



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC and FF

Introduction

This hearing was scheduled to address the Tenants' application for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulation or tenancy agreement; for the return of their security deposit; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenants are entitled to compensation pursuant to section 51(1) of the *Act* because the Tenants were served with a Notice to End Tenancy pursuant to section 49 of the *Act*; to compensation pursuant to section 51(2) of the *Act* because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice; to the return of double their security deposit; and to recover the filing fee for the cost of this Application.

Background and Evidence

The Landlord and Tenant agree that this tenancy began on March 01, 2009; that the Tenants were required to pay monthly rent of \$1,600.00; and that the Tenants paid a security deposit of \$800.00 in February of 2009.

The Landlord and the Tenant agree that the Agent for the Landlord served the Tenants with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, on February 17, 2010. The Notice indicated that the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit. The Notice indicated that

the Tenants must vacate the rental unit by April 30, 2010. A copy of the Notice to End Tenancy was submitted in evidence.

The Landlord stated that when the Notice to End Tenancy was served he was planning to move back to Canada and reside in the rental unit with his wife; that after serving the notice he learned that his wife was unable to immigrate to Canada; and that they could not, therefore, occupy the rental unit.

The Landlord contends that he spoke with the female Tenant on March 24, 2010 and offered to rescind the Notice to End tenancy but that the Tenant declined the offer. The Tenant stated that the Landlord did not offer to rescind the Notice to End Tenancy.

The Landlord and the Tenant agree that on March 11, 2010 the Tenants provided the Landlord with written notice of their intent to vacate the rental unit on March 31, 2010, and that they did vacate the rental unit on that date. The parties agree that the Tenants provided the Landlord with their forwarding address in this letter.

The Landlord and the Tenant agree that the rental unit has been sold.

The Landlord and the Tenant agree that the Landlord did not pay the Tenants the equivalent of one month's rent in compensation for requiring the Tenants to vacate the rental unit.

The Landlord and the Tenant agree that the Landlord did not return any portion of the security deposit; that the Tenants did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit; and that the Landlord did not have authorization to retain any portion of it.

Analysis

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Tenants did receive notice to end a tenancy pursuant to section 49 of the *Act* and the Landlord has not yet paid them the equivalent of one month's rent, I find that they are entitled to compensation in the amount of \$1,600.00, which is the equivalent of one month's rent.

The evidence shows the Landlord or a close family member of the Landlord are no longer planning to move into the rental unit, which was the stated purpose for ending the tenancy under section 49. Although I find that the Landlord changed his plans due to reasons that were beyond his control, I find that he has now sold the rental unit and no longer has the ability to occupy it.

Section 51(2)(a) of the *Act* stipulates that if steps were not 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 the rental unit was 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 must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. As I have found that the Landlord or a close family member of the Landlord will not be occupying the rental, I find that the Landlord must pay the Tenants \$3,200.00, which is the equivalent of double the monthly rent.

I find that the Landlord's assertion that he offered to rescind the Notice to End Tenancy is irrelevant, as the Landlord does not have the right to rescind a legal notice without the consent of the other party.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution claiming against the deposit.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid, which is \$1,600.00.

I find that the Tenants' application has merit and that they are entitled to recover the cost of filing this Application for Dispute Resolution from the Landlord.

Conclusion

I find that the Tenants have established a monetary claim of \$6,500.00, which is comprised of \$1,600.00 for compensation pursuant to section 51(1) of the *Act*; \$3,200.00 for compensation pursuant to section 51(2)(a) of the *Act*; \$1,600.00 compensation pursuant to section 38(6) of the *Act*; and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenants a monetary Order in the amount of \$6,500.00. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of the Court.

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

The Landlord retains the right to file his own Application for Dispute Resolution in which he claims compensation for any damages to the rental unit.

Dated: August 30, 2010.

Dispute Resolution Officer