



# **Dispute Resolution Services**

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** FF, MNDC, MNSD

### **Introduction**

This matter dealt with an application by the tenant for a monetary order for compensation related to a notice to end tenancy. The tenant also seeks an order for return of a security deposit, and to recover the filing fee for the cost of this application.

Both the tenant and the landlord appeared at the hearing and gave testimony. I advised both parties that I would consider their oral evidence as well as their written submissions that had been received in reaching my decision.

### **Issue(s) to be Decided**

Is the tenant entitled to a monetary order related to a security deposit and to the manner in which the tenancy was ended, and if so in what amount?

### **Background and Evidence**

The parties are in agreement of the following facts:

- the tenancy started on March 1, 2008 at a monthly rent of \$800.00
- the tenants paid the landlord a security deposit of \$400.00 at the start of the tenancy
- at the time of the start of the tenancy, the rental unit had just been renovated

- on June 1, 2008 the landlord issued the tenant a 2 month notice to end tenancy citing the following reason:  
*“The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant”*
- the notice also contains a handwritten notation *“Major Kitchen and Bathroom Reno”*
- the tenant vacated the premises based upon the requirements of the notice on July, 30, 2008.
- the tenant at the time of vacating the premises gave the landlord her forwarding address in writing and requested the return of the security deposit.
- the security deposit has not been returned to the tenant
- the landlord re-rented the unit to a new tenant on August 3, 2008.

The landlord at the hearing conceded that the security deposit has not been returned and acknowledged that the tenant is entitled to the return of an amount equal to double the security deposit.

The landlord's evidence at the hearing is that there was a cast iron pipe leaking within the building and the access to the pipe required removal of the toilet and vanity in the bathroom and opening up a wall. In addition the kitchen counter top and sink were also removed and the wall accessed. The landlord stated that the repairs took two days and that the unit was re-rented on the third day after someone walked in looking for a rental unit. The landlord stated that they did not know how long the repairs would have taken but that the longest estimate was one week.

The landlord at the hearing stated that they could not allow the tenant to occupy the unit during the repair as there were no water or toilet facilities. The landlord also stated that they did not offer the tenant the option of remaining during the repairs or of staying elsewhere during the work.

## **Analysis**

In reviewing the evidence before me I will characterise the nature of the work done on the rental unit as a repair and not a renovation. The landlord's evidence is that the work required the access to a broken cast iron pipe and as such I find that no "renovation" was done to the rental unit.

The issue I find in this matter is whether the nature of the repairs was significant enough that it required the rental unit to be "vacant". Vacant implies empty and was it necessary for the unit to be in fact empty. When a rental unit is rendered vacant, it results in the ending of a tenancy and for tenants to seek housing elsewhere. This is a significant disruption and is a step that should not be taken lightly. The tenants had only occupied the rental unit for several days when they were given the notice to vacate and have now been required to once again pack up and move.

The landlord's evidence is that it would not be safe to allow the tenants to remain in the unit during the repairs due to a lack of toilet facilities and water. While that may be the case, the duration of the repairs was expected not to last more than one week and in fact lasted only two days. The nature of the legislation, namely s. 49 of the *Residential Tenancy Act*, was not intended to be used as a method to end a tenancy unless "vacant" possession was absolutely required. While vacant possession may be necessary due to a lack of water, the expected duration was not significant enough to require the unit to be in fact empty in order to carry out the repairs.

The landlord had several options available which they admit they did not explore. These included asking the tenant to voluntarily vacate the rental unit for the duration of the repairs either at the tenant's expense or that of the landlord. If the tenants are willing to vacate the premises during the repairs, there is no need to end the tenancy. The tenants should have been afforded such an opportunity or other options could have been explored. This interpretation of s. 49 was recently confirmed in the Supreme Court of British Columbia in the decision of *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, February 12, 2007.

## **Conclusion**

I find that in relation to the return of the security deposit that the landlord has not complied with s. 38 (1) of the *Residential Tenancy Act* and as such pursuant to s. 38 (6), the tenant is entitled to return of double the security deposit. The security deposit plus interest is calculated to be \$403.77. I find that the tenant is entitled to an amount \$803.77 in relation to her claim for the security deposit.

I find that the landlord's notice to end tenancy was deficient in that they did not require vacant possession to complete the repairs to the rental unit. The fact that the landlord did not explore other options other than ending the tenancy and was then able to re-rent the unit within three days renders the presumption of "good faith" on the landlord's part invalid. I find that the tenant is entitled to be compensated under s. 51 of the Residential Tenancy Act in the amount of double the monthly rent of \$800.00. I find that the tenant is entitled to an amount of \$1600.00 for her claim in relation to the notice to end tenancy.

I order that the respondent landlord pay the applicant tenant the amount of \$2403.77 forthwith. The order may be filed with and enforced as an order of the Supreme Court of British Columbia.

Dated: October 16, 2008