



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, MSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested compensation for the cost of emergency repairs, for damage or loss under the Act; return of the deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Are the tenants entitled to return of the \$650.00 security deposit?

Are the tenants entitled to compensation in the sum of \$1,600.00 for repairs completed to the rental unit?

Are the tenants entitled to compensation pursuant to section 51(2) of the Act in the sum of \$2,200.00?

Are the tenants entitled to filing fee costs?

Background and Evidence

The parties had a previous tenancy agreement that included an option for purchase of the rental property. They then entered into a tenancy agreement commencing May 1, 2010. Rent was \$1,100.00 due on the first day of each month. The tenants had paid the landlord \$650.00 in January 2009, which was then converted to deposit for the tenancy that commenced on May 1, 2010.

The parties agreed that the tenants received a 2 Month Notice to End Tenancy for landlord's use that was effective February 29, 2012; the home had been sold and the offer of sale included a notation by the purchaser that they wished vacant possession. The tenants did not dispute the Notice and verbally informed the landlord that they would vacate the unit on January 15, 2012.

The tenant confirmed that one half of December 2011 rent and one half of January 2012 rent was paid and that to his mind, this satisfied the compensation required when Notice ending a tenancy for landlord's use is accepted.

The landlord confirmed receipt of the tenant's written forwarding address on January 15, 2012; the landlord has not submitted a claim against the deposit. The landlord did return \$258.50 of the deposit to the tenants; with deductions made for one half of December, 2012, rent and January rent owed. The tenant has not cashed the cheque; the landlord confirmed it remains negotiable.

The parties confirmed there had not been any written agreement in relation to any deduction from the deposit. Move-in and move-out condition inspection reports were not completed.

The tenant completed work on the unit; replacing 2 toilets, a hot water tank, kitchen taps; they have claimed the cost of supplies, plus labour. No verification of the claim for these items was submitted.

The tenant submitted that the landlord had issued the Notice ending tenancy as the result of a sale of the home and that a February 23, 2012, advertisement was placed in the local newspaper, again advertising the home for sale. The landlord had not sold the home and the tenant has claimed compensation as provided by section 51 of the Act; equivalent to 2 month's rent.

The landlord supplied a copy of a contract of Purchase and Sale completed on December 12, 2011; the day before the Notice ending tenancy was issued, in which the purchaser, the landlord's nephew, requested vacant possession of the unit. The offer was unconditional, for a possession date by noon on March 1, 2012.

On January 25, 2012, the landlord's nephew issued correspondence indicating that he wished to be released from the purchase; this decision was based on personal circumstances. The landlord released his nephew from the sale contract and the property was again advertised for sale in February, 2012.

Analysis

In the absence of evidence that the landlord and tenant had entered into a tenancy that included an employment component, I find that the tenant's claim for repairs made to the unit do not fall within the jurisdiction of the Act. The tenant provided no evidence

that he been given the landlord's permission to complete repairs; as part of the tenancy agreement.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

I find, pursuant to section 44(d) of the Act that the tenancy ended on January 15, 2012, when the tenants vacated and gave the landlord possession of the unit.

I find, based on the acknowledgment of the landlord, that the landlord received the tenant's forwarding address on January 15, 2012, and that only a portion of the deposit was returned to the tenants. The tenants had not signed a document agreeing to any deductions from the deposit; the landlord was then required to either return the deposit in full, within 15 days of January 15, 2012, or to submit a claim against the deposit within that time-frame.

In the absence of either actions by the landlord, pursuant to section 38(6) of the Act, I find that the tenants are entitled to return of double the damage deposit paid; \$1,300.00; less the value of the cheque in the sum of \$258.00. No interest has accrued on the deposit, which I find was paid effective the start date of this tenancy, May 1, 2012.

In relation to the tenant's claim for compensation as provided by section 51(c) of the Act, I have considered the facts before me in relation to section 51(2) of the Act, which provides:

(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.

(Emphasis added)

The rental unit was sold and the day after the unconditional offer was accepted the Notice ending tenancy was issued and served. Within approximately 6 weeks; prior to

the completion and closing date of the purchase, the buyer was allowed to withdraw from the purchase.

The landlord was within his right to allow the purchaser to withdraw from the Contract of Purchase and Sale; however, this did not relieve the landlord from the provisions of section 51(2) of the Act. I find that the rental unit was not used for the stated purpose, sale, for at least 6 months after the Notice effective date of February 29, 2012. The purchase was terminated, with the agreement of the landlord. Therefore, as the tenants vacated the rental unit based upon the Notice based on the sale of the home and the landlord did not use the home for the stated purpose for at least 6 months, I find that the tenants are entitled to compensation in the sum equivalent to 2 months rent; \$2,200.00.

I find that the tenant's application has merit and that the tenants are entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

The claim for the costs of repairs is declined as it does not fall within the jurisdiction of the Act.

I find that the tenants have established a monetary claim, in the amount of \$3,550.00, which is comprised of double the \$650.00 deposit; 2 months compensation in the sum of \$2,200.00 and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution; less the \$258.50 cheque they are holding.

Based on these determinations I grant the tenants a monetary Order in the sum of \$3,291.50. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia 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: April 2, 2012.

Residential Tenancy Branch