

DECISION

Dispute Codes: MNDC, MNSD and FF

Introduction

This application was brought by the tenant seeking a Monetary Order in the equivalent of two months' rent under section 51(2) of the *Act* on the grounds that the landlord did not use the rental unit for the purpose stated on a Notice to End Tenancy for landlord use. The tenant further seeks return of her security deposit in double on the grounds that the landlord did not return it or make application to claim it within 15 days of the end of the tenancy as required under section 38(1) of the *Act*. The tenant also seeks to recover the filing fee for this proceeding.

As a preliminary matter, it was noted that the tenant's application names only one of two landlords named on the rental agreement. Both landlords were in attendance and concurred that the application be amended to include both.

Issue(s) to be Decided

This matter requires a decision on whether the tenant is entitled to Monetary Order for the claims submitted.

Background and Evidence

This tenancy ran from September 1, 2005 to August 31, 2009 when the tenant gave up possession after receiving a Notice to End Tenancy for landlord use dated July 23, 2009 and setting an end of tenancy date of September 30, 2009. Rent was \$884 per month and the landlords hold a security deposit of \$425 paid on September 11, 2005.

The Notice to End Tenancy issued under section 49 of the *Act* stated that the reason for the notice was to make the unit available to be “occupied by the landlord or.....a close family member.”

During the hearing, the tenant gave evidence that she exercised the option granted under section 50 of the *Act* to end the tenancy earlier when another rental unit in the same building came available. However, she stated that before she moved but after she had committed to a new rental agreement, she received a call from a new owner of the rental unit who told her that she could remain as a tenant.

The tenant stated that her rental unit had been listed for sale since May of 2009 and she was of the view that the landlords’ underlying motive in issuing the Notice to End Tenancy was to enable the landlord to offer vacant possession to potential buyers to facilitate an earlier sale.

The landlords contend that the notice was issued in good faith and that the daughter of one needed accommodation in the community and fully intended to occupy the rental unit, and had in fact begun moving in, when the sale was pending.

They provided evidence that the offer had been made after the tenant had given her notice and, therefore, saw no reason to decline the sale.

As to the tenant’s claim for return of the security deposit, the landlord stated that the tenant had given verbal agreement that it be applied against various items, but the

tenant stated she had agreed only to the cost of carpet cleaning as per the rental agreement. The landlord submitted a paid invoice for \$199.50 for carpet cleaning.

Analysis

Section 51(2) of the Act provides that:

- (2) In addition to the amount payable under subsection (1), if
- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
- the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The landlords concur that the rental unit was not used for the purpose stated on the Notice to End Tenancy - occupancy by a close family member. While section 49(5) of the *Act* make provision for a landlord to issue a Notice to End Tenancy to sell the unit, the landlord is required to have a signed offer with conditions removed before issuing the notice.

In this instance, I find that the rental unit was not used for the purpose stated on the notice and the tenant is entitled to compensation in the equivalent of two months' rent.

As to the security deposit, section 38(1) of the *Act* provides that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, a landlord must return the deposit or make application for dispute resolution to claim against it.

Section 38(6) of the *Act* states that if the landlord does not comply with section 38(1), the landlord may not claim against the deposit and must pay the tenant double the amount of the deposit. In this instance, I find that the tenant agreed that the cost of carpet cleaning could be retained by the landlords but that landlords failed to meet the requirements of section 38(1) of the *Act* with respect to the balance of the deposit and must pay the tenant double the amount of the unauthorized portion on the deposit.

I further find that the tenant is entitled to recover the filing fee for this proceeding for a total award calculated as follows:

Double the amount of one month's rent ($\$884 \times 2 = \$1,786$)	\$ 1,786.00
Return unauthorized portion of the deposit ($\$425 - \$199.50 = \$225.50$)	225.50
To double unauthorized portion of the deposit	225.50
Interest on bare deposit (\$425 from Sept. 1, 2005 to date)	15.04
Filing fee	50.00
TOTAL	\$2,302.04

Conclusion

Thus, the tenants' copy of this decision is accompanied by a Monetary Order for \$2,302.04, enforceable through the Provincial Court of British Columbia, for service on the landlords.

January 5, 2010