



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0942748 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for a monetary order for the return of their security deposit and/or pet damage deposit; however, based on their details of dispute provided, I find the tenants' intent of their application was for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, based on alleged bad faith related to a 4 Month Notice to End Tenancy for Demolition of the Rental Unit dated June 21, 2018 ("4 Month Notice"), for the return of the last month's rent pursuant to serving the 4 Month Notice, and for recovery of the cost of the filing fee. Based on the above, I amend the tenants' application pursuant to section 64(3) of the *Act* as I find the application sufficiently set out the tenants' claim.

The tenants and an agent for the landlord ("agent") attended the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties.

As indicated above, the tenants' application was amended pursuant to section 64(3) of the *Act*.

Issues to be Decided

- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that the tenancy ended by way of a 4 Month Notice with an effective vacancy date of October 22, 2018, as monthly rent was due on the 22nd day of each month in the amount of \$1,000.00. The parties also agreed that the tenants were granted permission by the landlord to stay in the rental unit until November 4, 2018, which was the day that the tenants vacated the rental unit.

The tenants have claimed \$12,000.00, which is comprised of 12 months of rent due to what the tenants' have alleged is the landlord's bad faith in not complying with the reason stated on the 4 Month Notice, and for \$1,000.00 to be reimbursed for the last month of rent as a result of being issued a 4 Month Notice. The tenants are also seeking the recovery of the cost of their filing fee.

The tenants' testified that they are seeking 12 months of compensation for a total of \$12,000.00 due to the landlord failing to comply with the reason stated on the 4 Month Notice. According the 4 Month Notice, the landlord writes that they were evicting the tenants to demolish the rental unit. The 4 Month Notice is dated June 21, 2018, and the landlord submitted in evidence a Permit for Demolition dated June 20, 2018 ("permit"). The agent testified that the rental unit was demolished approximately three weeks after the permit was issued, in conjunction with the neighbouring single family home to make room for a 13 lot subdivision. In addition, the parties agreed that the rental unit has been demolished.

Regarding the last month's rent, the agent testified that the tenants' waived their last month's rent in lieu of having to clean the rental unit/property and that the tenants verbally consented but did not sign anything in writing to waive their right to the return of their last month of rent. The last month of rent was for the period of September 22, 2018 to October 21, 2018. The tenants denied that they agreed to waive their last month of rent and have claimed the landlord has refused to compensate them for having served the 4 Month Notice. The tenants are also seeking the recovery of their filing fee as part of their application.

Analysis

Based on the documentary evidence, the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

12 Months of Rent Claim – Section 51(2) of the *Act* applies and states:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to

accomplish the stated purpose for ending the tenancy, or
(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[Emphasis added]

I find the landlord has provided sufficient evidence that the 4 Month Notice was served in good faith and that the rental unit was demolished in a reasonable time period after serving the 4 Month Notice. I find the permit and testimony support my finding. Therefore, I find the tenants have provided insufficient evidence to support that the landlord violated the *Act* in relation to the allegation of bad faith. Therefore, the tenants' claim for 12 months of compensation pursuant to section 51(2) is dismissed without leave to reapply, due to insufficient evidence.

Claim for last months' rent – Section 51(1) of the *Act* applies and states:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

[Emphasis added]

Based on the above, I find that a disputed verbal agreement is not sufficient evidence from the landlord that the tenants' waive their right to compensation in the amount of \$1,000.00 for their last month's rent. Therefore, I find the tenants have provided sufficient evidence that they have not waived their right to compensation and that the landlord must compensate the tenants in the amount of **\$1,000.00** for the amount of the tenant's last month of rent due to the landlord serving the tenants with a 4 Month Notice. Therefore, I find the tenants have met the burden of proof for the one month of rent owing and I grant that amount as indicated above.

As the tenants' application is partially successful, I grant the tenants the recovery of their filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Given the above, I find the tenants have established a total monetary claim of **\$1,100.00** as described above. The remainder of the tenants' claim has been dismissed, without leave to reapply.

I grant the tenants a monetary order pursuant to section 67 and 72 of the *Act* in the amount of **\$1,100.00**.

Conclusion

The tenants' application is partially successful.

The tenants have been granted a monetary order pursuant to sections 67 and 72 of the *Act*, in the amount of \$1,100.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: June 18, 2019

Residential Tenancy Branch