Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNSDS-DR, FFT, FFL

Introduction

In this dispute, the tenant seeks compensation for the return (and doubling) of his security deposit, pursuant to section 38 and 67 of the *Residential Tenancy Act* (the "Act"). Meanwhile, the landlords seek compensation for loss of rent, pursuant to section 67 of the Act. Both parties seek recovery of the filing fee under section 72 of the Act.

The tenant applied for dispute resolution on April 24, 2020 and the landlords applied for dispute resolution on April 27, 2020. The applications were crossed, and both were heard at a dispute resolution on May 21, 2020. The tenant and one of the landlords attended the hearing, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties, and both confirmed service of evidence on the other side. Finally, I note that the names of the landlords were corrected on the style of cause to this matter.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure,* to which I was referred, and which was relevant to the issues of these applications. As such, not all of the parties' testimony may necessarily be reproduced.

Issues

1. Is the tenant entitled to compensation as claimed?
2. Is the landlord entitled to compensation as claimed?
3. Are either party entitled to recovery of the filing fee?

Background and Evidence

This tenancy ran from November 29, 2019 until March 30, 2020, though it consisted of four separate tenancies (and four corresponding written tenancy agreements). The four tenancy agreements, all of which were submitted into evidence, were for the following

fixed terms: November 29, 2019 to January 1, 2020; January 1 to February 29, 2020; February 29 to March 31, 2020; and, March 31 to April 30, 2020. Monthly rent was $5,950.00. The tenant paid a security deposit of $2,000.00.

On February 28, 2020, the tenant provided notice to the landlord's property manager, by way of email, that March 31, 2020 would be their last day in the rental unit. "Please take this as our formal notice," the email stated. The property manager responded later that morning, remarking, "Thanks [A]. I have noted this." A copy of this email was tendered into evidence.

On March 30, 2020, the tenant sent an email to the property manager, indicating that he had vacated the rental unit. He also included his forwarding address to the manager, who acknowledged receipt of the email. The tenant, in answer to two questions I posed to him, testified that he has not yet received the security deposit and that he did not provide consent for the landlords to retain any or all of the security deposit.

The landlord testified that they seek $5,950.00 for the rent for April 2020. He explained that the tenancy was to end on April 30, 2020, as per the last of the written tenancy agreements. "He was supposed to pay rent," the landlord submitted. The landlords tried finding a new tenant after the tenant gave his notice, but, given the then-developing and worsening pandemic, finding tenants proved difficult. Copies of their Kijiji and Craigslist ads were submitted into evidence. Moreover, the pandemic threw the landlord's offices "into shambles."

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.

Landlords' Claim

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

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 done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 7 (1) 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.
>
> (2) 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.
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> . . .
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> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this case, the landlords claim that the tenant was required to pay rent for April 2020. However, the tenant gave notice on February 28, 2020 that he was ending the tenancy and would be vacating the rental unit on March 31, 2020. The landlord's property manager acknowledged receiving the notice: "I have noted this." In other words, it is reasonable to interpret this response from the landlord's property manager as accepting that the tenancy would end on March 31, 2020. The property manager's response to the subsequent email from the tenant on March 30, 2020 (regarding him cleaning the rental unit and vacating) further acknowledges that the tenancy was ended on March 31, 2020: "Thank you for letting me know. I will have Jonathan contact you to pick up the keys from you tomorrow."

Section 44(1)(c) of the Act states that a tenancy may end when "the landlord and tenant agree in writing to end the tenancy." Based on the evidence before me, I find that that the landlords' property manager (referred to as an office manager in the correspondence) agreed in writing that the tenancy would end as indicated by the tenant. Therefore, while the landlord submitted that the tenant was required to pay for rent until the end of April 2020, I must conclude that the landlords' own property manager agreed to the tenant's request for the tenancy to end on March 31, 2020.

Furthermore, given the complete absence of the landlords at any point between February 28, 2020 and April 27, 2020 protesting or raising any issue with the tenancy end date, I further surmise that the landlords had either implicitly or explicitly agreed in writing that the tenancy would end on March 31, 2020. When a landlord agrees that a tenancy ends on a specific date, and does not dispute such a date, the tenant is not responsible for rent past that date. As such, the tenancy ended in compliance with the Act, and it therefore follows that the tenant has not breached the Act that may give rise to compensation for the landlords.

Accordingly, as the first criteria for establishing a claim for compensation has not been met, I need not consider the remaining three factors. The landlords' application is dismissed without leave to reapply.

Tenant's Claim

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this dispute, the landlord received the tenant's forwarding address in writing on March 30, 2020. They did not repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address. That the office was in shambles is not a reasonable defense to failing to return a security deposit, given that most (if not almost all) of the landlords' correspondence and business dealings appear to occur online and electronically.

Section 38(6) of the Act states that

> If a landlord does not comply with subsection [38](1), the landlord
> (a) may not make a claim against the security deposit or any pet damage deposit, and
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Here, having found that the landlords did not comply with subsection 38(1) of the Act, I further find the landlords must pay the tenant double the amount of the security deposit for a total of $4,000.00. Further, as the tenant was successful in his application, I grant his claim for reimbursement of the filing fee in the amount of $100.00, pursuant to section 72 of the Act.

Conclusion

The landlords' application is dismissed without leave to reapply.

The tenant's application is granted, and I award and grant the tenant a monetary order for $4,100.00, which must be served on the landlords. 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) of the Act.

Dated: May 21, 2020

Residential Tenancy Branch