Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT OLC MNDCT FFD

Introduction

The tenants seek various relief, including an order for compensation, against their former landlords pursuant to sections 30, 62, 67, 70 and 72 of the *Residential Tenancy Act* (the "Act").

A dispute resolution hearing was convened on October 14, 2022 and both parties attended. All parties were affirmed, and no service issues were raised.

Preliminary Issue: Tenancy Has Ended

The tenancy effectively ended on or about August 22, 2022. As such, the tenants' claims for relief under sections 30 and 70 of the Act (an order that the landlords allow access to the rental unit) and section 62 of the Act (an order for the landlords to comply with the Act, the regulations, or the tenancy agreement) are now moot. Such orders would have little practical or legal effect and as such these claims are dismissed without leave to reapply. Further, it is worth noting that the tenants advised me during the hearing that they have no intention of moving back into the rental unit.

Issues to be Decided

1. Are the tenants entitled to compensation, pursuant to section 67 of the Act?
2. Are the tenants entitled to recover the cost of the filing fee under section 72?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

It should be noted at the outset that the vast majority of the documentary evidence consisted of copies of text messages written in Chinese Hanzi without any accompanying translation into English. And while both parties referred to various text messages, and orally translated them to some degree, I will not consider the actual text messages as documentary evidence. Without a certified translation of non-English documentation, I cannot be certain as to the actual content of these text messages.

The tenants testified that the tenancy began August 15, 2022. There is a written tenancy agreement signed by all parties on July 12, 2022, and a copy of the agreement was in evidence. Monthly rent was to be $1,250.00 and the tenants paid a $625.00 security deposit.

While the tenants moved some of their property and furniture into the rental unit, they never ended up living in the rental unit (a basement suite). The tenants brought some issues (for example, mold on the carpet, terrible smells, and so forth) to the landlord's attention. The parties disagreed with how the landlords respond to these issues. On August 16 the tenants sent the landlords a message advising that they, the tenants, would go to the rental unit and "attempt to fix" some of the issues.

On August 19, the tenants went to the rental unit only to find that they could not open the door of the rental unit with the key that had been provided by the landlords. The next day, the landlords sent a message to the tenants advising them that, based on the landlord's interpretation of a previous message, the tenancy would be ending.

On August 22, the tenants rented a U-Haul truck to move the remainder of their belongings into the rental unit. Upon arrival, the tenants found the landlord waiting outside the now-locked rental unit with the blinds drawn. The tenants' furniture and property that had been inside the rental unit had been moved *outside* the rental unit. At this point, the tenants tried communicating with the landlord in person but the landlord "insisted that they didn't want to rent to [us] anymore." The tenants "felt threatened" and ended up returning the key to the landlord.

Later that day, the tenants discovered that the landlords had posted ads online for the rental unit. And, they noted, for a higher rent. Apparently, the ad was posted before the tenants had arrived to move their furniture in.

The tenants seek various compensation that I will address below. It is noted that the landlords returned $1,150.00 to the tenants, which included the $625.00 security deposit.

The landlords testified that it was the tenants who canceled the tenant, “not us.” The landlord referred to a communication between the parties where the tenants had purported stated that they did not want to rent. It is noted that the tenants disputed that they ever told the landlords that they would be cancelling the tenancy. It is further noted that the text messages purportedly containing the tenants’ cancelling of the tenancy are not in English. In any event, the landlords argued that the tenants were the parties which intended and stated that they were ending the tenancy. As for locking the rental unit, the landlord testified that this was done to prevent placing the property “at considerable risk.” They also put the ad up because they thought that the tenancy was ending and that they needed to quickly secure new tenants.

In rebuttal, the tenants testified that the text message to which the landlord referred does not contain any cancellation-of-the-tenancy message. Further, the tenants paid rent on August 18 and never said anything about not continuing the tenancy. Indeed, they rented a U-Haul with the full intention of moving the remainder of their belongings into the property. Last, the tenants argued that it would make no sense for a landlord to confirm if their tenants were renting when rent and a security deposit had been paid and when they were in the process of moving things into the rental unit.

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.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss. Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable in minimizing their loss?

The parties entered into a tenancy commencing August 15, 2022. That tenancy ought to have remained in force until at least July 31, 2023. The *only* manner in which the tenancy could have legally ended is by one of the methods enumerated in section 44(1) of the Act. One of those methods, subsection 44(1)(a)(i) of the Act, is when a tenant gives a notice to end tenancy under section 45 of the Act.

Based on the evidence, both oral evidence and very limited documentary evidence, I am not satisfied that the tenants ended the tenancy. The landlords have not provided any evidence to persuade me that the tenants ever gave notice to end the tenancy. That there is some reference—in the landlords' communication, and not the tenants'—to the tenants' family discussing whether to keep renting is not, I find, sufficient notice to actually end the tenancy.

However, it is my finding that the landlords illegally locked the tenants out of the rental unit and illegally ended the tenancy. As such, it is my finding that the landlords breached section 44(1) of the Act by not giving proper notice to end the tenancy themselves, and by not permitting the tenants exclusive possession of the rental unit as required by section 28(c) of the Act. In all, the tenants had exclusive possession of the rental unit for a total of 4 days (from August 15 until they found out on August 19 that the locks had been changed).

The tenants claim $1,250.00 for a "One Month Rent Fee" and $625.00 for "Security Deposits". The parties acknowledged that the landlords returned $1,150.00 which seems to include the security deposit and part of the rent. In other words, the tenants paid the landlords $525.00 in rent, along with $625.00. However, given my finding that the tenants only had exclusive possession of the rental unit for 4 days, the pro rata rent would be $164.00 (calculated at $1,250.00 x 12 ÷ 365 = $41.10 per day). Therefore, the landlords are not entitled to rent for any days that they locked the tenants out of the rental unit and as such the tenants are entitled to compensation of $361.00.

The tenants also seek $117.49 for the cost of the U-Haul truck. However, it is my finding that this is an expense that would have occurred regardless of whether the landlords had locked the rental unit. A moving expense is incurred anytime a tenant moves, and as such I am unable to find that the landlords breached the Act in a manner giving rise to claim for compensation. This aspect of the tenants' claim is dismissed.

Finally, the tenants seek $22,000.00 in compensation for "Compensation for Breaking Contract [and] Re-renting a unit." In respect of this claim, I am unable to determine how the tenants arrived at this figure from the landlords' breach of contract.

There is no documentary evidence for me to find that the tenants suffered a loss of $22,000.00 due to the landlords' non-compliance with the Act, the regulations, or the tenancy agreement. As such, this aspect of the tenants' application is dismissed without leave to reapply.

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee. In this dispute, as the tenants were successful with one aspect of their claim the landlords are ordered to pay the tenants $100.00.

Conclusion

For the reasons given above, the tenants' application is granted, in part. The tenants are awarded, and the landlords are ordered to pay to the tenants, $461.00

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: October 19, 2022

Residential Tenancy Branch