Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed that each party was in receipt of the same hearing materials before me and I admitted them for consideration in making this decision.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for damages or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The parties executed a written tenancy agreement on March 18, 2016 for a tenancy that commenced on April 23, 2016. The tenants paid a security deposit of $750.00 and a pet damage deposit of $750.00. The tenancy agreement provides that the tenants are required to pay rent of $1500.00 on the first day of every month. The rent has subsequently increased by way of Notices of Rent Increase and the current rent is $1599.00 per month.

The tenants seek recovery of $50.00 per month since their tenancy started on the basis the landlords have charged them an unlawful "pet fee" of $50.00 per month.

The tenants seek recovery of $50.00 per month since their tenancy started on the basis the monthly payment was comprised of rent plus a $50.00 “pet fee” and the tenant subsequently learned that charging a pet fee is unlawful.

The parties were in agreement that the tenants had paid the landlords $1500.00 per month and then the amounts stipulated in the subsequent Notices of Rent Increase but the tenants have not paid any more than that. The tenants did not take issue with the amount of the increase on the Notices of Rent Increase.

I noted that the tenancy agreement provides for a monthly rent of $1500.00 and not $1450.00 plus a pet fee. The tenants pointed to an email that pre-dates the execution of the tenancy agreement as evidence the landlord’s have collected a pet fee.

Aside from the email, the parties sought to make submissions concerning their negotiations with each other before executing the tenancy agreement. I did not permit further submissions concerning their negotiations prior to entering into the tenancy agreement as that amounts to “parol evidence”. Neither party was familiar with the parol evidence rule.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 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 whatever was reasonable to minimize the damage or loss.

Upon consideration of this matter, I proceed to determine whether the tenants have established that the landlords have violated the Act, regulations or tenancy agreement with respect to the amount collected from the tenants every month.

Section 13 of the Act requires the landlord to prepare a written tenancy agreement and provides for certain terms that must be included in the written agreement. One such term that must be included in the written agreement is the amount of rent payable by the tenants.

In this case, the landlords prepared a written tenancy agreement using a generic form published by the Residential Tenancy Branch and presented it to the tenants for their signatures. The written tenancy agreement executed by the parties clearly stipulates that the monthly rent is $1500.00 payable on the first day of every month. All parties executed the tenancy agreement on March 18, 2016 and above their signatures it states:

> "By signing this tenancy agreement, the landlord and the tenant are bound by its terms."

Sections 40 through 44 of the Act provide for the lawful way a landlord may increase the rent after the tenancy has started. I heard undisputed testimony that the monthly rent was increased a number of times since the tenancy started by way of Notices of Rent Increase and there was no issue raised with respect to manner in which the rent was increased by way of the Notices of Rent Increase. As such, I accept that the periodic increases were done in accordance with the Act.

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement. I heard undisputed evidence that the tenants have been paying the amount stipulated by the written tenancy agreement and the subsequent Notices of Rent Increase and the landlords have not collected any more that those amounts.

In light of the above, I find the landlords have not collected any more monies than that stipulated in the tenancy agreement and the subsequent Notices of Rent Increase and at its face I do not see a violation of the Act, regulations or tenancy agreement.

In making this Application for Dispute Resolution the tenants are trying to have me look behind what is written in the tenancy agreement that was duly executed by all the parties. Generally, looking behind the terms of an agreement is not done; however, there are some exceptions.

Section 91 of the Act provides that

> **91** Except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

The Parol Evidence Rule is a rule under the common law that applies to contract interpretation. A tenancy agreement is a contract.

Under the Parol Evidence Rule of contract law, where the language of a written contract is clear and unambiguous, then no extrinsic parol evidence (written or oral) may be admitted to alter, vary or interpret in any way the words that are written in the agreement. When there is no ambiguity in a written contract it must be given its literal meaning. Words must be given their plain, ordinary meaning unless to do so would result in an absurdity.

The Parol Evidence Rule prevents a party to a written contract from presenting extrinsic evidence that contradicts or adds to the written terms of the contract that appear to be whole. The rationale for this rule is that since the contracting parties have reduced their agreement to a final written agreement, extrinsic evidence should not be considered when interpreting the written terms, as the parties had decided to ultimately leave them out of the contract. In other words, one may not use evidence made prior to the written contract to contradict the writing.

I find the tenant's email that pre-dates the execution of the written tenancy agreement amount to extrinsic parol evidence. Therefore, I must consider whether there is a basis to consider the parol evidence.

In order to consider the tenants' parol evidence, I must be satisfied that the wording of the tenancy agreement is unclear or ambiguous or that there is some other basis in law that would warrant consideration of the parol evidence.

Upon review of the term concerning the payment of rent in the subject tenancy agreement, I find that it clearly communicates the tenant's obligation to pay $1500.00 per month as "rent" and there is no reference to a "pet fee" in the tenancy agreement that was agreed upon by all parties. I do not see the term as being unclear or ambiguous and no other legal basis for admitting the parol evidence was put before me. Therefore, I find insufficient grounds to look behind the tenancy agreement or the Notices of Rent Increase to determine what the monthly rent is and the negotiations the parties had before the tenancy agreement was entered into would amount to "parol evidence" that I decline to admit.

Having been satisfied the landlords have collected rent that is stipulated in the tenancy agreement and the subsequent Notices of Rent Increase, I find the tenants have not demonstrated the landlords have violated the Act, regulations or tenancy agreement with respect to this matter. Therefore, I dismiss the tenant's application in its entirety.

Conclusion

The tenants' 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 29, 2021

Residential Tenancy Branch