



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, FF / MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to 2 applications: i) by the landlord for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee; ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / the double return of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a copy of the written tenancy agreement in evidence, the month-to-month tenancy began April 15, 2010. Monthly rent of \$1,150.00 was payable in advance on the first day of each month, and a security deposit of \$575.00 was collected. A move-in condition inspection report was completed / signed on April 13, 2010.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated July 25, 2011. A copy of the notice was submitted in evidence. The reason shown on the notice for its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse.

The date shown on the notice by when the tenants must vacate the unit is September 30, 2011, and the parties agree that the tenants had finished vacating the unit by that date. A move-out condition inspection report was not completed.

For a number of reasons, the unit was not later used for the purpose set out on the landlord's 2 month notice. Rather, it was listed for sale and a purchaser took possession effective on or about November 2, 2011. Arising from this, the tenants seek compensation pursuant to the Act.

The tenants requested the return of their security deposit and provided the landlord with their forwarding address on more than one occasion. The landlord testified that the first occasion on which she recalls receiving the forwarding address was October 2, 2011. However, the landlord has not presently returned the security deposit and her application for dispute resolution was filed on October 27, 2011. Arising from this, the tenants seek compensation pursuant to the Act.

As to compensation sought by the landlord, this has been broadly set out in "two cost models" as follows:

\$3,280.80: this is described by the landlord as the total of "estimates from professionals had the work been done;" however, the landlord testified that she did not have the work done and therefore she incurred none of these costs.

\$7,010.00: this is described by the landlord as "a percentage of the amount that I had to reduce the price of the house by." The landlord testified that the house was sold "as is."

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

TENANTS' CLAIM

Section 51 of the Act speaks to **Tenant's compensation: section 49 notice**. In part, this section of the Act provides that 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.

Based on the documentary evidence and testimony, I find that as the property was not used for the reason set out on the landlord's 2 month notice to end tenancy, the tenants have established entitlement to compensation "equivalent of double the monthly rent" which is calculated to be \$2,300.00 (2 x \$1,150.00).

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of 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 or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, as the forwarding address was first provided on October 2, 2011, and the landlord's application for dispute resolution was filed on October 27, 2011, I find that the landlord's application was made outside of the applicable 15 day period. Accordingly, I find that the tenants have established entitlement to the double return of the security deposit in the total amount of \$1,150.00 (2 x \$575.00).

As the tenants have succeeded in their application, I find that they have also established entitlement to recovery of the \$50.00 filing fee.

Total entitlement: \$3,500.00

LANDLORD'S CLAIM:

Below, the attention of the parties is drawn to particular sections of the Act.

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Even while the landlord has not specifically applied to retain the security deposit, I draw the attention of the parties to certain provisions set out in the legislation cited immediately above. In summary, the right of the landlord to claim against the security deposit is extinguished if the landlord fails to provide the tenants with 2 opportunities for the inspection or, having offered 2 opportunities, does not participate in the inspection, or “having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.”

Further to the absence of the comparative results of move-in and move-out condition inspection reports, as earlier noted, the landlord did not directly incur any costs associated with damage allegedly the result of the tenancy. I find that the decision made by the landlord to sell the house “as is,” as opposed to undertaking certain repairs and other work in order to sell at a higher price, does not entitle the landlord to compensation under the Act.

Following from all of the above, I find that the landlord has failed to establish entitlement to compensation for damage to the unit, site or property, or compensation for damage or loss under the Act, Regulation or tenancy agreement. These aspects of the application are, therefore, hereby dismissed.

As the landlord has not succeeded in her application, I find that she has not established entitlement to recovery of the \$50.00 filing fee. This aspect of the application is also, therefore, hereby dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$3,500.00**. 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.

The landlord's application is hereby dismissed.

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 16, 2012.

Residential Tenancy Branch