015

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the

Tenants double the security deposit and pet damage deposit.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $2,950.00, which is comprised of double the security deposit/pet damage deposit ($2,900.00), and $50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of 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: April 01, 2016

Residential Tenancy Branch