Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This dispute resolution proceeding was initiated by the tenants, who filed an application for dispute resolution on November 1, 2018, against the landlords. The tenants argue that the landlords were in breach of the *Residential Tenancy Act* (the "Act") and seek relief by way of compensation under sections 38 and 67 of the Act, and compensation for the filing fee under section 72 of the Act.

An arbitration hearing was convened on December 18, 2018 and the landlords, their witness, and one of the tenants attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The landlords raised an issue with respect to the fact that the tenant had served a copy of the Notice of Dispute Resolution Proceeding package on their agent, versus serving each landlord separately. Section 89(1)(b) of the Act permits service on an agent of the landlord. As such, I find that the landlords were served in accordance with the Act.

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.

Issues to be Decided

1. Are the tenants entitled to compensation under sections 38 and 67 of the Act?

2. Are the tenants entitled to compensation under section 72 of the Act?

Background and Evidence

The tenant seeks compensation related to having to move out of the rental unit on an emergency basis and recovery of those costs. A monetary order worksheet was submitted into evidence which listed the claimed amounts as follows: (1) moving company costs of $5,178.52; (2) bed and breakfast costs of $2,250.00; and (3) security deposit refund of $400.00. An additional claimed amount of $100.00 for the filing fee brings the total claimed to $7,928.52. Receipts were submitted into evidence corresponding to the above-noted amounts claimed, other than the filing fee.

The tenant testified that the tenancy commenced in July 2013 and ended mid-December 2016. I note that this application was filed on November 1, 2018, almost two years after the tenancy ended but within the time limitations permitted by the Act. The tenant submitted a copy of the written tenancy agreement into evidence.

The tenant then testified that (he read from a letter sent to the landlords) they

> had to move out the middle of December 2016 because there were tenants moved in to the basement suite [the rental unit was on the main floor of a house] that immediately started smoking crack and dealing drugs 24 hours a day. There were gangsters cars parking in all the parking spots that I shovelled snow off and pit bulls released to look after the area. There was a surveillance system put in to monitor the area. The crack smoke made it almost impossible to breath in the upstairs suite.

The tenant contacted the RCMP on December 12, 2016 who told him that there was an active investigation going on and "to let [landlords' agent] know and tell her not to get involved or do anything. Let the investigation go on." The letter goes on to state that "Because [the landlords' agent] was specifically told not to do anything after she was informed of the problem, she put our lives at risk. When we told the police, they advised us to leave until they could resolve the problem. We went to a bed and breakfast until we found a different rental property."

On December 28, the tenants "had an RCMP escort along with [moving company] go to pack our belongings and leave." The letter is dated September 9, 2018.

The tenant explained that he had tried to obtain police reports, but the RCMP would not provide them to the tenant.

The tenant described the situation downstairs as involving “serious and loud fights,” smoking of crack, pit bulls running loose, numerous vehicles (some without license plates) parked, and death threats to the tenant by the downstairs occupants.

The landlord referred to an RCMP report in which the landlord’s agent is described as having called the police on December 12, 2016, in regard to “the downstairs tenant is doing and selling drugs from the location making him nervous.” The report refers to the tenant seeking police assistance. The report also refers to the landlord’s agent has “going through the motions of having [downstairs tenant] evicted.”

Also submitted into evidence by the landlords is an email (dated February 9, 2019) in which their property manager (the agent and witness) states that “There was never any evidence of pets.” Further, “As the upstairs tenants mentioned drug activity, I posted a notice to do an inspection of both units. Both the upstairs and downstairs tenants had vacated the units without notice.”

The landlords also submitted a written letter authored by the property management company’s office administrator, “A.T.”

In his submission, the landlord argued that there is no evidence that the RCMP ever told the agent not to communicate with the downstairs tenants. He further submitted that there is no evidence of any issues with the downstairs tenants, or of any threats. Further, there is no documentary evidence of the pit bulls or the cars or the security camera. He further commented that there is no business name on the receipt for the bed and breakfast, and that a search of any bed and breakfast at the address listed on the receipt failed to show anything operating as such.

He noted that the security deposit was not returned because they, the landlords, did not have the tenants’ forwarding address.

In rebuttal and final submissions, the tenant explained that much of the information about the cars and the dogs is in the police report. (He commented that the police indicated that they would provide the reports to the Residential Tenancy Branch if requested.) He reiterated that he was scared and felt threatened. The downstairs tenants were purportedly UN gang members from Alberta, that there were ten of them, and that they had shaved heads and Chinese character tattoos.

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.

Claim for Moving Costs and Bed and Breakfast Costs

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 an order for 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?

In this case, the tenants argue that the landlords failed to take necessary steps to deal with the downstairs tenants, thus putting their lives at risk. However, the landlords dispute this, and submit that there is no evidence of such risk.

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 tenant has failed to provide any evidence to establish how the landlords failed to comply with the Act, the regulations, or the tenancy agreement.

While the tenant referred to police reports, and commented that I could obtain those directly, I can only consider evidence that is submitted and presented before me in

accordance with the Act and the *Rules of Procedure.* And, while there may very well have been issue with the downstairs tenants, there is a complete absence of *any* documentary evidence establishing even a basic semblance of there being an issue of which the landlords allegedly failed to address.

The landlords commented that their agent was in the process of having the downstairs tenants evicted, but there was nothing more offered into evidence that delved into why, specifically, they were being evicted. Having found that the tenants have not established that the landlords failed to comply with the legislation or the tenancy agreement, I need not consider the remaining three factors of the above-noted test.

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 tenants have not met the onus of proving their claim for compensation under section 67 against the landlords.

Claim for Security Deposit

Section 39 of the Act states that

> Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
>
> > (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
> > (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

In this case, there is no evidence that the tenants provided the landlords with their forwarding address in writing within one year after the tenancy ended in December 2016. There is a letter from the tenants to the landlord dated September 9, 2018, in which their address is included. However, in the absence of any other documentary evidence of either party, I find that the tenants did not give the landlords their forwarding address in writing pursuant to section 39 of the Act.

As such, I find that the landlords are entitled to keep the security deposit and the tenants' right to the return of the security deposit is extinguished. I therefore dismiss this aspect of their claim without leave to reapply.

Claim for Filing Fee

As the tenants were unsuccessful in their application I dismiss this aspect of their claim without leave to reapply.

Conclusion

I hereby dismiss the tenants' 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 *Residential Tenancy Act*.

Dated: February 25, 2019

Residential Tenancy Branch