Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

The tenants seek compensation from their former landlord pursuant to sections 67 and 72(1) of the *Residential Tenancy Act* (the "Act").

A hearing was held by teleconference on Tuesday, December 6, 2022 at 1:30 PM. Both parties attended and the tenant (J.S.) and the landlord were affirmed.

Preliminary Matter: Service and Submission of Evidence

The tenant testified under oath that she served the *Notice of Dispute Resolution Proceeding* and her documentary evidence by Canada Post registered mail on April 19, 2022. Canada Post tracking information indicates that the package was received by the landlord on April 21, 2022.

The landlord testified that the only document he received was "a letter from you guys," presumably meaning the *Notice of Dispute Resolution Proceeding*. He remarked that he did not receive anything else. The tenant provided, by oral submission during the hearing, an itemized list of the documents she had mailed to the landlord. This included a copy of email conversations between her and the landlord regarding the return of prepaid rent. The landlord acknowledged that he was aware of these conversations.

The landlord asked if he could be given an opportunity to submit documentary evidence (he had not submitted or served anything as of today's date). He explained that, while he was aware of the hearing because of the *Notice of Dispute Resolution Proceeding* being received on April 21, 2022, he had forgotten or lost track of the matter.

Given that the purpose of the Act and the Residential Tenancy Branch is to provide an efficient and expedient dispute resolution mechanism for disputes between landlords and tenants, and, given that the landlord had well over seven months to prepare for this hearing and submit evidence, I am not inclined to grant an adjournment for this purpose.

Issues

1. Are the tenants entitled to compensation under 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.

The particulars of the tenants' application read as follows:

> I gave notice to end my tenancy at [address of rental unit] on November 30th, 2021. I had previously paid landlord [landlord's name] the amount of $1,100 (rent) in advance for January 2022. After formally ending the tenancy in writing (email), I requested the return of my pre-paid rent. I sent a follow-up email to [landlord's name] on December 8th. I received a reply from [landlord's name] on December 14th confirming the end of my tenancy and that he would return the pre-paid rent. I sent an additional email on January 10th.

The tenant testified that despite the landlord's assurances that he would be sending her back the pre-paid rent for January, he didn't. A copy of an Interac e-transfer confirmation (dated June 6, 2021 for $2,200.00) was in evidence. It is noted that the tenancy began January 1, 2020 and ended December 31, 2021. Rent was $1,100.

Also in evidence is a copy of an email dated December 14, 2021 in which the landlord writes, *inter alia,* to the tenant: "We accept your move-out notice dated Nov.30 and will return your one month prepaid rent."

The landlord testified about the history of the tenancy and an otherwise good relationship. At the end of the tenancy, however, the tenant "shut down" and would not let the landlord communicate with her. Nor did the tenant let the landlord conduct an inspection of the rental unit. It was not until the tenants vacated did the landlord discover that the "rental unit was a mess" with plenty of cat scratches on the walls. He admitted that he was angry and "just wanted to be done"; he did not file an application seeking damages for the mess or the damages to the rental unit. He was also "so busy at work" that he chose not to pursue legal action against the tenant at that time.

As a brief aside, it is noted that the landlord (who was phoning from Texas) twice became disconnected from the hearing. During his disconnection I did not hear any testimony from 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.

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.

While the tenant did not refer me to any specific section of the Act or the regulations that the landlord breached, it is nevertheless my finding that the landlord did not have any legal justification to retain the prepaid rent.

Section 5(4) of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003, while not directly on point insofar as prepaid rent payments made in cash are concerned, is worth considering:

> The landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the premises without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.

Now, in this case we're not dealing with post-dated cheques, but rather future rent payments. Yet in my view the principle underlying section 5(4) is the same, and ought to be applied to the facts of this dispute: a landlord who receives rent in advance, and who later becomes not entitled to that rent must then return or refund such rent payments.

It is also my finding that the applicant has established a claim against the landlord based on unjust enrichment.

“Unjust enrichment” occurs when one person is enriched at the expense of another in circumstances that the law views as unjust. The doctrine of unjust enrichment was definitively established *Pettkus v. Becker*, 1980 CanLII 22 (SCC), [1980] 2 SCR 834.

To establish unjust enrichment, an applicant must prove: (i) enrichment; (ii) deprivation; (iii) causal connection between enrichment and deprivation; and (iv) absence of juristic justification for the enrichment.

The concept of deprivation and enrichment are extremely broad. Deprivation refers to any loss of money or money's worth in the form of contribution while A is enriched if B contributes to the acquisition of assets in A's name. The causal connection between enrichment and deprivation must be “substantial and direct.” The absence of juristic reason is satisfied if an applicant establishes a reason why the benefit ought not be retained, or if the respondent demonstrates a convincing argument in favour of retention of the property.

In this dispute, there is no doubt in my mind that the landlord was enriched with the tenant’s prepayment of $1,100.00. The tenants were deprived of this amount to the enrichment of the landlord. There is a clear causal connection between the landlord’s enrichment and the tenants’ deprivation. Last, there was no juristic justification for the enrichment. Certainly, the landlord may have retained a right to withhold a security deposit (which is not an issue in the case before me), but he had no legal right under the Act or common law to keep the funds. Indeed, he went so far as to tell the tenants that the $1,100.00 would be returned to them. But other than his anger and being busy with work, the landlord had, I find, no juristic justification for keeping the money.

For the reasons given above it is my finding that the tenants have proven a claim for compensation in the amount of $1,100.00.

Further, as the tenants were successful in their application, they are entitled to an additional $100.00 in compensation to pay for the cost of the filing fee, pursuant to section 72 of the Act.

In total the tenants are awarded $1,200.00. Pursuant to section 67 and 72 of the Act the landlord is hereby ordered, within 15 days of receiving a copy of this Decision, to pay this amount directly to the tenants.

If the landlord does not, or refuses to, pay this amount within 15 days then the tenants must serve a copy of the monetary order upon the landlord. This monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The landlord will be liable for court costs if enforcement becomes necessary.

A copy of the Order is issued with this Decision to the tenants.

Conclusion

The application is hereby granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 6, 2022

Residential Tenancy Branch