Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: MNDCL-S, LRSD, FFL, MNRT, MNDCT, MNSD, FFT

Introduction

The Landlords and the Tenants seek various compensation from each other under the *Residential Tenancy Act* (the "Act").

The Landlords filed their application for dispute resolution on June 11, 2024, and the Tenants filed their application for dispute resolution on June 28, 2024. This decision addresses both applications.

Issues

1. Are the Landlords entitled to compensation?
2. Are the Tenants 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 began on August 1, 2023, and ended on December 28 (according to the Landlords) or on December 31, 2023 (according to the Tenants). Monthly rent was $2,800.00 and the Tenants paid a $1,400.00 security deposit. There is a copy of the written *Residential Tenancy Agreement* in the evidence. The tenancy itself was a fixed-term tenancy that was supposed to end on July 31, 2024.

The Landlords seek the following compensation: $5,600.00 for loss of rental revenue for January and February 2024, $51.21 for BC Hydro for January and February 2024, and $100.00 for the cost of the application fee.

The Landlords testified that the Tenants ended their tenancy by sending a text message to them on December 30, 2024, at 6:38 PM. The Landlords received one set of keys back and had access to the rental unit on January 2, 2024. The Landlords further testified that they started looking for a new tenant “right away” and posted advertisements on Facebook Marketplace, Craigslist, and on a few Chinese websites, including a rental group on WeChat. Eventually, they secured a new tenant who took occupancy on March 1, 2024.

During the two-month period that the rental unit sat empty the Landlords kept the electric heat turned on to 15°C and thus incurred a small amount of hydro costs.

It is the Tenants’ position that there is no supporting documentary evidence proving that the Landlords took reasonable steps to find a new tenant.

The Tenants seek the following compensation:

(1) $2,428.00 for out-of-pocket costs related to the attempt to remedy mold-related issues; (2) $2,000.00 “due to the health issues and various other issues associated with the rental unit” and this amount is broken down into (i) $800.00 in moving expenses, (ii) $300.00 in dry cleaning expenses, (iii) $900.00 in medication and other health related expenses.

The Tenants presented testimony regarding a mold issue that started or made itself known right after the tenancy began. The Tenants waited months for the Landlords to do something to fix the mold issue, which was primarily in the washer-dryer unit. They eventually commissioned a mold report, which showed high levels of mold, and the solution was that the washer-dryer needed cleaning. According to Tenants’ counsel, the Tenants sent one text message to the Landlords regarding the issue.

Ultimately, the Tenants had to vacate the rental unit because of health issues related to the mold. The Tenant incurred moving expenses because of being forced to leave, and they had to dry clean all their clothes.

In addition, the Tenants seek the return and doubling of their security deposit. The Tenants “gave” the Landlords their “forwarding address” in the form of sending the Landlords a registered mail—in which the key to the rental unit was put—on which mail a return address was affixed. (The Landlords denied that there was any address on the envelope.) The Tenants also purportedly told the Landlords their forwarding address during a phone conversation in early January.

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?

1. Landlords' Claim for Loss of Rental Revenue

A tenancy may only be ended in a manner prescribed under section 44(1) of the Act. It is the Tenants' argument that the fixed-term tenancy was ended under subsection 45(3) of the Act. This section states that

If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Having reviewed the entirety of the Tenants' evidence, there is but one "written notice" in the form of a text message dated September 1, 2023:

However, nothing further is ever communicated to the Landlords until the Tenants texted the Landlords on December 30 letting them know that they are moving out.

The written notice is, I find, inadequate in satisfying the provision under subsection 45(3) of the Act. When a tenant wishes to end a tenancy under this section, the following must be included in any written notice: (1) that there is a problem; (2) that they believe the problem is a breach of a material term of the tenancy agreement; (3) the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and (4) if the problem is not fixed by the deadline, the party will serve a notice to end the tenancy.

In this case, none of this was included in the text message other than mention of the washing machine not being available. (See *Residential Tenancy Policy Guideline 8,* ver. August 2023, p. 5).

For this reason, I am not satisfied that the tenancy was ended in accordance with subsection 45(3) of the Act and therefore the Tenants breached the fixed-term tenancy by moving out early. But for the Tenants' breach of the Act and the tenancy agreement the Landlords would not have suffered a loss of rental income for two months. The amount lost has been proven.

The last question is, did the Landlords take reasonable steps to minimize their loss. The Landlords submit that they took reasonable steps by listing the property almost immediately after the Tenants moved out. The Tenants dispute this assertion and claim that there is no documentary evidence to support this claim.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this dispute, the Landlords did not submit any documentary evidence to support their testimony. As such, I am unable to make a conclusion, on a balance of probabilities, that the Landlords took reasonable steps to minimize their loss.

This is not to say that they didn't, but rather, there is an absence of supporting, documentary evidence to prove this fact.

For this reason, the Landlords' claim for compensation for loss of rental income is dismissed without leave to reapply.

2. Landlords' Claim for BC Hydro

In respect of this claim, while the Tenants breached the Act and the tenancy agreement, I am not satisfied on a balance of probabilities that the Landlords took reasonable steps to minimize their loss. While I appreciate that the Landlords may have wanted to keep the heat at a marginally comfortable level at 15 degrees, it is not necessary to do so. For this reason, I respectfully decline to award any compensation for BC Hydro costs.

3. Landlords' Claim for Application Fee

Given that the Landlords have not been successful in their application it follows that their claim to recover the cost of the application fee must be dismissed without leave.

3. Tenants' Claim for Compensation

While there is no dispute that there was the presence of mold in the washing machine, and perhaps on that basis it could be said that the Landlords breached (likely through negligence) section 32(1) of the Act ("Landlord and tenant obligations to repair and maintain"), there appears next to nothing ever conveyed to the Landlords about the mold issue.

Indeed, the evidence shows that the Tenants only contacted the Landlords in early September about the washing machine not working—without any reference to mold—and the Landlords were not even aware of a mold report having been produced until after this dispute found its way into the Residential Tenancy.

In short, it is my finding that the Tenants failed to take reasonable steps to mitigate potential losses incurred because of mold in the washing machine. For this reason, having failed to properly mitigate their loss, the Tenants' claims for $2,428.00 and for $2,000.00 are both dismissed without leave to reapply.

4. Tenants' Claim for the Security Deposit

Under section 38(1) of the Act, a landlord must either repay a security deposit or make an application for dispute resolution within 15 days of receiving "the tenant's forwarding address in writing." The Tenants submit that the Landlords received the forwarding address in writing when they sent a registered mail envelope to the Landlords. An envelope containing a key to the rental unit, and nothing else.

Leaving aside a conversation between the parties in early January (a verbal provision of a forwarding address does not meet the requirement under subsection 38(1) of the Act), it is, I find, unreasonable for the Tenants to assume that a return address on an envelope is necessarily the Tenants' forwarding address and that the Landlords ought to have accepted it as such. If there was a return address written on the envelope—and the Landlords dispute that there was any such address—it does not follow that this is a forwarding address for the Tenants as contemplated by section 38(1) of the Act.

For this reason, it is my finding that the Tenants did *not* provide their forwarding address in writing to the Landlords as required by the Act and as such the doubling provision of subsection 38(6) of the Act is not activated. The Tenants are entitled to the return of their security deposit, but not a doubled amount.

5. Tenants' Claim for Cost of Application Fee

The Tenants are entitled to $100.00 for the cost of the application fee, pursuant to section 72(1) of the Act.

Conclusion

The Landlords' application is dismissed in its entirety, without leave to reapply.

The Tenants' application is granted, in part, and the Landlords are ordered to return the $1,400.00 security deposit, interest in the amount of $36.61 as per the regulations, and $100.00 for the application fee for a total of $1,536.61.

A monetary order for this amount is issued with this decision to the Tenants, who must serve a copy of the order upon the Landlords.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 30, 2024