Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

The landlords seek compensation, against their former tenant for breaking her tenancy agreement, in the amount of $425.00 under section 67 of the *Residential Tenancy Act* (the "Act"). They also seek recovery of the filing fee under section 72(1) of the Act.

The landlords applied for dispute resolution on January 14, 2019 and a dispute resolution hearing was held on May 6, 2019. The tenant and one of the landlords attended the hearing, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlord raised an issue with respect to the tenant's service of documentary evidence, which I shall address below.

I have reviewed and considered evidence submitted that met the requirements of the *Rules of Procedure*, and to which I was referred, but have only addressed the evidence and arguments to the extent necessary to explain my decision.

Preliminary Issue: Tenant's Service of Evidence

The landlord testified that he "never received any evidence" from the tenant. The tenant explained that she submitted evidence to the landlord by email (at the email address that the landlord confirmed with me at the start of the hearing). She believed that she emailed her evidence in mid- to the end of February 2019.

While the tenant received confirmation from the Residential Tenancy Branch that it had received copies of her evidence, she did not receive any confirmation from the landlords that they had received her emailed evidence.

Rule 3.15 of the *Rules of Procedure* requires that "The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible."

Further, Rule 3.16 states that "At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure."

As I explained to the tenant, service of documents by e-mail is not an acceptable method of service under sections 88 or 89 of the Act. Only where the party can prove that the other side received their evidence by email might I find that service was properly executed. Here, the tenant was unable to provide confirmation that the landlords received her evidence, and the landlord's denial of ever receiving it leads me to conclude that the tenant did not serve her evidence in accordance with the Act or the *Rules of Procedure.*

Accordingly, I do not accept and will not consider the tenant's documentary evidence.

Issues

1. Whether the landlords are entitled to compensation in the amount of $425.00.

2. Whether the landlords are entitled to recovery of the filing fee.

Background and Evidence

The tenancy began on February 15, 2018 and was for a fixed-term tenancy of one year to February 15, 2019, continuing as a month-to-month tenancy thereafter. Monthly rent was $1,700.00. The tenant (and her then co-tenant, who was a signatory to the tenancy agreement) paid a security deposit of $850.00. A copy of the written tenancy agreement was submitted into evidence.

The landlords continued renting to the co-tenant and transferred half of the security deposit (that is, $425.00) to the co-tenant's new tenancy. However, the landlords claim against the tenant for her half of the security deposit because they (1) lost rental income on another property between January 15, 2019 (approximately) to about March 2019 (the tenants in that property moved into the rental unit after the tenant vacated on January 1, 2019), and (2) lost rental income on the rental unit between the tenant's leaving on January 1, 2019 until new tenants moved in on January 15, 2019. The

landlord testified that his losses are much higher than amount claimed; at least $1,200.00.

The tenant gave notice on December 1, 2018 (by way of email) that she was leaving on January 1, 2019, and that there was another couple who could move into the rental unit.

On December 3, 2018, the landlord states that “We are not consenting to you ‘assigning’ the original lease to the couple next door [. . .].” In a further email of December 3, 2018, the landlord says that “We are not allowing sub-lease as we are not comfortable with the circumstances, that is our right as the owners, our lawyer has advised us very clearly.”

The tenant moved out on January 1, 2019. New tenants moved into the rental unit on January 15, 2019.

In her final submission the tenant argued that she ought not be liable for any losses that the landlords may have incurred on a separate, unrelated property. She also argued that the date on which she planned to vacate “seems to be agreed upon by all parties.”

In his final submission the landlord argued that the tenant *said* that she was leaving January 1, 2019, and that because new tenants did not move in until January 15, 2019 the landlords incurred a loss of half the month’s rent.

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.

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, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

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

In this case, the tenant was in a fixed-term tenancy agreement that was set to end on February 15, 2010. A tenant cannot end a fixed-term tenancy earlier than the date on which it ends, pursuant to section 45(2) of the Act.

The tenant advised her landlords that she was ending the tenancy early and moving out on January 1, 2019. And, despite the tenant's argument that the date "seems to be agreed upon by all parties," the agreement was not what is referred to as a mutual agreement to end a tenancy (see section 44(1)(c) of the Act). In this case, the landlords made it quite clear in a few emails that the tenant was breaking the tenancy agreement.

For these reasons, I find that the tenant breached the tenancy agreement and the Act. I further find that, but for the tenant's breach of the tenancy agreement that the landlords would not have suffered a loss in rent.

Have the landlords proven the amount of their loss? I find that they have. The landlords have not claimed for any loss in respect of the other property (the property not containing the rental unit). Had they made such a claim I would have dismissed it; the tenant is not responsible for losses incurred by the landlords on an unrelated property.

However, the landlords did incur a loss in rent between when the tenant vacated the rental unit and when the new tenants moved into the rental unit. That loss, which is equivalent to half a month of rent, far exceeds the amount that the landlords claim against the tenant.

Based on the above I conclude that the landlords have proven that their loss exceeded $425.00, which is the amount claimed.

Finally, I find that the landlords took reasonable steps to mitigate their loss. They appeared to have lined up new tenants (the neighboring tenants) who moved in on January 15, 2019. There is, given the extremely short notice given by the tenant that she was ending her tenancy early, not much more that the landlords might have done to mitigate their loss.

As an aside, I note that the landlords “crossed off” section 9 (“ASSIGN OR SUBLET”) of the tenancy agreement, and hand-printed a notation that stated “NO ASSIGN OR SUBLET”.”

This modification of the tenancy agreement is *prima facie* in contravention of section 34 of the Act, which permits a tenant to assign a tenancy agreement or sublet a rental unit where there are 6 months or more remaining in a fixed term tenancy agreement. A landlord must not unreasonably withhold consent in these scenarios. As such, this attempted deletion of section 9 of the tenancy agreement, including any such deletion on any other tenancy agreement, is invalid and of no force or effect.

That having been said, there were far less than 6 months remaining in the tenant’s tenancy, so the landlords were not under an obligation to consider authorizing the tenant to sublease.

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 landlords have met the onus of proving their claim for compensation in the amount of $425.00.

I order that the landlords may retain the tenant’s security deposit in satisfaction of this aspect of their claim.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee.

As the landlords were successful in their application I grant their claim for reimbursement of the filing fee in the amount of $100.00. A monetary order in this amount is issued to the landlords along with this decision.

Conclusion

I conclude that the landlords are entitled to compensation in the amount of $525.00 pursuant to sections 67 and 72(1) of the Act. The landlords may retain $425.00 of the tenant's security deposit in partial satisfaction of this award.

I grant the landlord a monetary order in the amount of $100.00, 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: May 6, 2019

Residential Tenancy Branch