Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The male Tenant filed an Application for Dispute Resolution in which the male Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on November 17, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied to keep all or part of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on December 24, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to each Tenant, via registered mail. The Tenants acknowledged receiving these documents.

On June 14, 2016 the Landlord submitted 53 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants by registered mail on June 14, 2016. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On June 20, 2016 the Tenants submitted 4 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Landlord by registered mail on June 20, 2016. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for a strata fine?
Is the Tenant entitled to compensation related to service of a Two Month Notice to End Tenancy for Landlord's Use of Property?
Should the security deposit be returned to the Tenant or retained by the Landlord?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on November 01, 2013;
- the tenancy ended on October 31, 2015 but all of the keys were not returned until November 02, 2015;
- the Tenants paid a security deposit of $875.00;
- a condition inspection report was completed prior to the start of the tenancy;
- a condition inspection report was not completed at the end of the tenancy;
- the Landlord did not schedule a time for a final condition inspection, in writing;
- the Landlord did not have written permission to keep any portion of the Tenants' security deposit;
- the Landlord did not return any portion of the Tenants' security deposit;
- on November 02, 2015 the Tenants provided the Landlord with an address, via text message;
- the address provided by text message is the same address the male Tenant provided as a service address on his Application for Dispute Resolution;
- on November 02, 2015 the Landlord went to the address provided by text message for the purposes of obtaining keys to the rental unit; and
- the Landlord entered the residence at the address provided and spoke with the male Tenant.

The Landlord stated that he did not know the address provided by text message was to be used as a forwarding address because when he asked the male Tenant if he was living at the address the male Tenant did not answer him and because the male Tenant told him this address was drafty and he was not certain if he was going to like the premises. He stated that he believed that the Tenants may have only been residing at this address on a temporary basis.

The male Tenant stated that the Landlord knew, or should have known, that he was residing at the forward address provided because he came into that resident and saw the Tenants furniture in the residence.

The male Tenant is seeking compensation of $3,500.00 which he understands he is entitled to if the new owners did not move into the residential property. He stated that:

- the Tenants were served with a Two Month Notice to End Tenancy because the rental unit had been sold and the new owners wished to occupy the rental unit;
- he was told that the new owners moved their personal belongings into the rental unit approximately two months after the rental unit was vacated; and
- he understands the new owners may not be living in the rental unit on a full-time basis.

The Landlord is seeking to retain the $875.00 security deposit in partial satisfaction of Strata Corporation fines levied against the rental unit. The Landlord stated that:

- the male Tenant signed an agreement to abide by bylaws of the Strata Corporation;
- sometime in 2013 he was informed, via the telephone, that the Tenants were contravening a Strata bylaw by storing a vehicle hard top rack in their designated parking area;
- he informed the male Tenant about the bylaw infraction and was informed that the matter would be resolved;
- Strata fines of $6,200.00 were levied;
- in September of 2015 the Strata Corporation agreed to reduce the fines to $1,250.00;
- he paid $1,250.00 in Strata fines;
- he does not know why his written submission declares that the Strata fines were reduced to $1,000.00;
- he asked the male Tenant to pay for the Strata fines but the male Tenant did not respond to that request;
- he was not aware Strata fines were being levied until July of 2015 when it was brought to his attention by a realtor;
- he was not aware Strata fines were being levied because notice of those fines were being mailed to the rental unit and the Tenants did not forward that mail to him until September of 2015;
- the Tenants did not advise him his mail was being delivered to the rental unit;
- he has no first-hand knowledge of when the vehicle hard top rack was removed from the Tenant's designated parking space; and
- he believes the vehicle hard top rack was not removed until October of 2014, as fines for the bylaw infraction were levied until October 31, 2014.

The Tenants contend that:

- the male Tenant signed an agreement to abide by bylaws of the Strata Corporation;
- prior to the Landlord filing his Application for Dispute Resolution the Tenants were not asked by the Landlord to pay any strata fines;
- the Tenants were not aware Strata fines were being levied as the documents related to those fines were not being mailed to the Tenants;

- the Tenants did not open mail being delivered to the rental unit if it was addressed to the Landlord;
- shortly after the tenancy began the Tenants informed the Landlord that his mail was being delivered to the rental unit but the Landlord made no attempts to pick up that mail;
- sometime in December of 2013 the Tenants were told that storing a vehicle hard top rack in their designated parking area was a Strata bylaw infraction; and
- the vehicle hard top rack was removed from the Tenants' designated parking area on January 08, 2014.

The Landlord submitted a copy of a letters from the Strata Corporation, dated February 18, 2014, one of which is addressed to the Landlord and one of which was addressed to the "current resident" of the rental unit. In these letters the Strata Corporation asks that the vehicle hard top rack be removed from the Tenants' designated parking area.

The Landlord submitted documents from the Strata Corporation that show that parkade bylaw fines of $6,200.00 were levied between April 15, 2014 and October 31, 2014.

Analysis

On the basis of the undisputed evidence, I find that this tenancy ended on October 31, 2015 and that the Landlord received a forwarding address for the Tenants, via text message, on November 02, 2015. I therefore find that the Landlord received the Tenants' forwarding address, in writing, on November 02, 2015.

In determining that the Landlord received the Tenants' forwarding address in writing, via text message, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that a text message meets the definition of writing as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As text messages are capable of being retained and used for further reference, I find that a text message can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act.*

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act,* must be served. Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlord acknowledged receiving the text message in which the Tenant provided his forwarding address, I find that the Landlord was sufficiently served with the Tenants' forwarding address.

In reaching the conclusion that the forwarding address was sufficiently served by text message I was influenced, to some degree, by the undisputed evidence that the parties were communicating by text message on November 02, 2015, which was the date the forwarding address was provided. This satisfies me that the Landlord was not averse to communicating with the Tenant by text message.

In reaching the conclusion that the forwarding address was sufficiently served by text message I was influenced, to some degree, by the undisputed evidence that on November 02, 2015 the Landlord visited the address provided. This satisfies me that the Landlord was fully aware that the Tenants could be contacted at the address provided.

In adjudicating this matter I have placed no weight on the Landlord's testimony that he did not consider the address provided by text message to be a forwarding address because he did not know if this address was going to be the Tenants' permanent residential address. Section 38 of the *Act* requires a tenant to leave a forwarding address at the end of the tenancy. There is nothing in the *Act* that requires a tenant to provide the landlord with a residential address. In this case the Tenants provided a forwarding address which is their residential address.

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. I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or he did not file an Application for Dispute Resolution within 15 days of the tenancy ending and the receiving a forwarding address.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with section 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.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for

at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. As the evidence shows that this tenancy ended because the rental unit had been sold and the new owners moved into the rental unit approximately two months after the rental unit was vacated, I find the male Tenant has not established that he is entitled to compensation pursuant to section 51(2)(a) of the *Act.* I therefore dismiss his claim for $3,500.00.

On the basis of the undisputed testimony I find that the Tenants were storing a vehicle hard top rack in their designated parking area in December of 2013, which is a contravention of a Strata Corporation bylaw. On the basis of the testimony of the male Landlord, I find that this vehicle hard top rack was removed on January 08, 2014. As there is no evidence a fine was levied for a bylaw infraction in December of 2013 or January of 2014, I am unable to conclude that the Tenants are obligated to pay a fine for contravening a Strata Corporation bylaw during these months.

I find that there is insufficient evidence to establish that the vehicle hard top rack was being stored in the Tenants designated parking area after January 08, 2014. In reaching this conclusion I was heavily influenced by the male Tenant's testimony that the rack was removed on January 08, 2014 and the absence of any direct evidence that refutes that testimony.

Although the evidence shows that the Strata Corporation levied bylaw fines until October 31, 2014, I find that is not sufficient evidence to establish that the fines were warranted. In reaching this conclusion I was heavily influenced by the absence of any evidence that shows how the Strata Corporation determined that the vehicle hard top rack was still being stored in the Tenant's designated parking area. It is possible, for example, that the fines continued to be imposed simply because the Landlord and/or occupant did not advise the Strata Corporation that the rack had been removed.

I find that it is not sufficient to provide evidence that a Strata Corporation has concluded that a bylaw infraction has occurred without providing some evidence of how the Strata Corporation reached that conclusion. To rely solely on the conclusions of the Strata Corporation without any knowledge of the nature and quality of their investigation is, in my view, wholly inappropriate.

I find that the Landlord has failed to establish that the Tenants are responsible for paying any Strata Corporation bylaw fines and I dismiss his application to retain the security deposit.

I find that the Landlord has failed to establish the merit of his Application for Dispute Resolution and I dismiss his application to recover the fee for filing this Application for Dispute Resolution.

I find that the male Tenant's Application for Dispute Resolution has merit and that he is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The male Tenant has established a monetary claim, in the amount of $1,800.00, which includes double the security deposit and $50.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the male Tenant a monetary Order for $1,800.00. In the event the Landlord does not voluntarily 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.

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 07, 2016

Residential Tenancy Branch