



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing was scheduled in response to the tenants' application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the term of tenancy was from May 1, 2010 to October 31, 2010. Thereafter, tenancy continued on a month-to-month basis. Monthly rent of \$1,100.00 was payable in advance on the first day of each month. A security deposit of \$550.00 and a pet damage deposit of \$150.00 were collected on April 20, 2010. A move-in condition inspection and report were completed on April 30, 2010.

At the start of tenancy the tenants dealt with the landlord principally through a property manager. The tenants claim it was agreed that during the tenancy, certain repairs and renovations would be undertaken while they continued to reside in the unit. It was on the basis of this understanding that the tenants claim they were prepared to pay a level of rent considerably in excess of what the former tenant had paid for living in similar conditions. While the tenants understood that the former tenant paid \$400.00 less per month in rent, the landlord testified that monthly rent was actually \$870.00. The landlord also testified that as rent remained at that level for about 6 years without the increase permitted under the legislation, \$870.00 was below market value rent.

Pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated May 30, 2011. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is July 31, 2011. The reason shown on the notice for its issuance is as follows:

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.

Subsequently, after the tenants paid rent to the end of June 2010, they gave 10 days notice of their intent to end the tenancy, and vacated the unit by June 27, 2011. A move-out condition inspection and report were completed at the end of tenancy.

Shortly after the end of tenancy, the landlord commenced work on the unit. It is understood that during that time the landlord and / or the landlord's husband resided in the unit while the work was being done. The landlord testified that following completion of the renovations and repairs, new tenants began storing some of their possessions in the unit in December 2011 and began living in the unit effective January 1, 2012.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 51 of the Act speaks to **Tenant's compensation: section 49 notice**, and provides in part as follows:

51(1) 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.

(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.

Further, Residential Tenancy Policy Guideline # 2 speaks to “Good Faith Requirement when Ending a Tenancy,” and provides in part:

A claim of good faith requires honesty of intention, with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

Section 50 of the Act addresses how **Tenant may end tenancy early following notice under certain sections**, and provides that in the event of a landlord’s 2 month notice, a tenant may give the landlord “at least 10 days’ written notice to end the tenancy on a date that is earlier than the effective date of the landlord’s notice.” In these circumstances, the tenant is only required to pay “the proportion of the rent due to the effective date of the tenant’s notice.”

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(5) A landlord’s obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Based on the documentary evidence and testimony of the parties, the various aspects of the tenants’ claim and my findings around each are set out below.

\$1,100.00*: compensation pursuant to section 49 of the Act. I find that the tenants have established entitlement to the full amount claimed, and there appears to be no dispute between the parties in this regard.

\$146.68*: *pro-rated return of rent for the 4 day period from June 27 to 30, 2011*. I find that the tenants have established entitlement to the full amount claimed, and there appears to be no dispute between the parties in this regard. This amount is calculated as follows:

$$\$1,100.00 \text{ (monthly rent)} \div 30 \text{ (\# of days in June)} = \$36.67 \text{ (daily rent)}$$

$$\$36.67 \text{ (daily rent)} \times 4 \text{ days} = \underline{\$146.68}$$

\$5,600.00: *reduction in rent (14 months x \$400.00 per month)*. Despite their efforts, the parties were unable to achieve a settlement between them during the hearing in regard to this aspect of the application.

The landlord acknowledged the need for certain renovations and repairs, but identified delays from difficulty in finding those she could trust to do the work. As to the tenants, I note the absence of any application during the term of tenancy, seeking a reduction in rent for repairs, services or facilities agreed upon but not provided, or an application seeking an order against the landlord to make repairs to the unit, site or property.

In regard to the fair market value of rent at the time when the subject tenancy began in 2010, I have considered rent paid by the former tenant in relation to what would have been the allowable annual increases, had they been introduced:

\$870.00 monthly rent paid by former tenant beginning in approximately 2004

\$903.06 monthly rent in 2005 (3.8% allowable increase of \$33.06)

\$939.18 monthly rent in 2006 (4.0% allowable increase of \$36.12)

\$976.74 monthly rent in 2007 (4.0% allowable increase of \$37.56)

\$1,012.87 monthly rent in 2008 (3.7% allowable increase of \$36.13)

\$1,050.34 monthly rent in 2009 (3.7% allowable increase of \$37.47)

\$1,083.95 monthly rent in 2010 (3.2% allowable increase \$33.61)

Following from the above, it appears that rent paid by the subject tenants (\$1,100.00) was only \$16.05 (\$1,100.00 - \$1,083.95) more than the amount the previous tenant

would have paid, had the allowable increases been introduced during the previous tenant's approximate 6 year tenancy.

Despite this, I find that the tenants came to an honest understanding that renovations and repairs would be undertaken promptly after the tenancy began. For any number of different reasons, they were delayed and in some cases not completed. On a balance of probabilities, I find that the tenants have established entitlement limited to **\$1,750.00***, calculated on the basis of \$125.00 for each of the 14 months of tenancy.

Approximately \$3,600.00+: *an entitlement understood by the tenants to arise pursuant to actions undertaken by the landlord following the end of tenancy.* I find that the landlord has proven good faith and an honest intent in relation to the stated reasons for ending the tenancy. Specifically, I find that the renovations and repairs were begun promptly after the end of the subject tenancy, and that new tenants did not begin to make use of the unit and eventually take possession until after the renovations and repairs were completed, approximately 5 or 6 months later.

Even if the landlord had been unsuccessful in proving good faith and an honest intent, the tenants' entitlement would be limited to the equivalent of 2 months' rent totalling \$2,200.00. In the result, this aspect of the application is hereby dismissed.

\$100.00: filing fee. As the tenants have achieved a limited measure of success with their application, I find that they have established entitlement to recovery of half the filing fee in the amount of **\$50.00*** ($\$100.00 \div 2$).

Conclusion

Following from all of the above and pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$3,046.68** ($\$1,100.00 + \$146.68 + \$1,750.00 + \50.00). Should it be necessary, this Order may be served on the landlord, filed in the Small Claims Court and enforced as an Order of that 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*.

Dated: January 05, 2012.

Residential Tenancy Branch