Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ICON PROPERTY ADVISORS
PORT ROYAL VILLAGE DEVELOPMENTS INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlords' agent EN ("landlord") and the two tenants, tenant JO ("tenant") and "tenant WA," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 38 minutes.

The landlord confirmed that she was the property manager for the two landlord companies named in this application and that she had permission to speak on their behalf (collectively "landlords").

At the outset of the hearing, I informed both parties that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")*. The landlord and the two tenants all affirmed under oath that they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with the hearing, they wanted me to make a decision, and they did not want to settle this application.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and the tenants were duly served with the landlords' evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to add the landlord company owner name PRVDI. The landlord confirmed the owner name during the hearing. Both parties consented to this amendment during the hearing.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2019 for a fixed term ending on November 30, 2020. The tenancy ended on October 31, 2020. Monthly rent of $2,155.00 plus storage fees of $30.00, totalling $2,185.00, was payable on the first day of each month. A security deposit of $1,077.50 was paid by the tenants and $969.50 was returned to the tenants, while $108.00 was retained by the landlords for blinds cleaning. Both parties signed a written tenancy agreement. The tenants paid a full month's rent and storage fees of $2,185.00 to the landlords for November 2020 on November 1, 2020. The former landlord agent RH ("former landlord agent") sent an email, dated November 2, 2020, to the tenants, stating the following:

> *Hi*
> *Yes you will get the rent back with the damage deposit.*
> *Just to let you know there will be a deduction for blind cleaning from the deposit.*
> *Thanks*
> *[former landlord agent first name]*
> *Did you clean the suite?*

The tenants seek a refund of a full month's rent and storage fees of $2,185.00 for November 2020, plus the $100.00 filing fee paid for this application. The landlords dispute the tenants' application.

The tenant testified regarding the following facts. The tenants want a refund of their rent and storage fees of $2,185.00 for November 2020, as it was debited from their account by the landlords on a pre-authorized payment plan on November 1, 2020. The tenants left one month earlier than the end of their fixed term tenancy agreement but were told by the former landlord agent that the rent would be returned. Before the tenants moved out, they confirmed with the former landlord agent, that if they left early, they would not be charged any fees. The tenants were in no rush to move out. The former landlord agent told the tenant verbally in person that the tenants would get their entire rent back and to call him in two weeks if they did not receive it. The tenant called the former landlord agent repeatedly, but he blocked the tenant, without returning the rent. The tenant approached the former landlord agent in person asking for the rent back and he lunged at the tenant, accused the tenant of trespassing, made a scene, and threatened the tenant. The former landlord sent an email, dated November 2, 2020, to tenant WA confirming that the tenants would get their rent back and their security deposit minus the blinds cleaning. The tenants provided a copy of this email. When the landlord took over, the tenant told her what happened with the former landlord agent, sent her copies of the emails on December 9 and 10, 2020, and asked for the rent back or the tenants would have to move forward with representation. The tenants provided copies of these emails. There was no reason for the tenants to move out early, as the tenant was moving back to his parents' place.

Tenant WA testified regarding the following facts. He was in no rush to move out, as he is young and found another place to live. He was unnecessarily paying rent for two different places for November 2020, because the former landlords' agent refused to return the tenants' rent that he agreed to do. He offered the former landlords' agent to show the rental unit to prospective tenants, while the tenants were still living there, in order for the landlords to re-rent the unit.

The landlord testified regarding the following facts. The tenants only had verbal conversations with the former landlord agent, there was nothing in writing. The former landlord agent was an experienced resident manager, who no longer works for the landlords, since he left at the end of January 2021. The tenants were not charged the lease break fee of $750.00, they did not provide written notice to leave, and they talked to the former landlord agent in mid-October 2020 to leave at the end of October 2020. The tenants got a "break" on the blinds cleaning since they were only charged $108.00

instead of the $204.75 that was the actual cost. Although the landlord received the former landlord agent's email, dated November 2, 2020, regarding returning the rent and the security deposit, there is no context to this message, as no other emails were provided before this date. The landlord did not ask the former landlord agent about this email. The rental unit was re-rented to new tenants on January 1, 2021. The landlord did not receive the above email until she received the tenants' application February 18, 2021. The landlord received the above email from the tenants on December 9, 2020 and spoke to the former landlord agent about it and he denied it. These events happened a year ago.

Analysis

Overall, I found the two tenants to be more credible witnesses than the landlord. I found the tenants' testimony to be consistent and forthright, they presented their evidence in a calm and candid manner, and their version of events did not change throughout the hearing. The tenants provided documentary evidence to support their testimony.

On the other hand, I found the landlord to be a less credible witness. The landlord's testimony was not consistent and forthright, as it was confusing and changed frequently throughout the hearing. The landlords did not provide sufficient documentary evidence to support the landlord's testimony, despite the fact that they had the tenants' evidence since December 2020, months before this application was filed in February 2021 and before this hearing occurred in June 2021.

The landlord said that there was no written record of the former landlord agent's agreement. When the tenants pointed to the email, she then claimed there was no context to the email to determine what it meant. The landlord stated that she did not discuss the email with the former landlord agent and then claimed that she did, and he denied its contents. She explained that she did not get this email until she received the tenants' application on February 18, 2021, but then agreed that she got the email on December 9, 2020, after the tenants referenced it in their testimony. She said that she could not remember the events because they occurred a year ago, even though they occurred on December 9, 2020, which is approximately six months prior to this hearing date on June 11, 2021. She claimed that she did not know this was an issue until she received the tenants' application on February 18, 2021, despite the fact that the tenant referenced an email to her, dated December 10, 2020, asking to work out a resolution prior to filing this application.

On a balance of probabilities and for the reasons stated below, I find that the tenants are entitled to the return of a full month's rent plus storage fees of $2,185.00 from the landlords for November 2020.

I find that the former landlord agent agreed to return the tenants' rent plus the security deposit minus the blinds cleaning, in his email from November 2, 2020. I find that although this person no longer works for the landlords, he was an authorized agent of the landlords at the time that this dispute arose in October and November 2020, prior to leaving his employment at the end of January 2021. The tenants provided a copy of the above email. The landlord did not question the authenticity of this email.

The landlords returned the tenants' security deposit minus the blinds cleaning of $108.00. They fulfilled this portion of the agreement in the former landlord agent's email of November 2, 2020. Yet, they did not return the $2,185.00 for rent and storage fees, while the tenants did not possess the rental unit in November 2020, as they vacated on October 31, 2020.

I find that the landlords failed to fulfill their agreement with the tenants to return their rent and storage fees of $2,185.00. I find that the tenants relied on this agreement, to their detriment, in leaving the rental unit one month earlier on October 31, 2020, than the fixed term end date of November 30, 2020, in their tenancy agreement. I find that the email from the former landlord agent is clear and does not require further context, as it refers to returning rent to the tenants. The only rent that was recently debited by the landlords from the tenants' pre-authorized account on November 1, 2020, the day before the email of November 2, 2020, was the November 2020 rent, since the tenancy ended on October 31, 2020.

Although the landlord claimed that the landlords did not charge the tenants a lease breach fee of $750.00, the tenants only paid a reduced blinds cleaning fee from $204.75 (the invoice provided by the landlords for this hearing indicates the cost was actually $152.25), and the landlords were unable to re-rent the unit until January 1, 2021, I find that the landlords agreed to different terms with the tenants as noted above.

Further, the security deposit refund statement, issued by the landlords and provided by them as evidence for this hearing, does not indicate any deductions for "rent owing" or "liquidation costs," except for blinds cleaning of $108.00, as of October 31, 2020.

I also find that the landlords failed to provide documentary evidence of advertisements, inquiries from prospective tenants, showings to prospective tenants, or the new tenancy agreement signed with the new tenants. I find that the landlords failed to provide sufficient evidence to show their efforts to re-rent the unit, mitigate their losses, and to show that they actually suffered a loss of $2,185.00 for November 2020 rent and storage fees.

As the tenants were successful in this application, I find that they are entitled to recover the $100.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of $2,285.00 against the landlord(s). The landlord(s) must be served with the monetary Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: June 11, 2021

Residential Tenancy Branch