Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, FFL

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Although both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another, Landlord KG (the landlord) called into this teleconference more than ten minutes after the scheduled start time for this hearing. As a result, I ensured that anything of relevance that the tenant had told me during the first portion of this hearing was repeated by the tenant during the portion of the hearing when the landlord was present.

The landlord gave sworn testimony that the other landlord provided the tenants with a copy of the dispute resolution hearing package by registered mail, although they did not know when this happened nor did they provide the Canada Post Tracking Number to confirm this registered mailing. Tenant LS (the tenant) gave undisputed sworn testimony that the dispute resolution hearing package sent by the landlords failed to include the call-in information for this hearing, the phone number and the time for the hearing. The tenant said that they only became aware of this essential information the day before the hearing when one of the other tenants had to call the Residential Tenancy Branch (the RTB) to obtain the details to enable them to participate in this hearing. While the landlords have not adequately demonstrated service of the entire

dispute resolution hearing package in accordance with section 89 of the *Act*, I am satisfied that the tenants were sufficiently served for the purposes of the *Act*. I make this finding pursuant to paragraph 71(2)(c) of the *Act*.

Although the landlords did not serve written evidence to the tenants, the landlords' only written evidence was a copy of the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice), which the tenants received after it was posted on their door by the landlords on May 10, 2019. The tenant said that their written evidence was sent to the landlords by registered mail on July 11, 2019. The landlord said that they had not received this evidence package. As this written evidence would only have been deemed served to the landlords on the day of this hearing, I have not considered the tenants' written evidence as it was not served to the landlords at least 7 days before this hearing, as is required by the RTB's Rules of Procedure.

At the commencement of the hearing, the parties agreed that the tenants surrendered vacant possession of the rental unit to the landlord on June 10, 2019. The landlord said that they understood from neighbours that the tenants had already moved out by the end of May 2019, although the keys were not handed over to the landlord until the scheduled June 10, 2019 joint move-out inspection. On this basis, the landlord withdrew the application for an Order of Possession. The landlords' application for an Order of Possession is hereby withdrawn.

At the hearing, the landlord said that after they obtained possession of the rental unit they discovered damage to the rental unit, which requires repair. Although the landlord expressed their intent to pursue legal action through the Small Claims Court of British Columbia with respect to this damage, I noted that claims of less than $35,000.00 can be made to the RTB within two years of the end of a tenancy. As these matters were not included in the landlords' application of May 30, 2019, I advised the parties that I would not be considering them as part of the matters properly before me.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The parties agreed that this tenancy began on September 15, 2018, at which time the tenants took possession of the rental unit. According to the terms of their month-to-month Residential Tenancy Agreement, which neither party entered into written evidence, monthly rent was set at $2,550.00, payable in advance on the first of each month. The landlord gave undisputed sworn testimony that the tenants paid one-half of the monthly rent for September 2018, and subsequently monthly rent was due on the first of each month. The landlords continue to hold the tenants' $1,275.00 security deposit paid when this tenancy began.

Although the landlords provided no Monetary Order Worksheet to outline the details of their application for a monetary award of $2,660.00, the landlord said that the claim was essentially to obtain unpaid rent as the landlords expected the tenants would not be paying for the month of June 2019.

As I noted at the hearing, the landlords' 1 Month Notice was seriously deficient in many ways. I observed that the landlords had identified May 10, 2019, as the date when their 1 Month Notice was to take effect, and the tenants were to have vacated the rental unit. As explained at the hearing, the earliest possible date when the landlords' 1 Month Notice issued on May 10, 2019, could have taken effect was June 30, 2019. The RTB's 1 Month Notice form requires a landlord to check one of the boxes supplied on that form to indicate the reason why the landlords were seeking an end to this tenancy for cause. The landlords did not check any of these boxes, instead outlining in the Details of the Dispute Box, their own explanation as to why the landlords were seeking an end to this tenancy. The landlords' failure to identify an allowed reason to end this tenancy would have invalidated this 1 Month Notice had the tenants chosen to dispute the Notice. However, as was noted above, the tenants did decide to end their tenancy on the basis of the landlords' 1 Month Notice, incorrectly choosing June 10, 2019, as the end date for their tenancy, 30 days after the 1 Month Notice was issued.

The parties agreed that a joint move-out condition inspection was scheduled for June 10, 2019, While both parties attended the rental unit on June 10, 2019, and the tenant did surrender the keys to the landlord at that time, there was conflicting sworn testimony as to whether any actual joint move-out condition inspection occurred that day. The landlord said that the tenant became verbally abusive, demanding the return of their security deposit at that time as well as a copy of any report created by the landlord of the inspection. The landlord testified that the tenant refused to walk through the rental unit with the landlord and abandoned the premises after leaving the keys with the landlord. By contrast, the tenant gave sworn testimony that they did walk through the rental unit with the landlord on June 10, 2019, as scheduled, but the landlord refused to

create a report of that inspection. The tenant said one of the other tenants, their son, Tenant SS, waited outside the rental unit while the tenant and the landlord conducted their joint move-out inspection.

The tenant testified that on June 17, 2019, they sent the landlords their forwarding address by registered mail to both the address of the rental unit and the landlord's Post Office Box, which the landlords had identified as their mailing address on their 1 Month Notice. The tenant provided the Canada Post Tracking Number to confirm these registered mailings. The landlord denied having received any mailing address from the tenants, and denied having received any information from Canada Post as to the registered letters referenced by the tenant. Based on this evidence, I advised the parties that in accordance with sections 88 and 90 of the *Act*, the landlords were deemed to have received the tenants' forwarding address in writing on June 22, 2019, the fifth day after their registered mailing.

At the hearing, the tenant confirmed that they had not paid any rent for June 2019. At first, the landlord said that they have not attempted to re-rent the premises for June 2019, because they are in the process of trying to sell this rental property. Later, the landlord revised that sworn testimony, maintaining that they tried to advertise the availability of the premises for rent on a popular rental website. The landlord provided no details regarding this attempt to rent the premises, saying that they had not entered this information into written evidence.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants contravened the *Act* or their tenancy agreement. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the

tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

In considering this matter, I first note that the landlord freely admitted that this was the first time that they had been involved in an application for dispute resolution before the RTB. They recognized that they had not followed many of the requirements with respect to submitting a claim, providing necessary information on documents and serving evidence. I also note that the tenant was also deficient in providing copies of evidence to the landlords in a timely fashion.

Notwithstanding the deficiencies restricting my consideration of written evidence by the parties, I find that there is sufficient sworn testimony to enable me to make findings with respect to the landlords' application for a monetary award for unpaid rent and for authorization to retain the tenants' security deposit.

Even though the landlords' serious deficiencies in their 1 Month Notice led to confusion as to when the tenants were expected to vacate the rental unit, the tenancy agreement between these parties did require the tenants to pay monthly rent that became due on June 1, 2019. While this would entitle the landlords to a monetary award for rent owing for June 2019, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I am not satisfied that the landlord did attempt to the extent that was reasonable to re-rent the premises for June 2019, especially given the landlords' testimony little more than a month later that they are trying to sell this property. As such, I am not satisfied that the landlords have discharged their duty under section 7(2) of the *Act* to minimize the tenants' exposure to their loss of rent for the month of June 2019.

Since the tenants did remain in possession of the rental unit until June 10, 2019, I allow the landlords a monetary award for the pro-rated amount of rent that would be owed for the tenant's occupation of the rental unit from June 1 to 10, 2019. This results in a monetary award of $849.99 ($2,550.00 x 10/30 - $ 849.99).
Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. Section 35 of the Act reads in part as follows:

> *(3) The landlord must complete a condition inspection report in accordance with the regulations.*

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit...

Section 36(1) of the *Act* reads in part as follows:

36 *(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord...*

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing as long as the landlord's right to apply to retain the deposit had not been extinguished. If that does not occur or if the landlord applies to retain the deposits within the 15 day time period but the landlord's right to apply to retain the tenant's deposit had already been extinguished, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* that is double the value of the deposit.

In this case, the landlords filed their application to retain the tenant's security deposit on May 30, 2019, before the 15 day period began and certainly within 15 days of receiving the tenants' forwarding address. As was noted above, there was conflicting testimony as to whether a joint move-out condition inspection actually occurred. Even if I were to accept the tenant's sworn testimony that they remained on site to complete the joint move-out condition inspection, any failure of the landlords to produce a report of that inspection occurred well after the landlords had already applied to retain the tenants' security deposit. As such, I find that at the time of the landlords' application to retain the security deposit for this tenancy, the landlords' right to apply to retain that deposit had not yet been extinguished. Thus, the tenants are not eligible for a monetary award

equivalent to double the value of the security deposit in accordance with section 38(6) of the *Act.*

As the landlords continue to hold the tenants' security deposit, I allow the landlords to retain $849.99 from the tenants' $1,275.00 security deposit.

Since the landlords applied for dispute resolution well before the tenants were legally required to end their tenancy on the basis of a 1 Month Notice that was invalid, before monthly rent for June 2019 was even due, and before the tenants had provided their forwarding address for the return of their security deposit, I make no order with respect to the landlords' application to recover their filing fee from the tenants.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the landlords to recover unpaid rent and to retain part of the tenants' security deposit:

Item	**Amount**
Landlords' Entitlement to Unpaid Rent from June 1- 10, 2019	$849.99
Less Value of Tenants' Security Deposit	-1,275.00
Total Monetary Order in Tenants' Favour	**$425.01**

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlords' application for an Order of Possession is withdrawn.

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: July 16, 2019

Residential Tenancy Branch