Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNDCL-S, FFL, MNSD, FFT

Introduction

This hearing was convened in response to cross applications.

The Landlords filed an Application for Dispute Resolution in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that on December 23, 2018 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlords submitted to the Residential Tenancy Branch were sent to the Tenant, via registered mail, at the forwarding address the Tenant provided sometime in December of 2018. The Landlord cited a tracking number that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served to the Tenant in accordance with section 89 of the *Residential Tenancy Act (Act*)*;* however the Tenant did not appear at the hearing. As the documents were properly served to the Tenant, the hearing proceeded in her absence.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied for the return of the security deposit and to recover the fee for filing an Application for Dispute Resolution. The Landlord stated that the Tenant served these documents to him by registered mail, although he cannot recall when they were received.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit and to compensation for lost revenue?

Should the security deposit be retained by the Landlords or returned to the Tenant?

Background and Evidence

The Landlord stated that:

- the tenancy began on June 01, 2018;
- the tenancy was for a fixed term, the fixed term of which was to end on June 30, 2019;
- the parties mutually agreed to end the tenancy on November 30, 2018;
- the mutual agreement to end the tenancy was made on the basis that the Tenant would allow the Landlords to show the unit to potential tenants;
- the rental unit was vacated on November 30, 2018;
- rent of $1,350.00 was due by the first day of each month;
- the Tenant paid a security deposit of $675.00;
- the Tenant paid a pet damage deposit of $200.00;
- a condition inspection report was not completed at the beginning of the tenancy;
- a time to complete the condition inspection at the start of the tenancy was not scheduled;
- a condition inspection report was completed at the end of the tenancy;
- the Tenant did not give the Landlords' written authority to retain any portion of her deposits;
- the Landlords did not return any portion of the deposits;
- he received the Tenant's forwarding address, by email, sometime in December of 2018; and
- the Tenant did not return the keys to the rental unit.

The Landlords are seeking compensation, in the amount of $875.00, for cleaning the rental unit. The Landlords submitted photographs. The Landlord stated that the photographs were taken on December 01, 2018 and that they show the rental unit required cleaning at the end of the tenancy. The Landlord stated that over a period of three days the Landlords spent between 8 and 12 hours cleaning the unit.

The Landlord stated that the Landlords also incurred costs for cleaning, which included renting a carpet cleaner and renting a vehicle to transport the Tenant's abandoned property to the dump.

The Landlords have claimed compensation for lost revenue for the month of December of 2018, in the amount of $1,350.00.

The Landlord stated that they lost revenue for December because the Tenant prevented them from showing the rental unit to prospective tenants.

In support of the claim for lost revenue the Landlord stated that:

- the Landlord mutually agreed to end the tenancy on the understanding that the Tenant would allow him to show the rental unit;
- he started advertising the rental unit on a popular website in mid-October of 2018;
- sometime in mid-October of 2018 he sent the Tenant an email asking to show the unit;
- she responded to that email and told him she would not be home at the time he wanted to show the unit;
- he estimates that he told her he wanted to show the unit another fifteen times prior to the end of the tenancy;
- on each occasion she told him the Landlord could not show the rental unit because she would not be home at the time the Landlord wanted to show it; and
- he could not show the unit without the Tenant being home, as he did not have a key to the rental unit.

The Landlord stated that when they did gain access to the rental unit it was so dirty they could not show it for three days. He stated that sometime in mid-December they were able to enter into an agreement for a new tenancy, effective January 01, 2019.

Analysis

This teleconference hearing was scheduled to begin at 1:30 p.m. on April 11, 2019. The Landlord joined the teleconference (from India) prior to the scheduled start time. By the time the teleconference was terminated at 2:13 p.m., the Tenant had not appeared.

I confirmed that the correct call-in numbers and participant codes had been provided in both Notices of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

I find that the Tenant failed to diligently pursue her Application for Dispute Resolution and I therefore dismiss the Tenant's Application, without leave to reapply.

On the basis of the undisputed evidence I find that the Tenant paid a security deposit of $675.00 and a pet damage deposit of $200.00.

On the basis of the undisputed evidence I find that the tenancy ended on November 30, 2018.

On the basis of the undisputed evidence I find that the Tenant provided the Landlord with a forwarding address, via email, sometime in December of 2018. I therefore find that the Landlord received the forwarding address, in writing, sometime in December of 2018.

In determining that the Landlord received the Tenant's forwarding address in writing, via email, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that a text message meets the definition of written as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As emails are capable of being retained and used for further reference, I find that an email can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act.*

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act,* must be served. Service by email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlord acknowledged receiving the email in which the Tenant provided her forwarding address, I find that the Landlord was sufficiently served with the Tenant's forwarding address.

As the tenancy ended on November 30, 2018; the Landlords filed their Application for Dispute Resolution on December 19, 2018; and it is not known precisely when in December the Landlords received the Tenants forwarding address, I find that I have insufficient evidence to determine whether the Landlords complied with section 38(1) of the *Act*. Section 38(1) of the *Act* requires landlords to either repair the security/pet

damage deposit of file an application to keep the deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing.

Section 23(3) of the *Act* stipulates that a landlord must offer the tenant at least 2 opportunities, as prescribed, for an inspection of the rental unit at the start of the tenancy. Section 23(4) of the *Act* stipulates the landlord must then complete a condition inspection report in accordance with the regulations. On the basis of the undisputed evidence I find that the Landlords did not comply with either section 23(3) or 23(4) of the *Act*, as they did not schedule a time to inspect the rental unit at the start of the tenancy and they did not complete a condition inspection report at the start of the tenancy.

Section 24(2)(a) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with section 23(3) of the *Act.* As I have concluded that the Landlords failed to comply with section 23(3) of the *Act*, I find that the Landlords' right to claim against the security deposit and pet damage deposit for damage is extinguished. As the Landlords have also claimed compensation for lost revenue, I find that they have the right to make a claim against the security deposit even though they did not comply with section 23(3) or 23(4) of the *Act.*

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the testimony of the Landlord and the photographs submitted in evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlords are entitled to compensation for the time spent cleaning the unit. As the Landlord estimated that the Landlords spent between 8 and 12 hours cleaning the unit, I find it reasonable to conclude that they are entitled to compensation for 10 hours of cleaning, at a rate of $25.00 per hour.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. While I accept that the Landlords incurred

costs for renting a carpet cleaner and a vehicle, I find that the Landlords failed to establish the true cost of renting this equipment. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence that establishes the cost of these rentals. When such receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. As the Landlords have not established the cost of these rentals, I dismiss their claim to recover those costs.

Section 67 of the *Act* authorizes me to order a tenant to pay money to a landlord if the landlord has suffered a loss of revenue because the tenant has failed to comply with this *Act* or the tenancy agreement.

There is nothing in the *Act* that requires a tenant to be present when a landlord shows a rental unit to a prospective new tenant. In the event a landlord wishes to show a unit to a prospective tenant, the landlord must give the tenant notice of the landlord's intent to enter the rental unit in accordance with section 29(1) of the *Act,* which reads:

> A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
> (i) the purpose for entering, which must be reasonable;
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
> (d) the landlord has an order of the director authorizing the entry;
> (e) the tenant has abandoned the rental unit;
> (f) an emergency exists and the entry is necessary to protect life or property.

I find that the Landlords had the right to show this rental unit, providing they complied with section 29(1)(b) of the *Act*, regardless of whether or not the Tenant agreed to allow the showing. Even if I accept the Landlord's testimony that the Tenant told the Landlords they could not show the rental unit, I would therefore find that the Landlords could have shown the unit without her permission, with proper notice. I therefore cannot

conclude that the Landlords were prevented from showing the rental unit because the Tenant told them they could not show it and I therefore cannot conclude that they are entitled to compensation for lost revenue on this basis.

On the basis of the undisputed evidence I find that the Landlords were prevented from showing this rental unit to prospective tenants because they did not have a key to the unit and they required the Tenant to provide the Landlords with access to the unit. There is nothing in the *Act* that requires a tenant to provide a landlord with access to the rental unit if the landlord does not exercise his/her right to retain a key to the unit. As there is no evidence that establishes the Landlords did not have a key because the Tenant breached the *Act* or the tenancy agreement, I cannot conclude that the Landlords are entitled to compensation for lost revenue on the basis of the fact they could not show the rental unit because they did not have a key to the unit.

Given that the Landlords were unable to show the rental unit until after it was vacated on November 30, 2018, I cannot conclude that the 8-12 hours it took the Landlords to clean this rental unit had any significant impact on the Landlords' ability to rent this unit for December of 2018. In the absence of evidence to show that a prospective tenant was scheduled to view the unit on December 01, 2018 and was then prepared to move into the unit on December 01, 2018, I cannot conclude it was the cleanliness of the rental unit that prevented the rental unit from renting the unit for December of 2018. Rather, I find it was the Landlords' failure to show the rental unit from the December 01, 2018 that prevented them from renting the unit for that month. I therefore cannot conclude that the Landlords are entitled to compensation for lost revenue on the basis of the fact the rental unit was not left in clean condition.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

The Landlords have established a monetary claim, in the amount of $350.00, which includes $250.00 for cleaning and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act,* I authorize the Landlord to retain $350.00 from the Tenant's security deposit in full satisfaction of this monetary claim.

As the Landlords have not established a right to retain all of the security/pet damage deposit, I find that they must return the remaining $525.00 to the Tenant. Based on these determinations I grant the Tenant a monetary Order $525.00. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims Court 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 *Act*.

Dated: April 12, 2019

Residential Tenancy Branch