Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing was convened pursuant to an Application for Dispute Resolution, made on July 6, 2018, and amended on September 11, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for money owed or compensation for damage or loss; and
- an order that the Landlord return all or part of the security deposit and/or pet damage deposit.

The Tenants attended the hearing and were assisted by advocates K.R. and S.C. on September 28 and November 20, 2018, respectively. The Landlord attended the hearing on her own behalf. The Tenants and the Landlord provided affirmed testimony.

The Tenants testified that the Landlord was served with the Application package and an Amendment to an Application for Dispute Resolution by registered mail. The Landlord acknowledged receipt of these packages. In addition, the Landlord testified the Tenants were served with the documentary evidence upon which she relied by registered mail. The Tenants acknowledged receipt. During the hearing, neither party raised any issue with respect to service or receipt of the above documents. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were advised to refer me to any documentary evidence upon which they wished to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit?

Background and Evidence

A complete copy of the tenancy agreement between the parties was submitted into evidence by the Landlord. It confirmed the fixed-term tenancy began on July 1, 2017, and was expected to continue until June 30, 2018. Rent in the amount of $1,200.00 per month was due on the first day of each month. The Tenants paid a security deposit of $600.00, which the Landlord holds.

Despite the fixed-term tenancy agreement, the Tenants sought to end the tenancy early. In an email dated October 30, 2017, the Tenants provided written notice of their intention to vacate on December 1, 2017. The Landlord agreed. However, the Tenants did not vacate the rental unit as planned or pay rent when due. Accordingly, the Landlord applied to the Residential Tenancy Branch for an order of possession for unpaid rent, which was granted by an adjudicator in a decision dated December 27, 2017. The file number of this related decision is included above for ease of reference. The Landlord then obtained a Writ of Possession, issued by the Supreme Court of British Columbia on January 3, 2018. Thereafter, the Tenants were prevented from accessing the rental unit. A copy of the Writ of Possession was included with the Landlord's documentary evidence.

The Tenants' claims were set out in a Monetary Order Worksheet, dated September 10, 2018. Attached to the Worksheet was a further breakdown of the amounts claimed. First, the Tenants claimed compensation of $2,600.00 for rent paid when they were unable to access the rental unit. A.S. claimed $1,500.00 and C.F. claimed $1,100.00. Rent payment receipts and a statement were submitted in support.

In reply, the Landlord denied the Tenants paid rent as alleged.

Second, the Tenants claimed $351.80 for hotel costs incurred on February 21 and 26, 2018. The Tenants suggest these costs were incurred because of the Landlord's actions. Receipts were submitted in support. It was noted during the hearing that an attempt was made to redact an Alberta address from the receipts, although it was unclear whether that was the location of the hotel or the Tenants' address.

In reply, the Landlord testified that the Writ of Possession was obtained legally and that she was entitled to lock the Tenants out of the rental unit. She submitted that any costs incurred by the Tenants as a result should be borne by the Tenants.

Third, the Tenants testified the Landlord sold or otherwise disposed of their belongings contrary to the *Act*. The Tenants seek compensation for the value of the items. The claim includes:

- $2,000.00 for two electric scooters,
- $828.35 for a bicycle,
- $149.80 for a couch,
- $104.00 for blackout curtains,
- $70.00 for silverware,
- $47.00 for dishes,
- $450.00 for a scooter,
- $500.00 for a twin bed,
- $200.00 for a dresser,
- $80.00 for a coffee maker,
- $40.00 for a toaster,
- $75.00 for a microwave,
- $50.00 for a rocking chair,
- $250.00 for an area rug,
- $299.00 for an oak coffee table and end tables,
- $200.00 for a television stand,
- $35.00 for a television wall mount,
- $950.00 for a 60" flat screen television,
- $160.00 for a foam mattress topper,
- $1,500.00 for a king size bed and box spring,
- $400.00 for 2 floor lamps,
- $80.00 for a set of 4 dining chairs, and
- $750.00 for an oak dining table.

In support, the Tenants submitted several receipts and a number of online advertisements as confirmation of how much was paid to replace their belongings. The Tenants submitted that they were illegally locked out of the rental unit and that the Landlord improperly disposed of the above items.

In reply, the Landlord confirmed that a Writ of Possession was issued on January 3, 2018. She acknowledged that the Tenants were subsequently locked out of the rental unit. However, the Landlord testified that the Tenants' belongings remained in the rental unit for about 3-1/2 months until April 17, 2018, at which time the Landlord made arrangements for a moving and storage company to place the Tenants' belongings in storage.

In written submissions, the Landlord stated that "multiple attempts" were made to have the Tenants remove their belongings between January 3 and April 17, 2018. In support, the Landlord submitted copies of correspondence with K.R., the Tenants' advocate. The correspondence confirms the Landlord wanted the items removed, but that she was not prepared to have to Tenants return to the rental unit. She suggested it would be appropriate to have a third party attend to collect the Tenants' belongings. This restriction was place in light of the damage caused during the tenancy and the outstanding rent. The correspondence also revealed the Landlord's apparent frustration. In one email from the Landlord to K.R., she stated: "At this rate if I wait for you all to organize anything it will be practically next year."

In response to the Tenants' submission that their belongings were in good condition, the Landlord relied on an inventory of the Tenants' belongings, prepared by the moving and storage company. Condition codes suggest the items were not in good condition. The Landlord testified they smelled heavily of smoke, and submitted numerous photographs of the Tenants' belongings to refute their claims about the quality and condition of those items.

Fourth, the Tenants claimed $1,200.00 for return of double the amount of the security deposit. During the hearing the Tenants testified they did not provide the Landlord with a forwarding address in writing.

Finally, the Tenants claimed $2,000.00 in aggravated damages for actions by the Landlord which they considered to be harassment. Specifically, the Tenants testified the Landlord contacted "child services" after they were prevented from accessing the rental unit. The Tenants testified to their belief the Landlord did this in retaliation.

The Landlord maintained that the Tenants did not pick up their belongings in the roughly 5-1/2 month period from January 3 to June 20, 2018. On June 20, 2018, the Tenants' belongings were either sold, donated to a local charitable organization, or disposed of. The Landlord provided a copy of the inventory prepared by the storage company, which includes her notes about the disposition of each item. The Landlord testified to her belief that the Tenants' belongings were dealt with in accordance with the *Act*.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act.* 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 case, the burden of proof is on the Tenants to prove the existence of the damage or 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 was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenants' claim for $2,600.00 for rent paid when they were unable to access the rental unit as of January 3, 2018, I find there is insufficient evidence to conclude the Tenants are entitled to recover this amount. In the arbitrator's decision referred to above, the Landlord was issued an order of possession for unpaid rent on December 27, 2017. With the order of possession in hand, the Landlord obtained a Writ of Possession, dated January 3, 2018, and took steps to secure the rental unit. I find it is unlikely that the Tenants continued to pay rent after they were locked out of the rental unit in accordance with the Writ of Possession. This aspect of the Application is dismissed.

With respect to the Tenants' claim for $351.80 for hotel costs, I find there is insufficient evidence before me to grant the relief sought. As noted above, the Landlord obtained a Writ of Possession and locked the Tenants out of the rental unit on January 3, 2018. Although no doubt inconvenient for the Tenants, it appears the difficulties they experienced were largely of their own making. That is, the order of possession was issued on the basis that rent was not paid when due. The Landlord followed what appears to have been a correct procedure and was granted a writ of possession, which entitled her to secure the rental unit. Any costs the Tenants incurred as a result are not the responsibility of the Landlord. This aspect of the Application is dismissed.

With respect to the Tenants' claim for compensation for the cost to replace a number of items they say were left at the rental unit, I find there is insufficient evidence before me to grant the

relief sought. Section 25 of the Residential Tenancy Regulation confirms a landlord's obligations with respect to a tenant's property left behind after the end of a tenancy. It states:

> *(1) The landlord must*
>
> *(a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,*
>
> *(b) keep a written inventory of the property,*
>
> *(c) keep particulars of the disposition of the property for 2 years following the date of disposition, and*
>
> *(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.*

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that
(a) the property has a total market value of less than $500,
(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
(c) the storage of the property would be unsanitary or unsafe.

[Reproduced as written.]

In this case, the Landlord testified, and I find, that the Landlord did not remove the Tenants' belongings from the rental unit until April 17, 2018, roughly 3-1/2 months after the Writ of Possessions was issued. Further, I accept the Landlord's testimony that she retained a moving and storage company to store the items for more than 2 months until June 20, 2018, at which time they were sold, donated to a local charitable organization, or otherwise disposed of. I find the Landlord stored the items for longer than necessary and disposed of them in a commercially reasonable manner. It was not reasonable for the Tenants to leave their items in the rental unit for as long as they did. This aspect of the Application is dismissed.

With respect to the Tenants' claim for $1,200.00 for return of double the security deposit, section 38 of the *Act* confirms that a landlord's obligation to return a security deposit to a tenant or make a claim against it by filing an application for dispute resolution is triggered when a tenant provides the landlord with their forwarding address in writing. As the Tenants testified they did not provide the Landlord with a forwarding address in writing, this aspect of the Application is dismissed. The Tenants' current forwarding address was not confirmed during the hearing. However, the Tenants remain at liberty to provide the Landlord with their forwarding address in writing. On receipt, the Landlord will have 15 days to repay the security deposit to the Tenants or make a claim against it by submitting an application for dispute resolution. If the Landlord does not deal with the security deposit in accordance with section 38 of the *Act*, the Tenants are at liberty to reapply for it to be returned. This is not an extension of any applicable statutory deadline.

Finally, the Tenants claimed $2,000.00 in aggravated damages for actions by the Landlord which they considered to be harassment. Policy Guideline #16 elaborates upon the meaning and purpose of aggravated damages. It states:

> *"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.*
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> [Reproduced as written.]

In this case, I find that even if the Landlord did contact child services as alleged, there is insufficient evidence before me to conclude the Tenants suffered significant damage or loss. In addition, the primary basis upon which the Tenants claim aggravated damages is related to the Landlord's decision to contact child services. Although I am not satisfied the Landlord did so, I find that an award of aggravated damages would not be appropriate in these circumstances as it would have a chilling effect on an individual's obligation to report concerns relating to children to the proper authorities. This aspect of the Application is dismissed.

Conclusion

The Tenants' Application is dismissed, 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 *Residential Tenancy Act*.

Dated: December 14, 2018

Residential Tenancy Branch