Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This dispute resolution proceeding was initiated by the landlords, who filed an application for dispute resolution on July 20, 2018 against the tenant. The landlords argue that the tenant breached the *Residential Tenancy Act* (the "Act") and seek compensatory relief under sections 67 and 72(1) of the Act.

A dispute resolution hearing was convened on December 18, 2018 and the landlords and the tenant attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

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

Preliminary Issue: Tenant's Request for Adjournment

The tenant requested an adjournment of the hearing on the basis that she suffered from a medical condition (post-concussion syndrome resulting from an incident in 2013) that affects her ability to represent herself and which affects her executive and higher level cognitive processes, and that she requires legal representation to afford her a fair hearing.

I note that the application contains a copy of a letter dated November 19, 2018, from her law student representative (hereafter the "law student advocate") to the landlord (P.S.)

in which the law student writes, “we could also request that you consent to adjourn the hearing [because the law students’ legal advice program] does not operate on the scheduled day and I, as [the tenant’s] legal representation, am unable to attend.” (I note as an aside that this is less-than-exemplary representation when, according to the tenant, the law students’ legal advice program had conduct of the file since August 2018 and only at the last minute took any action on the file, and then failed to provide representation on the date of hearing, which had been scheduled since late July 2018.)

The letter also refers to the tenant’s “medically recognized condition that makes it difficult for her to represent herself,” and again asks for an adjournment. Submitted into evidence by the tenant (or by the law student) is a copy of a physician’s letter dated July 14, 2016, in which the tenant’s physician states that the tenant’s condition is such that the tenant “reports her concentration and memory to be poor 90% of the time, and states that it takes her longer to make decisions and to complete tasks.”

The tenant also explained that she was suffering from a rather bad flu, which would make difficult her participation in the hearing. She requested an adjournment of one month.

The landlords opposed the request for an adjournment on the basis that “there is no reason to adjourn” and that they have waited since July 2018 to have their application heard.

Rule 7.9 of the *Rules of Procedure* provides either party to request an adjournment, and that when considering such a request I must consider several factors, including the degree to which the need for an adjournment arises out of the intentional actions or neglect of the party seeking the adjournment. In this case, I find that the tenant and tenant’s law student advocate, or the law students’ legal advice program for that matter, neglected to take reasonable steps in requesting an adjournment in a timely manner until the very last moment.

The landlords have waited since July 2018 to have their application dealt with at a hearing scheduled for December 18, 2018, and it is wholly unreasonable, and in infringement of the rules of natural justice and administrative fairness, for their application to again be delayed for several more months. (I note that, while the tenant and her law student advocate requested an adjournment of one month, the Residential Tenancy Branch would have likely adjourned the matter until mid-2019.)

Having heard and considered the oral and written submissions of the parties, I refused to grant the tenant's request for an adjournment on the basis that (1) the tenant and her law student advocate had more than sufficient time to either prepare for the hearing or request an adjournment well in advance of the scheduled hearing date, and (2) the landlords should not be prejudice by having to wait another several months to have their application heard. Having refused the request for an adjournment, I advised the tenant that I would ensure she was not rushed, that she could take a brief break during the proceedings if necessary, and that if we required more time than the scheduled hour in order for me to hear from her, that I would allow this.

Issues to be Decided

1. Are the landlords entitled to compensation under section 67 of the Act?
2. Are the landlords entitled to compensation for recovery of the filing fee under section 72 of the Act?

Background and Evidence

The landlords' claim for compensation of $ 2,021.20 comprised the following items, as set out in a Monetary Order Worksheet which was submitted into evidence, along with accompanying receipts for the first three items:

Skip tracing	$309.75
Canada Post 10 Day Notice Mail Fee	$ 10.50
Lease agreement	$ 20.95
Unpaid rent (February 2018)	$790.00
Unpaid rent (March 2018)	$790.00
Filing fee	$100.00

In respect of the claim for skip tracing, the landlord testified that he was unable to locate the tenant to serve her with the Notice of Dispute Resolution Proceeding package and had no other address for the tenant, thus he had to resort to hiring the services of a skip tracer to locate the address and whereabouts of the tenant.

In respect of the claim for the Canada Post mailing fee, the landlord testified that this was the registered mailing fee required to properly serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

In respect of the claim for the lease agreement, the landlord explained that he was out of town when the tenant requested a copy of the tenancy agreement, and that he had to expend this cost in order to provide her with a copy of the tenancy agreement.

In respect of the claim for unpaid rent, the landlord explained that on January 1, 2018, the tenant viewed the rental unit. On January 5, 2018, the tenant returned to the rental unit and had a discussion with the then-current tenant about various matters. On January 21, 2018, the tenant and the landlords signed a written tenancy agreement (submitted into evidence). The tenancy was a fixed term tenancy commencing February 1, 2018 and ending on January 31, 2019. Monthly rent, due on the first of the month, was $790.00 and there was a requirement for the tenant to pay a security deposit, though the tenant never paid the deposit.

On February 2, 2018, at 6:14 PM, the tenant sent a text message to the landlord in which she stated, after some content about the internet, that “there has been a recent change in my circumstances which we should discuss as it will alter our lease agreement”. After some back and forth, the tenant then sent a text message to the landlord in which she states, among other things, “So if I sign a year lease I might have to break it-family comes first.” The tenant never paid rent for February, never took the keys, and never moved into the rental unit.

The parties met in-person on February 4 in an attempt to resolve situation. This did not end well, and there are further emails beween the parties following that discussion, with accusations by the tenant about the landlord’s character. This was the last correspondence between the parties until the landlord heard from the tenant’s law student.

On February 19, 2018, the landlord re-posted an advertisement for the rental unit (at the same rent of $790.00) and the next tenant signed a tenancy agreement on February 21, 2019 for a tenancy that commenced April 1, 2018.

The tenant testified that the tenancy agreement (referred to as a “lease agreement” by the tenant) was not a standard tenancy agreement approved by the Residential Tenancy Branch, and that despite some of the clauses making her feel uncomfortable, she felt pressured to sign the tenancy agreement due to the difficulty of finding housing in the Greater Vancouver area.

The tenant noted that she had family four houses down from the landlords, and that it was that family with whom she planned to live and therefore break the tenancy agreement. On this point, the tenant argued that the landlords knew that her family's address was a serviceable address and that there was therefore no reason for the landlord to retain a skip tracing service to locate her or to serve her with documents. She commented that her law student advocate advised her that service by e-mail is acceptable (which, I note, is incorrect advice). Further, she submitted that the landlords failed to minimize their loss in respect of the cost of the skip tracing service in that they could have applied for substituted service, which they did not.

The tenant testified that by February 4, she felt uncomfortable about moving into the rental unit based on, among other unmentioned things, a conversation she had with the previous tenant on January 5; that tenant had told her that the landlords prohibited the tenant from having a party. The tenant further explained that there was a "large power imbalance" between the parties, making the entire situation difficult. She felt anxious and had to break the tenancy.

In respect of the claim for rent, the tenant concedes that she is liable for the unpaid rent for February 2018, but that she is not liable for the rent for March 2018 on the basis that the landlords failed to mitigate their losses in respect of that month's rent. She submitted that, on the basis that the vacancy rate in the municipality was 0.8% in October 2017, the landlords would have had no problem renting the rental unit had they done do in a reasonable manner. Further, the tenant submitted that the landlords presented no evidence of the landlords actually finding new tenants. Finally, in her rebuttal and final submission, the tenant argued that there was no consideration for the tenancy agreement, no key handed over, no possession, and none of her personal property moved into the rental unit.

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.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the

regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

I will turn now to the particulars of the landlords' claim and address each claim in roughly the same order that they appear on the Monetary Order Worksheet.

Claims for Skip Tracing Costs and Canada Post Mail Fee

In respect of these claim, the landlords have not pointed me to any section of the Act, the regulations, or the tenancy agreement that the tenant breached by being untraceable. As for the Canada Post fee, this is not an expense that is recoverable under the Act, as the legislation does not permit recovery of costs of litigation.

As such, I dismiss this aspect of the landlords' claim without leave to reapply. I will not consider the remaining three criteria given that the first criteria were not met.

Claim for Lease Agreement Cost

The landlord testified that it cost him $20.95 because the tenant insisted on having a copy of the tenancy agreement. I fail to see why the tenant should bear the cost of requesting a copy of the written tenancy agreement under any circumstances. This expense is the cost of doing business as a landlord, and I find that the landlords have failed to establish under which section of the Act the tenant breached and is thus liable for this expense.

Accordingly, I dismiss this aspect of the landlords' claim without leave to reapply.

Claim for Unpaid Rent for February 2018

The tenant concedes that she is liable for the unpaid rent for February 2018 in the amount of $790.00. As such, based on the landlords' claim and the tenant's conceding in respect of that claim, I grant the landlord a monetary award in the amount of $790.00.

I note that the tenant made submissions in respect of the apparent lack of consideration in the agreement. "Consideration" in respect of a contract, or agreement, means that something of value (for example, monthly rent) was promised in exchange for the specific action or nonaction (for example, the availability of a rental unit). It does not necessarily require an exchange of money but can also take the form of a promise to perform something or an agreement to do something. In this case, the landlords agreed to let the tenant rent the rental unit. It should be added that, as the tenant concedes liability for the unpaid rent for February 2018, the tenant has thus demonstrated the validity of the tenancy agreement.

In respect of the tenant's submissions that there was a power imbalance between the parties and that she felt pressured into signing the agreement, I am unconvinced that this was the case. The tenant viewed the rental unit on January 1 and signed the tenancy agreement a full three weeks later and broke the agreement a full ten days later. This is not, in my opinion, conduct of a party who feels pressured into signing an agreement. As such, I do not find that the tenant's submissions in regard to an apparent lack of consideration, coercion, or a power imbalance, to have any effect on my finding that there existed a tenancy agreement and a tenancy.

Claim for Unpaid Rent for March 2018

Section 45 of the Act addresses the methods by which a tenant may end a tenancy, and section 45 (2) of the Act applies to fixed term tenancies (as is the case here). This section of the Act states the following:

> (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
> (a) is not earlier than one month after the date the landlord receives the notice,
> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
> (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45 (4) of the Act states that a "notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*." Section 52 of the Act states that in order to be effective, a tenant's notice to end a tenancy must be in writing and must (a) be signed and dated by the tenant giving the notice, (b) give the address of the rental unit, and (c) state the effective date of the notice.

In this case, the tenant ended the tenancy two days into the tenancy, which is, of course, much earlier than the date specified in the tenancy agreement as the end of the tenancy (that is, January 31, 2019). And, the tenant ended the tenancy by text message. Based on the evidence of the parties, I find that the tenant breached section 45 (2) of the Act. I further find that but for the tenant's breach of the Act and the tenancy agreement the landlords would not have suffered a loss in rent.

The landlords have proven, based on oral and documentary evidence, that the value of their loss was two months' rent in the amount of $1,580.00 (of which the tenant accepts liability for $790.00).

Turning now to the issue of whether the landlords did whatever was reasonable to minimize their loss, the landlord testified that he reposted an advertisement on February 19, 2018, and that he secured a new tenant on February 21, 2018 for a new tenancy commencing on April 1, 2018. Monthly rent was the same as previously posted and offered to the tenant.

The tenant's submission is that the landlords offered no evidence of finding new tenants or of their efforts at attempting to find new tenants.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide any additional evidence (such as a copy of the advertisement for the rental unit, or a copy of the new tenant's tenancy agreement, or copies of communication with the new tenant) proving that he took reasonable steps to mitigate his losses in respect of the loss of rent for March 2018.

That having been said, I find the landlord's testimony to be credible and consistent with his attention to detail, and the thoroughness with which he prepared and presented his application. Moreover, I cannot ignore the fact that the tenant failed to comply with the Act in providing proper notice to end the tenancy, and the landlord should not suffer due

to that non-compliance. Given the above, I find that the landlord has acted in reasonably in minimizing his losses, but reduce that mitigation by 50% on the basis that (1) he has not provided documentary evidence regarding his efforts to mitigate, though I accept his oral testimony, and (2) the tenant failed to comply with the Act which ultimately lead to the landlord suffering a loss of rent for February and March.

Given the above, I award the landlord a reduced monetary award of $395.00 for the loss of rent claimed for March 2018.

Claim for Filing Fee

I grant the landlords a monetary award of $100.00 for recovery of the filing fee, pursuant to section 72(1) of the Act.

Conclusion

I grant the landlords a monetary order in the amount of $1,285.00.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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 19, 2018

Residential Tenancy Branch