Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

On November 16, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") requesting compensation for the end of their tenancy, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and one of the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

Preliminary Matter -Evidence

The Tenant testified that he served the Landlord the notice for dispute resolution and the related evidence and the Landlord agreed that he had received it. The Landlord stated he sent his evidence to the Tenants via email and the Tenant stated that he did not receive the evidence package.

Rule 3.16 of the Rules of Procedure states that "the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure."

In this case, I find that the Landlord failed to serve the evidence in accordance with the Act and therefore, I find that the Landlord's evidence is inadmissible for this hearing.

Issues to be Decided

Should the Tenants receive end of tenancy compensation, pursuant to section 51 of the Act?

Should the Tenants be compensated for the cost of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on July 6, 2019 and continued as a month-to-month tenancy. The rent was $2,500.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of $1,250.00. The Tenants moved out of the rental unit on October 5, 2020.

The Tenant provided undisputed testimony that they received a Two Month Notice to End Tenancy for Landlord's Use from the Landlord on August 19, 2020, with a move-out date of October 31, 2020.

The Tenant stated that they provided the Landlord notice, via text message, that they would be moving out of the rental unit on October 4, 2020. The Tenant was unsure of the date he sent the notice and did not provide any documentation in this regard.

The Tenant stated that they met with the Landlord for a move-out inspection on October 4, 2020 and did not agree with the Landlord's assessment of the damage as noted on the report. The Tenant admitted that the document was signed as an acknowledgement of being present for the inspection; but did not agree to the damage claimed by the Landlord and did not agree to not receiving any money back.

The Tenant stated that because they moved out of the rental unit on October 5, 2020, they are still owed compensation for the balance of the month of October 6-31, 2020, in the amount of $2,096.78.

The Landlord acknowledged that he received the Tenants' notice on September 24, 2020, via text, to move out of the rental unit by October 4, 2020 and subsequently set up a move-out inspection appointment for that date. When questioned, the Landlord confirmed that he and the Tenants regularly communicated about tenancy issues via text or phone calls.

The Landlord stated that during the move-out inspection, the Tenants stated they were willing to pay for damaged carpets and walked out without signing the report. However, the Tenant returned the next day and signed the condition inspection report acknowledging the damage and to receive no money back. The Landlord stated that the Tenant signed in the wrong spot and agreed to the deduction of the security deposit

but did not sign where the Landlord wrote about the Tenant responsibility and agreeing "to $0.00 damage deposit and $0.00 monies back".

The Landlord stated that, given the damage to the rental unit, he thought the Tenants had agreed to giving up the security deposit and compensation and that the matter was done.

Analysis

As I mentioned during the hearing to the attending parties, the Tenants' Application is not about the return of the security deposit, rather it is specific to compensation due to tenants who receive a Notice to End Tenancy for Landlord's Use. I have not made any findings in regard to the security deposit related to this tenancy.

Section 51(1) of the Act authorizes a tenant who receives a Notice to End Tenancy under Section 49 to receive one month's rent from the landlord. In this case, there has been no evidence presented to me that the Landlord has compensated the Tenants for ending their tenancy.

Section 50 of the Act establishes that a tenant may end the tenancy early by giving the landlord at least 10 day's written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice and paying the landlord the proportion of the rent due to the effective date of the tenant's notice. Section 50(3) of the Act states that the 10 day notice given to the landlord by the tenant does not affect the tenant's right to compensation under section 51.

In this case, based on the testimony and evidence presented and in accordance with section 71(2) of the Act, I find that the Tenants, after being served with a Notice to End Tenancy for Landlord's Use, did provide the Landlord notice to end the tenancy early when they texted him on September 24, 2020. I acknowledge that text messages are not the usual standard for serving notice, however, in this case, I find that the Landlord received the text, acknowledged the notice for the end of tenancy, and set up a move-out inspection for October 4, 2020.

The parties presented conflicting testimony about the move-out condition report and whether the Tenants consented to compensating the Landlord for damages. I do not find that the Landlord provided sufficient evidence to demonstrate that the Tenants agreed to forgo their one month's compensation to cover the claimed damages.

I find that the Landlord has not compensated the Tenants pursuant to section 51(1) of the Act and that the Tenants moved out of the rental unit on October 5, 2020. As such,

I find that the Tenants have established a monetary claim for compensation, pursuant to Section 51, and order the Landlord to pay the Tenants $2,096.78; the amount claimed by the Tenants.

I find that the Tenants' Application has merit and that the Tenants are entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of $100.00, pursuant to section 72 of the Act.

Conclusion

I grant the Tenants a Monetary Order for the amount of $2,196.78, in accordance with sections 51 and 67 of the Act. In the event that 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 *Residential Tenancy Act*.

Dated: March 10, 2021

Residential Tenancy Branch