Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenants attended the hearing via conference call and provided affirmed testimony. The landlord, I.J. attended, but G.J. did not. The landlord, G.J. was unrepresented. The landlord, I.J. (the landlords) provided affirmed testimony stating that the hearing could proceed in absence of the other landlord. Both parties confirmed that the tenants served the landlords with the notice of hearing package via Canada Post Registered Mail on October 18, 2018. Both parties confirmed the tenants served the landlords with the amendment to the application for dispute and the submitted documentary evidence via Canada Post Registered Mail on January 21, 2019. The landlords confirmed that no documentary evidence was provided. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 6, 2016 on a 1 year fixed term tenancy ending on July 1, 2017 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated June 6, 2016. The monthly rent was $900.00 payable on the 1st day of each month and a security deposit of $450.00 was paid on June 6, 2016.

The tenants seek an amended monetary claim of $3,619.14.00 which consists of:

$450.00	Return of Original Security Deposit
$450.00	Compensation, Fail to Comply Sec. 38(6)
$720.00	Compensation, return of partial rent paid, September 2018
$100.00	Filing Fee
$14.54	Mail Fee
$1,800.00	Loss of Quiet Enjoyment
$54.25	Mail Forwarding Cost
$30.35	Extended Mail Forwarding Cost

The tenants seek compensation for the loss of quiet enjoyment as the landlord entered the rental property with a weapon and threatened the tenants with it. The tenants felt threatened and were forced to move suddenly incurring costs/a loss. The tenants would like return of the unused portion of pro-rated rent for the month of September 2018, the cost of forwarding their mail, compensation for the loss of quiet enjoyment, mailing costs, return of the original security deposit and compensation for failing to comply regarding return of the security deposit. The landlord disputes the tenants claims, stating that there was an incident that the landlord was responding to what he believes was an "emergency". The landlord stated that no charges have been made against him. The landlord also stated that the tenants have failed to provide any supporting evidence of harm caused to the tenants or any actual losses. The landlord further stated that he will be filing a claim for damages because the tenants received the landlord's copy of the rental unit keys and the tenants have failed to return his or the tenants rental unit keys after the end of tenancy, which has resulted in the landlord changing the locks at a cost. The tenants confirmed that the keys were not returned as a result of the landlord not returning the security deposit to the tenants.

The tenants stated that rent for September 2018 was paid and that on September 7, 2018 an incident occurred in which the tenants gave notice of a breach of the tenancy agreement and a request for return of the $450.00 security deposit. The landlord disputes the tenants claims stating that written notice for return of the security deposit was not given by the tenants, but was verbal. Both parties have agreed that the tenancy ended as of September 7, 2018 when the tenants vacated. Both parties also agreed that the landlord currently holds the $450.00 security deposit and has not returned it. The landlord provided undisputed affirmed testimony that he did not have the tenants' consent to retain it nor has the landlord filed an application to dispute its return to the tenants.

The tenants based their monetary claim of $1,800.00 for the loss of quiet enjoyment on what someone told him, what previous residential tenancy branch decisions were made on breach(s) of a material term and what the tenants "feel is reasonable". The tenants stated that the amount is equal to two months of rent. No further details of the calculations were provided.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Residential Tenancy Branch Policy Guideline #8, Unconscionable and Material terms states in part,

> ***A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.***
>
> *To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.*

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement[2], and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

In this case, the tenants have claimed that the landlord attended the rental unit with a weapon and threatened them which caused them to fear for their safety. The landlord has argued that he was responding to an emergency and has provided undisputed testimony that he has not been charged with any crime despite having the police attend. Both parties have confirmed that a "Breach Notice" was received by the landlord from the tenants on September 17, 2018 after the tenants vacated the rental unit on September 7, 2018. The "Breach Notice" states in part that due to an incident on September 5, 2018 in which the tenants claim that the landlord attended without notice and in possession of a weapon, threatening the tenants. It further states that the tenancy was ended on September 7, 2018 when the tenants vacated the premises. It requests a return of the $450.00 security deposit and return of the remaining portion of the September 2018 rent of $690.00 (pro-rated). During the hearing the tenants confirmed their request of $720.00 (pro-rated). No details of this discrepancy was provided by the tenants. The tenants provided their forwarding address as the new mailing address as all of their mail will be forwarded by Canada Post based upon the submitted costs claimed. In this case, it appears that the tenants ended the tenancy prior to giving notice in writing to the landlords of the breach. No deadline to correct the breach was given. As such, I find that the tenants failed in these circumstances to follow a reasonable process to inform the landlord of the breach of a material of the

tenancy. As well, in this situation the tenants have claimed that the landlord threatened the tenants with a weapon. This was emphatically disputed by the landlords who claim that he was responding to an "emergency" situation. The landlord also provided undisputed affirmed testimony that no charges were laid against him. A review of the tenants' submitted documentary evidence shows a copy of a police report filed which shows a heavily redacted report in which the case was closed with no further police action after a sword was seized. The report also mentions drinking by all of the tenants and the landlord being impaired through alcohol or drugs. No conclusions were made by the police.

In this case, I accept the evidence of both parties and find that an incident did take place between the two parties in the early hours of the morning. I find based upon the disputed testimony of both parties that the tenant ended the tenancy without proper notice. Although the tenants provided a "Breach Notice" to the landlord it was approximately 10 days after ending the tenancy. I also find that the tenants have failed to provide sufficient details on the calculation of the monetary claim to show actual costs of any losses, save for the mail forwarding claims. As such, the tenants' requests for the following have been dismissed.

$720.00	Compensation, return of partial rent paid, September 2018
$1,800.00	Loss of Quiet Enjoyment
$54.25	Mail Forwarding Cost
$30.35	Extended Mail Forwarding Cost

As discussed during the hearing with both parties, section 72 of the Act, addresses **Director's orders: fees and monetary order.** With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (mailing fee/charges of $14.54) is dismissed.

In review of all of the submissions and evidence provided by both parties, I find that the tenants have established a claim for $1,000.00 which consists of:

$450.00	Return of Original Security Deposit
$450.00	Compensation, Fail to Comply Sec. 38(6)
$100.00	Filing Fee

The landlord provided undisputed affirmed testimony that he received the tenants forwarding address in writing on September 17, 2018, but failed to return it within the

allowed time frame. The landlord also provided affirmed testimony that he did not file an application for dispute of returning the security deposit within the same timeframe.

Conclusion

The tenants are granted a monetary order for $1,000.00.

This order must be served upon the landlords. Should the landlords fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 *Residential Tenancy Act*.

Dated: February 15, 2019

Residential Tenancy Branch