



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESCANA PHARMACY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

Tenant RH ("tenant"), a landlord agent ("agent") and a broker of the landlord company ("broker") attended the teleconference hearing and the parties gave affirmed testimony. During the hearing the parties presented their evidence. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on April 1, 2015 and reverted to a month to month tenancy after March 31, 2016. The tenants vacated the rental unit on September 3, 2017. During the tenancy, monthly rent was \$795.00 per month.

The tenants have claimed \$16,890.00 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Double monthly rent	\$1,640.00
2. Move out expenses	\$750.00
3. One month rent (City of Vancouver move out policy)	\$820.00
4. 3 years compensation for rent difference	\$13,680.00
TOTAL	\$16,890.00

Regarding item 1, the tenant admitted that the amount claimed was incorrect as double the monthly rent would not total \$1,640.00, it would total \$1,590.00. The tenant claims that they are seeking double the monthly rent as they are alleging that the landlord failed to use the rental unit for the stated purpose on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated July 31, 2017 ("2 Month Notice"). There is no dispute that the tenants were served with a 2 Month Notice and did not dispute the 2 Month Notice. The reason stated on the 2 Month Notice was "The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant."

The agent referred to several documents submitted in evidence including an invoice for \$26,250.00 for painting exterior, stucco work, windows frames, flashing, doors, railings, and window caulking among other items. The agent testified that there is six units in the rental building and all but one unit were given 2 Month Notices as the five that were given 2 Month Notices including this unit required that the landlord have the rental unit vacant so that workers could come and go through the unit to the exterior of the building and also work from within the inside of the rental unit.

The agent testified that the entire unit was painted which was supported by another invoice. In addition, the agent referred to another invoice in the amount of \$8,353.00 for work completed in common areas of the building including hallways, stairwells, doors, etc. The agent also testified that \$2,302.00 was paid for electrical work throughout the building which was supported by an invoice and that due to a full building remodel; appliances including fridges, stoves, washers and dryers were also replaced and an invoice in the amount of \$3,940.36 was submitted in support of the replaced appliances.

The agent stated that the one unit that was not given a 2 Month Notice has much less work to complete and as a result, the landlord did not issue the tenant a 2 Month Notice to that one unit and that five of the six units had much more work to complete which included the unit involved in this dispute.

The tenants did not have any documentary evidence to rebut the agent's testimony and documentary evidence in terms of the work completed once the tenants vacated the rental unit. Instead, the tenant verbally disagreed that the rental unit had to be vacated.

Regarding item 2, the tenants have claimed \$750.00 for moving expenses which was dismissed during the hearing as the tenants failed to dispute the 2 Month Notice and are not entitled to moving expenses as a result. The burden of proof will be discussed later in this decision. There is no dispute that the tenants were compensated with one month of rent after being served with the 2 Month Notice in accordance with the *Act*.

Regarding item 3, the tenants have requested compensation for one month's rent due to the City of Vancouver's alleged move-out policy. This portion of the tenants' claim was dismissed without leave to reapply as such compensation is not a remedy under the *Act*; however, the tenant was reminded that if they wished to seek compensation through the City of Vancouver that that would be a decision the tenant would have to make outside of this dispute resolution process.

Regarding item 4, the tenant stated that they are claiming \$13,680.00 for "rent difference" at their new rental unit which was dismissed without leave to reapply as the tenant was reminded that they did not dispute the 2 Month Notice and as a result, there was no remedy for "rent difference" when the tenancy legally ended based on a undisputed 2 Month Notice.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did what is reasonable to minimize the damage or losses that were incurred.

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.

Item 1 – Firstly, there is no dispute that the tenants were served with a 2 Month Notice and did not dispute the 2 Month Notice. Therefore, the parties were advised during the hearing that I would not be making a determination if the 2 Month Notice was valid as the tenants failed to dispute the 2 Month Notice. Instead, the parties were advised that all I would be determining is whether the landlord has provided sufficient evidence that the landlord complied with the reason stated on the 2 Month Notice and whether the tenant provided sufficient to prove their claim.

I have carefully considered the invoices and testimony and find that the landlord has provided sufficient evidence to support that the rental building and rental unit underwent a full building remodel and that the work completed required the rental unit to be vacant during the renovations. I do not need to consider if the landlord re-rented the rental unit after the renovations were complete as I am satisfied on the balance of probabilities that the renovations were completed and that the tenants did not dispute the 2 Month Notice.

I also have considered that the tenants failed to provide any documentary evidence to rebut the landlord's documentary evidence and testimony and therefore, I find the tenants have failed to meet the burden of proof for this item by failing to prove part 1 and part 2 of the test for damages or loss described above. Therefore, item 1 is dismissed without leave to reapply due to insufficient evidence.

Item 2- As indicated above, the tenants have claimed \$750.00 for moving expenses which was dismissed during the hearing as the tenants failed to dispute the 2 Month Notice and are not entitled to moving expenses as a result. I find the tenants have failed to meet all four parts of the test for damages or loss described above. Therefore, this item is dismissed without leave to reapply due to insufficient evidence.

Item 3- As indicated above, the tenants requested compensation for one month's rent due to the City of Vancouver's alleged move-out policy. I find the tenants have failed to meet all four

parts of the test for damages or loss described above. Therefore, this item is dismissed without leave to reapply due to insufficient evidence.

Item 4 – As indicated above, the tenants have claimed \$13,680.00 for “rent difference” at his new rental unit which was dismissed as the tenant was reminded that they did not dispute the 2 Month Notice and as a result, there was no remedy for “rent difference” when the tenancy legally ended based on a undisputed 2 Month Notice. I find the tenants have failed to meet all four parts of the test for damages or loss described above. Therefore, this item is dismissed without leave to reapply due to insufficient evidence.

As the tenants’ application was unsuccessful, I do not grant the tenants the recovery of the cost of the filing fee.

Conclusion

The tenants’ application has no merit and is dismissed in its entirety.

I do not grant the recovery of the cost of the filing fee.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: September 11, 2018

Residential Tenancy Branch