



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MND, FFL

Introduction

On October 22, 2019, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for unpaid rent; for a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for a monetary order for damage; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlords and the executor for the Tenant’s estate attended the teleconference hearing. The executor was assisted by legal counsel.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlords’ Application names the respondent as “Estate of” [tenant’s name].

In accordance with Residential Tenancy Policy Guideline #43 Naming Parties, I have amended the Landlords’ Application for naming the respondent to include the words [executors name] Personal Representative of the Estate of [tenant’s name], Deceased.

Issues to be Decided

- Are the Landlords entitled to a monetary order to recover unpaid rent?
- Are the Landlords entitled to a monetary order due to damage to the rental unit?
- Are the Landlords entitled to a monetary order for money owed or damage or loss?

Background and Evidence

The Landlords and executor testified that the tenancy began in April 2016, on a month to month basis. Rent in the amount of \$800.00 was due to be paid to the Landlord each month. The Tenant rented a self-contained rental unit in the lower part of the Landlords home.

The parties testified that the Tenant was found deceased in the rental unit on October 1, 2018. The parties testified that the Tenant's belongings were removed from the rental unit by October 19, 2019.

Loss of Rental Income

The Landlords are seeking monetary compensation in the amount of \$9,600.00 for a loss of rental income.

The Landlords submitted that it is not safe to continue renting the rental unit. The Landlords testified that they received a delayed text message; suicide note, from the Tenant. The Landlords testified that they ran downstairs and found the Tenant to be deceased. The Landlords testified that police, paramedics and the coroner arrived.

The Landlords testified that the incident was traumatic. The Landlord's testified that they are a single income family and the Landlord was unable to work or sleep for several weeks. The Landlords testified that they went to counselling and received support from their neighbors. The Landlords provided a typed document that provides the following:

Due to the suicide in our property the landlords now suffer from psychological injury (legally called nervous shock) due to the landlords post-mortem notification of the suicide, finding of the body in our family home the landlords are now forever unable to rent our suite.

In reply, the executor's counsel submitted that there is no medical evidence of shock and trauma provided by the Landlords to substantiate their claim. Counsel submitted

that even if there were shock and trauma, the Landlords provided no evidence to support that these effects would preclude them from renting out the suite previously occupied by the Tenant.

The executor's counsel submitted that the Landlord has an obligation under the Act to do whatever is reasonable to minimize the damage or loss. Counsel submitted that the Landlords have simply chosen to not rent the suite and no evidence of any effort to rent the suite has been provided.

Unpaid Rent for October and November 2018

The Landlords are seeking compensation in the amount of \$320.00 for unpaid October 2018 rent and a loss of November 2018 rent in the amount of \$800.00.

The Landlords testified that the Tenant committed suicide on October 1, 2018 and there was no notice to end tenancy provided to the Landlord by the Tenant or the estate. The Landlords submitted that any notice to end the tenancy given to the Landlords in October would not legally end the tenancy until the end of November 2018.

In reply, counsel for the executor submitted that the rent owing for the month of October was dealt with at a previous hearing. The executors counsel provided a copy of the previous Decision of the file number noted on the cover sheet of this decision dated September 27, 2019. In that Decision, the Arbitrator found that the Landlords breached section 30 of the Act by restricting the estates access to the rental unit for the month of October 2018. The Arbitrator found that the estate was entitled to recover 40% of October rent. Executor's counsel submitted that the claim for October 2018 rent is *res judicata*; having already been determined.

In response to the Landlords claim for a loss of November 2018 rent, counsel for the executor submitted that the Landlord asked the Tenant to vacate by October 19, 2018 and the Landlord was found to have restricted access to the rental unit.

Compensation for Damage \$24,280.00

The Landlords testified that they own a stigmatized property which affects the property value. The Landlords testified that certain events which may include death can stigmatize a property. The Landlords testified that they are seeking the amount of \$24,280.00 because the monetary claim limit is \$35,000.00 and the amount they are claiming for damage brings their total claim to \$35,000.00.

In the Landlords' documentary evidence, they provided the following submission:

Due to the suicide in our property we now have a "stigmatized" property. According to BC Real Estate Council the landlord has an obligation to disclose at time of sale. Market dictates that this reduces the value of the property by 30-50%. 2019 BC Assessment has the landlords property listed as \$605,000.00 This would estimate that the property damage caused from the tenant is valued at \$181,500.00 - \$302,500.00

The Landlords uploaded two documents in support of their testimony. The "Stigmatizedproperty" document and "BCAssessment" document were provided in a webarchive format. The documents could not be opened using standard computer software available on a provincial government computer. A text box appeared identifying that an APP is required to view the documents. The Landlords were informed at the hearing that these two documents were not accessible. An Arbitrator is a neutral party who does not perform searches of the internet or elsewhere to provide documents for a party. Since the two documents provided by the Landlords were not provided in a format that is viewable, the two documents could not be considered.

The Landlords testified that that the Tenant was like family to them. They stated that the suicide note could have been sent to someone else. The Landlords testified that the neighborhood is aware of the suicide.

The Landlords submitted that the legal caselaw decision they received from the executor's counsel speaks to an issue of fraudulent misrepresentation. The Landlords feel they have an obligation to disclose the suicide at time of sale of their home. The Landlords submitted that the caselaw decision provided by the executor's counsel was related to an incident that occurred outside of the residential property.

In response to the Landlords' claim, the executors counsel asked the Landlords if they have listed their property for sale and the Landlords replied "no". Counsel asked the Landlords if they have listed the unit for rent and the Landlords replied "no".

The executors counsel submitted that the caselaw decision provided by counsel was misunderstood by the Landlords. Counsel submitted that sellers do not have to disclose that there was a suicide in a home. Counsel submits that the case law decision establishes that a death or murder cannot be something that is required to be disclosed.

The executor provided a copy of an email from a realtor dated November 19, 2019 regarding property value. The email provides that the Real Estate Commission of BC Professional Standards Manual regarding stigmatized properties states that whether a particular event stigmatizes a property or not, is so dependent on a particular buyer's

belief, feelings and convictions, that real estate professionals are not required to disclose such events for a particular property.

The executors counsel submitted that there was no damage to the Landlords home and there is no evidence that the Landlords' house has decreased in value.

Analysis

Section 7 of the Act provides 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. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- *Loss of quiet enjoyment;*
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental.*

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides guidance on situations where a Landlord seeks to hold a Tenant liable for loss of rent after the end of a tenancy agreement. The Guideline provides that compensation can be awarded in an amount sufficient to put the Landlord in the same position as if the Tenant had not breached the agreement. This includes compensating the Landlord for any loss of rent up to the earliest time the Tenant could legally have ended the tenancy.

Based on the evidence before me, the testimony of the Landlord and executor, and on a balance of probabilities, I make the following findings:

Loss of Rental Income

I have considered Residential Tenancy Branch Policy Guideline #16 and I have considered that compensation for damage or loss is not limited to physical property but also includes loss of rental income that was to be received under a tenancy agreement and damage to a person including both physical and mental.

I have also considered that the Act requires that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I accept the Landlords' testimony that they experienced shock and trauma upon discovering the Tenant deceased in the rental unit. I have considered the Landlord's statement that it is not safe to continue renting the rental unit and I have considered their written submission that they suffer from psychological injury (legally called nervous shock) and that due to the post-mortem notification of the suicide, and finding of the body in their family home, they are now forever unable to rent their suite.

I find that the Landlords did not establish at the hearing the reason why it would be unsafe to proceed with re- renting the unit. I accept the testimony before me that the Landlords have not attempted to re-rent the suite.

I find that the Landlords have provided insufficient medical evidence to support their position that due to their physical or mental injury they have suffered a loss of 12 months rent that was to be received under the tenancy agreement. I also find that there is insufficient evidence from the Landlords to establish that even if they were affected by mental injury this would prevent them from renting out the suite for 12 months or forever, and that compensation is due.

The Landlords claim for compensation of \$9,600.00 for a loss of rent is dismissed without leave to reapply.

Unpaid Rent for October and November 2018

With respect to the Landlords' claim to recover \$320.00 for October 2018 rent, I find that this matter was already considered and decided at the earlier hearing. The Arbitrator

found that the Landlords breached section 30 of the Act by restricting the estates access to the rental unit for the month of October 2018. The Arbitrator found that the estate was entitled to recover 40% of October rent. The Landlords appealed the Arbitrators decision by submitting an application for review consideration and the application was considered and dismissed.

The Landlords claim to recover \$320.00 for October 2018 rent is dismissed without leave to reapply.

With respect to the Landlords' claim to recover a loss of November 2018 rent, I find that the Landlords were found to have restricted the estates access to the rental unit. While I accept that the Landlords never received a proper written notice to end the tenancy, I find that the tenancy ended in accordance with section 44 (1)(d) of the Act when the Tenants representatives removed the Tenant's belongings and vacated the rental unit on October 19, 2018, at the request of the Landlord. Due to these circumstances and the restricted access to the unit, I find that the Landlord is not entitled to compensation for a loss of November 2018 rent.

The Landlords claim for compensation for a loss of November 2018 rent is dismissed without leave to reapply.

Compensation for Damage \$24,280.00

I have considered the Landlords' evidence that they have a stigmatized property which has resulted in a loss of value of their home. I find that the Landlords have provided insufficient evidence to support their submission that this incident has reduced the value of their property by 30-50%.

I have considered the caselaw provided by the executors counsel; *Wang v. Shao, 2019 BCCA 130*. I find that the Courts decision establishes that there is no obligation on a home owner to disclose a death on the property; and there is no general duty on a vendor to disclose defects on the quality or expected enjoyment of land being sold. The caselaw sets out that the doctrine of *caveat emptor* places the onus on the buyer to ask specific questions designed to unearth the facts related to the buyers particular subjective likes and dislikes.

In addition, I find that the executor has provided the better evidence. I accept the executors evidence taken from the Real Estate Commission of BC Professional Standards Manual regarding stigmatized properties that provides whether a particular

event stigmatizes a property or not, is so dependent on a particular buyer's belief, feelings and convictions, that real estate professionals are not required to disclose such events for a particular property.

I accept the testimony that the Landlords have not placed their home on the market for sale. I find that the Landlords are not obligated to disclose that there was a suicide in the residential property. I find that the Landlords have not established that their property is a stigmatized property due to the actions of the Tenant and that the Landlords have suffered a reduction of value of their home by 30 - 50%.

I find that the Landlords have not suffered damage or loss and the Landlords' claim for compensation is dismissed without leave to reapply.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were not successful with their application, I decline an order for the estate of the Tenant to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

Conclusion

The Landlords claims for monetary compensation due to a loss of rent, and for damages are not successful.

The Landlords' application is dismissed in its entirety 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: January 9, 2020

Residential Tenancy Branch