Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes:

MNDC, OLC, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On August 16, 2017 the Landlords filed an Application for Dispute Resolution, in which they applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlords stated that sometime in July of 2016 the Landlords' Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail. The Tenant acknowledged that the Tenants received these documents sometime in August of 2016.

On August 22, 2016 the Tenants filed an Application for Dispute Resolution, in which they applied for an Order requiring the Landlords to comply with the *Residential Tenancy Act (Act*), for the return of their security and pet damage deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on August 20, 2016 the Tenants' Application for Dispute Resolution and the Notice of Hearing were sent to the Landlords, via registered mail. The Agent for the Landlords acknowledged that the Landlords received these documents.

On January 12, 2017 the Tenants submitted 27 pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were served to the Landlords on January 12, 2017. The Agent for the Landlords acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On February 16, 2017 the Tenants submitted 4 pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were not served to the Landlords. As these documents were not served to the Landlords they were not accepted as evidence for these proceedings.

On February 15, 2017 the Landlords submitted 7 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlords stated that these documents were mailed to the Tenants on February 15, 2017. The Tenant stated that these documents were received on February 17, 2017.

The parties were advised that the Landlords' evidence was not served within the timelines established by the Residential Tenancy Branch Rules of Procedure, which require that a respondent's evidence be received by the applicant as soon as possible and no later than 7

days prior to the hearing. The Agent for the Landlords stated that the evidence was not served on time because she did not understand the deadlines regarding service of evidence.

The parties were advised that the Landlord's evidence was not being accepted as evidence for these proceedings. This decision was reached, in large part, because the evidence submitted by the Landlords is a series of emails from July of 2014. As the Rules of Procedure require that evidence must be served as soon as possible, I find that this evidence should ideally have been served to the Tenants with the Application for Dispute Resolution and, in any event, long before February 15, 2017.

Given that this evidence was not received by the Tenants until three days before the hearing, I find that it would be unfair to the Tenants to accept the documents without first providing the Tenants with an opportunity for more time to review the documents.

The Agent for the Landlords was advised that she would be able to refer to the Landlords' evidence during the hearing and that if, during the hearing, she believed it was necessary for me to physically view the evidence she could request an adjournment. This hearing was concluded without the Agent for the Landlords requesting an adjournment.

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

Are the Landlords entitled to compensation for unpaid rent, parking fees, and/or NSF fees?
Are the Tenants entitled to the return of their security deposit?

Background and Evidence

The Landlords and the Tenants agree that:

- the tenancy began on June 29, 2013;
- at the end of the tenancy the rent was $1,327.40;
- rent was due by the first day of each month;
- the Tenants paid a security deposit of $645.00;
- the Tenants paid a pet damage deposit of $645.00;
- the Landlords served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property, which declared that they must vacate the rental unit on October 31, 2016;
- the Two Month Notice to End Tenancy was first sent to the Tenants by email;

- the Tenants informed the Landlords that a Notice to End Tenancy could not be served by email;
- the Two Month Notice to End Tenancy was then mailed to the Tenants on July 17, 2016;
- on July 24, 2016 the Tenants sent the Landlords an email, in which they inform the Landlords of their intent to end the tenancy on August 04, 2016;
- in the aforementioned email, which was submitted in evidence, the Tenants ask the Landlords to accept the email notice as the author does not recall having a mailing address for the Landlords;
- a mailing address for the Landlords was provided to the Tenants on the Two Month Notice to End Tenancy;
- the Tenants paid $171.28 in rent for August of 2016;
- a final condition inspection report was completed on August 03, 2016;
- the keys to the unit were returned on August 03, 2016;
- the Tenants did not give the Landlords written authority to retain any portion of their security or pet damage deposit; and
- the Landlords did not return any portion of the security or pet damage deposit.

The Tenant stated that they provided the Landlords with a forwarding address, by mail, on August 12, 2016. The Agent for the Landlords acknowledged that the address was mailed to the Landlords, although she is not certain of the date of receipt.

The Landlords are seeking compensation, in the amount of $1,327.40, for unpaid rent from August of 2016. The Landlords contend that the notice to end tenancy the Tenants provided by email on July 24, 2016 was not a valid notice to end the tenancy and that the Tenants were obligated to pay all the rent due for August as the Tenants never provided proper notice to end the tenancy.

The Agent for the Landlords argued that the Tenants understood that the Landlords' notice to end tenancy could not be served by email so they should have understood that the Tenants' notice to end tenancy could not be served by email.

The Tenant argued that in his email of July 24, 2016 he specifically asked the Agent for the Landlord if she would "kindly consider that this email be sufficient notice".

The Tenants submitted a series of emails exchange between the parties after the Tenants provided their notice to end the tenancy. In one of those emails, dated July 28, 2016, the Tenants ask the Landlords to confirm that they will accept the email as written notice of their intent to vacate by August 04, 2016. The Tenants submitted a copy of the Agent for the Landlords' response to this email, dated July 29, 2016, in which the Agent for the Landlords replies "Yes to your detailed message".

The Tenant stated they understood the email of response of July 29, 2016 to mean that the Landlords were accepting the notice to end tenancy that was served by email. The Agent for the Landlord stated that her email response was simply intended to indicate the email had been received.

The Agent for the Landlords stated that she wished to withdraw the claim for parking fees. She stated that she understands the Tenants tendered a cheque for a parking payment that was

returned due to insufficient funds, although she was unable to provide any details of that transaction. The Tenant stated that they did not tender a cheque for a parking payment that was returned due to insufficient funds.

Analysis

On the basis of the undisputed evidence I accept that the Tenants were served with a Notice to End Tenancy, served pursuant to section 49 of the *Act*, which declared that the Tenants must vacate the rental unit by October 31, 2016.

Section 50(1)(a) of the *Act* stipulates that if a landlord gives a tenant notice to end a periodic tenancy under section 49 of the *Act* the tenant may end the tenancy early by 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.

On the basis of the undisputed evidence I accept that on July 24, 2016 the Tenants sent the Landlords an email in which they informed the Landlords of their intent to vacate the rental unit on August 04, 2016. I find that this email served as written notice to end the tenancy on August 04, 2016.

In adjudicating this matter I was guided 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 an email meets the definition of written 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 emails are capable of being retained and used for further reference, I find that an email can be used to provide notice to end a tenancy in some circumstances, 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 email is not a method 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 Agent for the Landlords acknowledged receiving the email in which the Tenants provided their notice to end the tenancy, I find that the Landlords were sufficiently served with the Tenants' notice to end their tenancy.

In adjudicating this matter I was influenced by the fact that section 50(1)(a) of the *Act* does not stipulate that a notice to end a tenancy given under this section must comply with section 52 of the *Act.* I therefore have placed no weight on the fact the notice to end tenancy that was served by the Tenants was not signed.

Section 50(1)(b) of the *Act* stipulates that if a tenant gives notice to end the tenancy pursuant to section 50(1)(a) of the *Act*, the Tenant must pay the landlord the proportion of the rent due to the effective date of the tenant's notice, unless the rent has already been paid, in which case the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

As the Tenants gave notice to end the tenancy effective August 04, 2015, I find that the Tenants were only obligated to pay rent for four days in August, which is $171.28. As the Tenants have paid $171.28 in rent for August, I dismiss the Landlords' claim for any other rent for August.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants tendered a cheque for a parking payment that was returned due to insufficient funds. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates this claim or that refutes the Tenant's testimony that they did not tender a cheque for a parking payment that was returned due to insufficient funds. I therefore dismiss the Landlords' claim for NSF fees.

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 Tenants mailed their forwarding address to the Landlords on August 12, 2016. As the Agent for the Landlords does not recall when the address was received, I find that it is deemed received on August 17, 2016, pursuant to section 90 of the *Act.* I therefore find that the Landlords had until September 01, 2016 to either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

The undisputed evidence is that the Landlords have not repaid the security deposit or pet damage deposit. The evidence shows that the Landlords filed an Application for Dispute Resolution on August 16, 2016, in which they applied for a monetary Order for money owed or compensation for damage or loss. I specifically note that they did not apply to retain the security deposit or pet damage deposit in this Application for Dispute Resolution. I further note that there is nothing in the Application for Dispute Resolution or the monetary calculation that would cause me to conclude that the Landlords intended to apply to retain the security deposit or pet damage deposit when they filed their Application for Dispute Resolution.

As the Landlords have not repaid the security deposit or filed an Application for Dispute Resolution claiming against the deposits and more than 15 days has passed since the tenancy

ended and the forwarding address was received, I find that the Landlords. failed to comply with section 38(1) of the *Act*.

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 Landlords did not comply with section 38(1) of the *Act,* I find that the Landlords must pay the Tenants double the security deposit and pet damage deposit

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application. I find that the Landlords failed to establish the merits of their Application for Dispute Resolution and I dismiss their application to recover the filing fee.

Conclusion

The Tenants have established a monetary claim, in the amount of $2,680.00, which includes double the pet damage/security deposit and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Tenants a monetary Order for $2,680.00. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, 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 *Act*.

Dated: February 21, 2017

Residential Tenancy Branch