Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bolld Real Estate Management and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT FFT

Introduction

In this dispute, the tenant seeks compensation pursuant to section 67 of the *Residential Tenancy Act* (the "Act"), and, recovery of the filing fee under section 72 of the Act.

The tenant applied for dispute resolution on March 2, 2020 and a dispute resolution hearing was held on July 9, 2020. The tenant and his wife attended the hearing and they were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No agent or representative of the landlord attended the hearing.

The tenant testified that he served the Notice of Dispute Resolution Proceeding package (the "package") on the landlord by way of Canada Post registered mail. I note that the Residential Tenancy Branch provided the tenant with the Notice of Dispute Resolution Proceeding on March 11, 2020. A copy of the registered mail receipt and tracking number, along with a photograph of the package, were submitted into evidence. The Canada Post registered mail tracking website indicates that the package was received at the post office on March 12, 2020 and delivered to the landlord's address on March 22, 2020 at 3:35 PM. I confirmed, by looking at the Residential Tenancy Agreement in which the landlord's address for service was included, by looking at the address on the photograph of the package, and by looking at the landlord's business address on the internet, that the tenant mailed the package to the correct address.

Based on the above documentary and oral evidence, I find that the tenant served the Notice of Dispute Resolution Proceeding package on the landlord in full compliance with sections 59(3) and 89 of the Act, and in full compliance with the *Rules of Procedure.*

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Finally, I note that the tenant's application included the names of his wife and child. As neither the wife nor child are named tenants on the tenancy agreement, their names are removed from the application.

Issues

1. Is the tenant entitled to compensation in the amount of $1,785.00?
2. Is the tenant entitled to recovery of the filing fee in the amount of $100.00?

Background and Evidence

The tenancy began October 1, 2019 and ended December 15, 2019. Monthly rent was $1,890.00 and the tenant paid a security deposit of $945.00. A copy of the Residential Tenancy Agreement along with a signed Form K was submitted into evidence.

Not long after the tenant and his family moved into the rental unit, however, the tenant found out that the building was an adult's only property. The landlord "didn't know the rules," the tenant's wife testified, and never advised the tenant that it was an adult-only building. The building's property management company sent a letter on November 8, 2019 to the tenant and cc-ing a representative of the landlord, in which they state:

> As Managing Agents for [name of building], I write to advise that it has been brought to our attention that your property agent has permitted occupancy of a minor within your unit, by way of renting your unit to a family with an infant child, which is in contravention of the following terms of the head lease, and building rules […]

The letter then goes on to cite from the building rules regarding it being an "ADULT ORIENTED BUILDING." The letter also states that there would be ever-increasing fines issued if the tenants did not vacate the rental unit.

After this, the tenant and the landlord entered into a Mutual Agreement to End a Tenancy (the "MAET"). The MAET was signed by both the tenant and a representative of the landlord (B.O.) on November 26, 2019, and it indicated that the tenant would

vacate the rental unit by 8:00 PM on December 15, 2019. A copy of the MAET was tendered into evidence.

Along with the MAET is an Addendum to the Mutual Agreement to End Tenancy (the "Addendum"), which was DocuSigned by the landlord's representative on November 26, 2019 and by the tenant on November 29, 2019. The Addendum, a copy of which was submitted into evidence, includes the following term:

> 1. The Landlord will compensate the Tenant up to a maximum of one month's rent of $1,890 for moving expenses with receipts provided. This amount will be payable within 15 days of vacate date upon receiving the moving expense receipts.

The tenants moved out on December 15 and 16, 2019. On December 19, 2019, the tenant emailed a copy of the moving and packing company's invoice and payment transaction details, to the landlord's main email address, and cc-d the landlord representative B.O. A copy of this invoice and payment transaction receipt were submitted into evidence and reflect a payment of $1,785.00 to the moving company.

Having not heard anything back from the landlord, the tenant sent a follow-up email to the landlord's representative on January 7, 2020, asking about the status of the reimbursement. Two days later, on January 9, the tenant sent yet another follow-up email to the landlord's representative. On January 10, the landlord's representative responded, and said that "I have forwarded to our managing broker for review and payment."

Yet more time passed, and on January 21, 2020, the tenant sent a third follow-up email to the landlord's representative, asking that the reimbursement matter be dealt with. The next day, the landlord's representative sent an email to the tenant. In her email, the representative indicates that they "have tried to call the moving company to ascertain the invoice as it was not marked whether it was paid or not and what method was used for payment." (This is odd, I find, given that the tenant provided a copy of a payment transaction confirmation document to the landlord.) There is also a reference to the landlord questioning the amount charged.

On January 22, 2020, there was an email sent to the tenant from another representative of the landlord, one Mr. L.C. In this email, the representative remarks that "I have reviewed the document which you have submitted and it is not an invoice." He then

states, “I honestly question the authenticity of the receipt.” The tenant then responds to the landlord’s representative L.C., addressing most of the points raised.

The tenant, after further efforts were made to obtain a more detailed invoice from the movers, was finally able to do so. He sent the revised, more detailed invoice, to the landlord’s representative on February 14, 2020. A copy of this invoice was also submitted into evidence, and it reflects the work done, the dates, and the amount.

Another representative of the landlord (J.P.) responded to the tenant on February 14 and confirmed that they received the tenant’s email of that same date. The email concludes with the statement, “I already shared your email with [L.C.] and [B.O.]. Please keep your lines open as either of them will reach out to you as soon as they can to provide you a detailed update.”

Neither representative of the landlord, or anyone from the landlord for that matter, ever reached out to the tenant.

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.

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.

. . .

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.

Claim for Compensation

In this dispute, the MAET and Addendum to the MAET were entered into by both parties. The landlord agreed to be bound by the terms of those documents, which included a provision that the landlord “will compensate the Tenant up to a maximum of one month’s rent of $1,890 for moving expenses with receipts provided. This amount will be payable within 15 days of vacate date upon receiving the moving expense receipts.” The tenant provided a copy of an Interac e-Transfer transaction document, in which the amount of $1,785.00 was sent to the recipient, the moving company, on December 15, 2019. The “Message” indicates that it is in reference to “Invoice 0001447.” The tenant submitted a copy of the invoice, which references the same invoice number, and which indicates the total to be $1,785.00.

Despite the landlord’s various representatives asking for a copy of a more detailed invoice, and the representative L.C.’s remark that he “reviewed the document which you have submitted and it is not an invoice,” nowhere in the Addendum was it required that the tenant provide an invoice. The term in the Addendum only said that “receipts” were provided. Moreover, I find it perplexing that L.C. questioned the authenticity of the receipt, as (1) an invoice is not a receipt, and (2) the tenant had previously submitted a copy of the Interac e-Transfer confirmation, which I find constitutes a receipt. A “receipt” is simply an acknowledgment, usually written, that something – in most cases, money – was received.

Had the landlord required more than a receipt, such as a detailed receipt with specific information, or had they required a detailed invoice, then they ought to have written that into the Addendum. What is more, landlord representative B.O. remarks in her email of January 22, 2020 the following: “As their stated quote for a two bedroom move from Vancouver to Victoria was the same amount as your invoice, it doesn’t seem very justifiable.” Given that the Addendum provided for a maximum $1,890.00 in moving expenses, the landlord appears to have simply not liked the amount that they were required to pay.

In summary, I find that the landlord breached their obligations under the MAET and Addendum. Further, but for the landlord’s breach of its legal obligation to compensate the tenant, the tenant would not have suffered a loss of $1,785.00 for which they now claim.

Third, I find that the amount claimed is clearly established at $1,785.00 – the amount that the moving company charged – and in the absence of any evidence from the landlord as to whether this is a reasonable or unreasonable amount, I find that the tenant has proven the amount of his loss.

Finally, I conclude that there is not much more that the tenant could have done to minimize the loss. He repeatedly, over a period of two months, followed up with various landlord representatives who, instead of promptly and professionally meeting their legal obligations under the Addendum, responded in an obstinate and sloth-like fashion.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for compensation in the amount of $1,785.00.

Claim for Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee.

As the tenant was successful in his application, I therefore grant his claim for reimbursement of the filing fee of $100.00.

Conclusion

I hereby grant the tenant a monetary order in the amount of $1,885.00, which must be served on the landlord. Should the landlord fail to pay the tenant the amount owed, the tenant may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is final and binding, except where otherwise permitted, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: July 9, 2020

Residential Tenancy Branch