Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that copies of the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch were personally served to each Tenant in December of 2019. As the Tenant acknowledged that these documents were served to each Tenant, the hearing proceeded in the absence of the Tenant with the initials "S.A." and the evidence was accepted as evidence for these proceedings.

On January 30, 2020 the Tenants submitted evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was posted on the Landlord's door, although he does not recall the date of service. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, however it is only referenced in this written decision if it is relevant to my decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for loss of revenue and to retain all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- on October 22, 2019 and October 23, 2019 they discussed entering into a tenancy agreement for this rental unit, effective November 01, 2019;
- during their discussion both parties understood the rent would be $2,150.00 per month;
- the Tenants did not physically view the rental unit prior to this discussion, although they were given a “video tour” of the unit;
- on October 23, 2019 the Landlord sent the Tenants a tenancy agreement, via email;
- the Tenants did not return a signed copy of the written agreement;
- on October 23, 2019, after they received the written tenancy agreement, the Tenants paid a security deposit of $1,075.00;
- no rent was paid for November of 2019;
- on October 27, 219 the Tenants’ friend viewed the rental unit;
- on October 27, 2019 the Tenants informed the Landlord, by telephone, that they did not wish to move into the unit;
- the Tenants never ended the tenancy in writing;
- the Tenants never moved into the rental unit; and
- on October 29, 2019 the Tenants provided the Landlord with a forwarding address, by email.

The Tenant stated that:

- they paid the security deposit because they understood it would “secure” the rental unit, which they understood meant the Landlord could not rent it to anyone else;
- the Tenants did not want to move into the rental unit, in part, because the friend who viewed the unit on October 27, 2019 advised them it was not in good repair and it smelled of smoke; and
- they told the Landlord they did not want to move into the rental unit because it was not clean enough and it smelled of smoke.

The Agent for the Tenant stated that:

- the Tenants did not move into the rental unit, in part, because they had questions about the pictures of the rental unit, which were not adequately answered by the Landlord;
- the Tenants understood they were paying the security deposit to hold the unit until it could be physically viewed;

- the Tenants did not sign the written agreement as some terms of the written agreement did not reflect the verbal terms they had discussed;
- the tenancy agreement declared that a security deposit of $1,025.00 was due, although they had previously agreed the deposit would be $1,075.00;
- the Tenants paid the security deposit on October 23, 2019, as the agreement declared it was due by October 24, 2019;
- the tenancy agreement does not declare when the rent was due;
- the tenancy agreement does not declare that parking was included with the tenancy, although they had verbally agreed it was included;
- the tenancy agreement does not declare that laundry was included with the tenancy, although they had verbally agreed it was included;
- the tenancy agreement does not declare that water was included with the tenancy, although they had verbally agreed it was included;
- the tenancy agreement includes an addendum, however the tenancy agreement indicates that there is no addendum; and
- the Tenants would have moved into the rental unit if the Landlord had answered all of their questions about the rental unit and corrected the errors in the tenancy agreement.

The Landlord stated that:

- The Tenants told him they did not want to move into the rental unit because they were no longer planning on moving to the city;
- the tenancy agreement incorrectly declared that the security deposit was $1,025.00;
- he informed the Tenants, by telephone, that he would amend the tenancy agreement to correctly reflect the amount of the security deposit;
- in a text message, he informed the Tenants the rent was due on the first day of each month;
- the Tenants did not ask about laundry after receiving the written tenancy agreement, however he had verbally agreed laundry was included with the rent;
- the Tenants did not ask about parking after receiving the written tenancy agreement, however he had verbally agreed parking was included with the rent;
- the Tenants asked about water after receiving the written tenancy agreement and he informed them, by telephone, that water was included with the rent;
- on November 02, 2019 he was able to find a new renter for the unit;
- the unit was re-rented for November 15, 2019; and
- he is seeking compensation of $1,075.00 for the revenue he lost between November 01, 2019 and November 14, 2019.

Analysis

The *Residential Tenancy Act (Act)* defines a “tenancy agreement” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting

possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

On the basis of the evidence before me, I find that on October 23, 2019 the Landlord and the Tenants verbally agreed that the Tenants would rent this rental unit from the Landlord, effective November 01, 2019. On the basis of the undisputed evidence, I find that they verbally agreed to several terms of the tenancy, including:

- rent would be $2,150.00 per month;
- a security deposit of $1,075 was required; and
- parking, laundry facilities, and water was included in the rent.

On the basis of the undisputed evidence, I find that the Tenants paid a security deposit of $1,075.00 on October 23, 2019. I find that once the Landlord accepted that security deposit, he had entered into a tenancy agreement with the Tenants and was no longer free to rent the unit to anyone else.

Similarly, I find that once the Tenants paid the security deposit, they clearly indicated their intent to rent the unit. I find this conclusion is supported by the Tenant's testimony that the security deposit was paid to "secure" the rental unit and that she understood the Landlord could not then rent it to anyone else.

In adjudicating this matter, I have placed little weight on the Agent for the Tenant submission that the Tenants understood they were paying the security deposit to hold the unit until it could be physically viewed. I find that this is not the common understanding of the purpose of a security deposit and that such an interpretation would be grossly unfair to the Landlord, as that would potentially leave the Landlord without sufficient time to find a new renter if the Tenants chose not to proceed with the tenancy.

On the basis of the undisputed evidence, I find that there were several problems with the written tenancy agreement sent to the Tenants on October 23, 2019, including:

- it does not declare the day in the month the rent was due;
- it does not declare that parking was included with the tenancy, although the parties had verbally agreed it was included;
- it does not declare that laundry was included with the tenancy, although the parties had verbally agreed it was included;
- it does not declare that water was included with the tenancy, although the parties verbally agreed it was included; and
- it incorrectly declared that the security deposit was $1,025.00, rather than the $1,075.00 they had verbally agreed upon.

On the basis of the documentary evidence submitted, I find that after the tenancy agreement was received the Landlord clarified the following discrepancies, by text message:

- he clarified that a $1,075.00 security deposit was required; and
- water was included in the rent.

On the basis of the documentary evidence submitted, I find that the Tenants asked the Landlord, by text message, when rent was due and he replied, by text message, that rent was due on November 01, 2019. I find that this message did not clearly convey that rent was due by the first day of each month, although I find it highly likely the Landlord would have clarified that matter if the Tenants specifically asked that question.

There is no evidence to establish that the Tenants asked the Landlord, after receiving the tenancy agreement, if parking and laundry was included in the rent. Given that the Landlord responded to the other questions asked by the Tenants, however, I find it reasonable to conclude that he would have answered those questions if they had been asked.

Given the deficiencies with the written tenancy agreement presented to the Tenants, I find it was reasonable for them not to sign the agreement that was initially presented to them. I find it was reasonable for them to ask the Landlord to amend the written agreement and to refuse to sign it until it correctly reflected the terms of their verbal agreement.

I find, however, that the deficiencies with the written agreement does not negate the terms of the verbal agreement they entered into on October 23, 2019. In the event the parties never signed a written agreement, their tenancy would be governed by the terms of the verbal agreement they entered into on October 23, 2019.

No evidence was submitted to establish that the Tenants verbally agreed that this tenancy would be a fixed term tenancy, even though the written tenancy agreement declares it is for a fixed term. As there is no evidence that the Tenants agreed to a fixed term tenancy, I find that the parties entered into a periodic, or month-to-month tenancy.

Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. As the Tenants entered into a periodic tenancy agreement with the Landlord, I find that they were obligated to end this tenancy in compliance with section 45 of the *Act*.

As the Tenants did not comply with section 45 of the *Act* when they ended this tenancy without proper notice, I find that the Tenants must compensate the Landlord for any losses the Landlord experienced as a result of the Tenants' non-compliance with the *Act,* pursuant to section 67 of the *Act*. I find that the Landlord made reasonable efforts to re-rent the rental unit, however in spite of those efforts he lost revenue for the period between November 01, 2019 and November 14, 2019, in the amount of $1,075.00. I find that the Landlord is entitled to compensation in this amount for lost revenue.

After considering all of the evidence before me, I find that the primary reason the Tenants did not proceed with the tenancy was that they were not satisfied with the condition of the rental unit. The Act does not allow a tenant to end a tenancy, without proper notice, for this reason. In the event the Tenants did not approve of the condition of the rental unit when the tenancy began, the appropriate response would be to communicate with the Landlord and ensure the deficiencies with the rental unit are corrected and/or the Tenants are compensated for correcting deficiencies, such as cleaning the unit. If the parties were not able to reach an agreement regarding deficiencies with the unit, the Tenants were at liberty to file an Application for Dispute Resolution requiring the Landlord to make repairs or for compensation for cleaning the unit.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Respondent for the cost of this Application for Dispute Resolution.

On the basis of the undisputed evidence, I find that the Landlord received a forwarding address for the Tenants, via email, by on October 29, 2019.

In determining that the Landlord received the Tenants' forwarding address, 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 an email 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 on October 29, 2019, in which the Tenants provided a forwarding address, I find that the Landlord was sufficiently served with the Tenants' forwarding address.

Section 38(1) of the *Act* stipulates that 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, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit and the Landlord did not file an Application for Dispute Resolution claiming against the deposit until December 04, 2019, which is more than 15 days after the tenancy ended and more 15 days after the forwarding address was received on October 29, 2019.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenants double the security deposit.

Conclusion

The Landlord has established a monetary claim, in the amount of $1,175.00, which includes $1,075.00 for lost revenue and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

The Landlord owes the Tenants $2,150.00, which is the equivalent of double the security deposit.

After these two amounts are offset, the Landlord must pay the Tenants $975.00. Based on these determinations I grant the Tenants a monetary Order for $975.00. In the event the Landlord does not comply with this Order, it may be served on the Landlord , 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 07, 2020

Residential Tenancy Branch