



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: MNSD, FFT
Landlords: MNRL-S, FFL

Introduction

This decision is in respect of the tenants' and landlords' applications for dispute resolution under the *Residential Tenancy Act* (the "Act") made on June 28, 2018 and November 16, 2018, respectively. The tenants seek a monetary order for the return of their security deposit and for recovery of the filing fee. The landlords seek a monetary order for unpaid rent and for recovery of the filing fee.

A dispute resolution hearing was convened on December 7, 2018 and one tenant and both landlords attended. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues with respect to the service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of these applications are considered in my decision.

Issues to be Decided

1. Are the landlords entitled to a monetary order for unpaid rent?
2. Are the landlords entitled to a monetary order for recovery of the filing fee?
3. Are the tenants entitled to a monetary order for the return of their security deposit?
4. Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The tenant testified that the tenancy commenced on December 15, 2017, when they moved into the rental unit. The rental unit is a downstairs suite in a house. Monthly rent was \$1,200.00 and they paid a security deposit of \$600.00. There was no written tenancy agreement.

On March 26, 2018, the landlords or landlord sent a text message to the tenant advising them that they had sold the house, and that they should move out by May 15, 2018. On May 15, 2018, the tenants moved out of the rental unit, and on May 18, 2018, they provided a letter in-person to the landlord with the tenants' forwarding address. The tenant testified that no Condition Inspection Report was completed either at the start of, or at the end of, the tenancy. They further confirmed that there was no written agreement between the parties permitting the landlords to retain any or all of the security deposit.

The tenant acknowledged that when they moved into the rental unit that the landlords had the house listed on the market, and that it might be sold at any moment. She also added that they gave the landlords a sheet of printed information and an internet link about a tenant's right to compensation at the end of a tenancy.

The landlord ("E.C.") testified that they listed the house for sale in June 2017, and that there was a "FOR SALE" sign on the front lawn when the tenants moved in. The landlords were just looking for a temporary tenancy because of the potential sale. She added that the rental unit was fully furnished, and that rent included free Wi-Fi and everything else, such as laundry, was included.

Eventually, the house sold, and the landlord confirmed that they advised the tenants that they should move out by, or on, May 15, as the possession date for the new owners was May 28, 2018.

When the tenants didn't pay for the last month's rent, the landlord decided to "just let it go," but then were later faced with the tenants' application for dispute resolution seeking the return of the security deposit. She added that they did not draft a written tenancy agreement because it was only a month-to-month tenancy.

The landlord's husband expressed dismay at the tenants' attempt to seek compensation, remarking, "Who gets away with free rent?"

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Landlords' Application for Unpaid Rent

Regarding the issue concerning "free rent," I draw the parties' attention to section 51(1) of the Act, which states that

A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 49 of the Act deals with a variety of situations where a landlord ends a tenancy due to landlord use. In this case, the landlords sold their house and as such any notice to end the tenancy fell under the requirements of section 49(5), which reads as follows:

- (5) A landlord may end a tenancy in respect of a rental unit if
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

I also refer the parties to section 49(7) of the Act, which requires that any notice given to the tenants ending a tenancy under this section must contain the name and address of the purchaser who asked the landlord to give the notice.

In this case, the landlords failed to comply with any part of the Act having to do with properly ending the tenancy. Sending a text message does not comply with section 49(7), and the landlords' notice did not include any information required in section 49(5)(c) of the Act. In addition, the amount of time given to the tenants was under two months, which is the minimum amount of time required under section 49(2) of the Act. That the landlords had the house on the market, that there was a "FOR SALE" sign on the lawn and that the tenants were aware of a potential sale, are all immaterial and moot. Further, that the landlords may have been "helping them out" is immaterial to their obligations under the Act. Upon creating a tenancy with the tenants, the landlords were obligated to comply with the Act regardless of whether it was a short-term tenancy.

Although the manner and form of the notice given to the tenants did not comply with the Act, that does not alter the fact that the tenants were entitled to an amount that is the equivalent of one month's rent. In other words, the tenants were, and are, entitled by law to one month of free rent, for April 15 to May 15, 2018, inclusive.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the onus of proving their claim for compensation for unpaid rent.

As the landlords were unsuccessful in their application I do not grant a monetary order for recovery of the filing fee.

Given the above, I dismiss the landlords' application without leave to reapply.

Tenants' Application for Return of Security Deposit

Section 38(1) of the Act states as follows:

Except as provided in subsection (3) of (4) (a), within 15 days after the later of

- (a) the date the tenancy ends,
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Subsection 38(4)(a) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if the tenant agrees in writing that the landlord may retain the amount to pay a liability or an obligation of the tenant.

In this case, I find that the tenants have established on a balance of probabilities that the landlords received the tenants' forwarding address in writing on May 18, 2018, and there is no evidence before me to find that the landlords made an application for dispute resolution claiming against the security deposit within 15 days of receiving the tenants' forwarding address. Further, the tenants testified that there was no agreement in writing between the parties permitting the landlords to retain any amount from the security deposit.

As such, taking into consideration all the oral and documentary evidence and undisputed testimony of the tenants, I find that the landlords did not comply with section 38(1) of the Act, and therefore grant the tenants a monetary award for the return of their security deposit.

Further, section 38(6) of the Act states that where a landlord fails to comply with section 38(1), the landlord may not make a claim against the security deposit or any pet damage deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Having found that the landlords failed to return the security deposit in compliance with section 38(1) of the Act, I further find that the landlords must pay the tenants double the amount of the security deposit for a total of \$1,200.00.

As the tenants were successful in their application, I grant them an additional monetary award in the amount of \$100.00 for the recovery of the filing fee.

Pursuant to section 67 of the Act, I grant the tenants a monetary order in the amount of \$1,300.00.

Conclusion

I grant the tenants a monetary order in the amount of \$1,400.00, which must be served on the landlords. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

I dismiss the landlords' application without leave to reapply.

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: December 7, 2018

Residential Tenancy Branch