Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: MNRL-S, MNDCL-S, FFL
MNDCT, MNSD, MNETC, MNEVC

Introduction

The landlords made an application under the *Residential Tenancy Act* ("Act") in which they seek compensation from the tenant. By way of cross-application the tenant made an application under the Act in which they seek compensation from the landlords.

Issues

1. Are the landlords entitled to compensation?
2. Is the tenant entitled to compensation?

Background and Evidence

In an application under the Act, an applicant must prove their claim on a balance of probabilities. Stated another way, the evidence must show that the events in support of the claim were more likely than not to have occurred. I have reviewed and considered all the evidence but will only refer to that which is relevant to this decision.

The tenancy in this dispute lasted one whole month. From March 1 to April 1, 2023, or thereabouts, to be exact. Monthly rent was $2,300.00 and the tenant paid a $1,300.00 security deposit.

The security deposit is currently held in trust by the landlords pending the outcome of their application. There is a non-standard[1] written tenancy agreement, signed and dated by both parties on February 6, 2023.

The Landlords' Claim for Compensation

The landlords filed their application for dispute resolution on April 24, 2023, and they seek $3,759.00 in compensation, including $100.00 for the cost of the application fee.

The landlords' Monetary Order Worksheet includes three subclaims: (1) $2,200 for loss of rent for April 2023; (2) $259.06 for electrical, utilities, and internet service for April 2023; and (3) $1,200.00 for costs arising out of a previous agreement between the parties in which the tenant requested the installation of baseboard heater covers and for which she agreed to pay for.

The landlords' documentary evidence included copies of communications between the parties, a calculation as to internet and utility costs, and an invoice from Home Depot.

The Tenant's Claim for Compensation

The tenant seeks compensation under four heads of damages, including two which are clearly unrelated to anything pertaining to the tenancy. For example, the tenant sought compensation of $1.00 on the basis of a two, four, or twelve months notice to end tenancy being issued. No such notice to end tenancy was ever issued. The tenant also seeks $2,300 in compensation on the basis that the tenancy agreement had a fixed term with a requirement to vacate the rental unit at the end of the tenancy. Again, no such term exists in the tenancy agreement. For this reason, I need not consider those two claims, as they are clearly frivolous and not based on any of the facts.

[1] It is recommended that the landlords use the Residential Tenancy Branch's *Residential Tenancy Agreement* (RTB-1) form for future tenancies. A copy of the most current version of the form may be found at https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb1c.pdf.

The tenant seeks the return of her $1,300.00 security deposit. Indeed, she is entitled to have this claim considered. If the landlords are unsuccessful with their application, then they will be ordered to return the security deposit to the tenant. While largely unrelated to a claim for the return of her security deposit, it is worth reproducing the description provided by the tenant in her application, as it refers to some of the issues they had while in the rental unit (reproduced as written):

> Landlord initiated ending Tenancy march 25th we had mutual agreement via email March 25th included in evidence. "landlord said they were OK ended Tenancy early" i agreed by March 26th 2023 booked Uhaul packed Boxes too said I felt relieved to move out due the cameras made me feel really uncomfortable in addition having pain neckdue to incline of roads landlord harass me not to park on public roadway monitoring me from camera security/safe issues I requested email correspondence only moving frwd

It is worth noting that the tenant signed the tenancy agreement without having first looked at the rental unit. The so-called security cameras are, in fact, light motion sensors. A light motion sensor is not a camera. There is no evidence before me to find as a fact that the landlords ever installed any security cameras in or around the rental unit.

The tenant seeks $1,800.87 (or, $1,815 if one refers to the tenant's Monetary Order Worksheet) in compensation for the following, as described in the tenant's application particulars:

> WestJet flight from Kamloops to Calgary $407.50 Uhauls Charges Kamloops-Calgary $418.88 Gasoline Costs for Vehicle from Kamloops-Calgary 41.82Shell $29.76Revelstoke 57.97 Shell 18.85 Shell Kamloops $32.00 $44.00 and $220 Yellow Cab Kamlo-Cache Gasoline Costs for Uhaul Kamloops to Calgary cache Creek 24.90 Petro Kamloops 129.46 Shell 150.75 shell Golden80 Shell 76.70

Total Gasoline : 623.36 PO Box Rental I had to open due to privacy act breached and discomfort in providing current address $86.10

What is unclear is why the landlords ought to be liable for any of these amounts. The tenant chose to end the tenancy on her own terms, and seemed to believe that the tenancy was ending at the end of March, and that the landlords somehow agreed to that. They did not.

Analysis

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. 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 if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

<u>The Tenant's Claim</u>

For the reasons set out below, under "The Landlords' Claim," the tenant is not entitled to the return of her security deposit.

Further, the tenant has not proven a single breach of the Act by which she is entitled to compensation from the landlords. The tenant was unhappy with various aspects of the rental unit and its environs, such as a slope on the ground, complications with on-street parking, stairs, and so forth. She was also apparently unhappy with security cameras inside and outside of the rental unit; the evidence does not even remotely substantiate the claim that the exterior motion sensors were cameras. Nor is there any evidence whatsoever that the interior, non-operating, motion sensors were cameras.

While the tenant may have been unhappy with her short, two-and-a-half-week occupancy of the rental unit, any perceived loss or compensatory damages cannot be awarded because the tenant failed to take the reasonable and necessary step of attending to the rental unit before signing the tenancy agreement. There is the well-known principle in law known as *caveat emptor.* It means “buyer beware,” and it ought to apply to prospective tenants when they consider signing a tenancy agreement. Certainly, a virtual walkthrough and a video of a rental unit can be helpful in a tenant’s deliberation, but these cannot replace an on-site, physical walk-through. Had the tenant done a pre-tenancy inspection of the rental unit, she would have seen the slope, seen the stairs, and seen the motion sensors. In short, I am unable to find that the landlords breached any section of the Act, the regulations, or the tenancy agreement from which compensation may flow.

In summary and taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus proving any claim for compensation, and her application is respectfully dismissed, without leave to reapply.

The Landlords’ Claim

A tenancy may only end in a manner in accordance with section 44(1) of the Act. The tenancy in this dispute was a fixed term tenancy that would have ended in early 2024.

Unless a tenant can end a tenancy by way of a mutual agreement to end the tenancy, a tenant cannot end a fixed term before its term expires (see section 45(2) of the Act).

The landlords were, because the tenant appeared unhappy with the tenancy and the rental unit, amenable to end the fixed-term tenancy early. They told the tenant in an email dated March 27 that they would be fine with ending the tenancy "at the end of April." In her response, the tenant writes, "If you and [C.] are OK with is ending the lease I will aim for the end of this month March 31 st 2023." However—and this is crucial—the landlords at no time agreed in writing that the tenancy would end on March 31. While the tenant never explicitly agrees that the tenancy is to end on April 30, the fact that the landlords agreed to letting the tenancy expire on this date means, and I do find as a fact, that the tenancy was to end on April 30.

Section 26 of the Act requires that a tenant pay rent, and any utilities, on the first day of the month or on the day that such amounts are owing.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving that the tenant owes rent, utilities, and the internet for April in the amount of $2,459.06. The landlords are therefore awarded this amount. The tenant breached section 26 of the Act, the landlords would not have suffered this loss but for the tenant's breach of the Act, the amount of the loss has been proven, and there is nothing more that the landlords could have reasonably done to mitigate this loss. Indeed, it would have been wholly unreasonable for them to agree to the tenancy ending mere days before the end of the month.

Regarding the claim for the baseboard heater cover, the tenant requested that the landlords purchase and install covers on the heaters. They did that. And they spent money on that. And it was the tenant who chose to end the tenancy early.

It is not, I find, reasonable for the landlords to have mitigated their loss in this claim by returning the covers, given that they had been ordered, purchased, and installed. The tenant breached an agreement between her and the landlords that was made under the tenancy, the landlords would not have suffered a loss but for the tenant's ending the tenancy early, and the amount of the loss has been proven. Applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving they are entitled to compensation in the amount of $1,200.00 for the cost of the baseboard heater covers.

As the landlords were successful in their application, they are entitled to an additional award of $100.00 to cover the cost of the application fee, pursuant to section 72 of the Act. In total, the landlords are awarded $3,759.00. The landlords are authorized under section 38(4)(b) of the Act to retain the tenant's ($1,100.00) security deposit in partial satisfaction of the amount awarded.

The tenant is ordered, pursuant to section 67 of the Act, to pay $2,659.00 to the landlords forthwith. A copy of a monetary order for this amount is issued with this Decision to the landlords, who must serve a copy of the monetary order upon the tenant. The order may be enforced in the Provincial Court of British Columbia.

Conclusion

The tenant's application is dismissed, and the landlords' application is granted.

Dated: November 18, 2023

Residential Tenancy Branch