



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for return of the security deposit, money owed or compensation due to damage or loss and recovery of the filing fee.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began September 5, 2010 with monthly rent of \$800.00 and the tenants paid a security deposit/pet damage deposit of \$600.00. In December 2010 the rent was increased to \$850.00 without proper notice; there is no written tenancy agreement in place.

On December 28, 2011 the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective end of tenancy date of February 28, 2012.

On January 16, 2012 the tenants gave the landlord written notice to vacate the rental unit effective January 31, 2012. The tenants stated that the notice was posted on the landlord's door on January 16, 2012 and provided to one of the landlords in person on January 18, 2012.

The tenants stated that the landlord has not used the rental unit for the purpose stated on the 2 month notice and did not move a family member into the rental unit. The tenants believe that after an incident in November 2011 where the landlord entered the tenant's rental without notice, scared the tenant's kids and the police were called, that the landlord then decided to end the tenancy. The tenants stated that the landlord also then started to cut off the internet and vacuum which was included in the tenancy. The tenants stated that they would never have vacated the rental unit as their children were

enrolled in schools in the area; had to switch schools mid-term, their best friends lived in the immediate vicinity and the move was very costly. The tenant's also stated that the landlord's mother in-law came to visit every year and they did not believe she was now going to stay in Canada on a permanent basis. As the landlord did not act in good faith and move a family member in to the rental unit, the tenants are seeking 2 months compensation per the *Act*. The tenants stated that the landlord also did not provide them with the 1 month's rent compensation for the 2 month notice per the *Act*.

The landlord testified that on December 28, 2011 they had provided the tenant with the 2 month notice for landlord's use of property but that when their father in-law who was living in India became very ill, the landlord's mother in-law returned to India to care for him and would not be returning to stay in the rental unit. The landlord stated that on January 3, 2012 they then gave the tenant a letter stating that they wished to rescind the notice to end tenancy and have the tenancy continue. The landlords testified that the tenants had never provided them with their notice to vacate and it was only after they saw the rental suite empty that they knew the tenants had vacated. The landlord maintained that as they were never in receipt of the tenant's notice to vacate, it was not until they received the documents for this hearing that they had knowledge of the tenant's forwarding address. The landlord also maintained that they never cut off any of the services to the rental unit.

The tenants stated that the landlord had not provided them with the January 3, 2012 letter to rescind the notice and the first time they ever saw this letter was when it was served as part of the landlord's evidence package in mid March 2012; the tenants believed that this letter was created to help the landlord's now establish their good faith intent. The tenants testified that the landlord did not return their security deposit until April 2, 2012 although they provided the landlord with their forwarding address in writing on January 16, 2012.

The tenants stated that in early February 2012 they found the first ads on the internet that had been posted by the landlord to re-rent the rental unit. The landlord stated that as the tenants vacated the rental unit and their mother in-law was no longer in the country, the landlord had no choice but to re-rent the rental unit.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenants have met the burden of proving that they have grounds for entitlement to a monetary order for return of the security deposit and money owed or compensation due to damage or loss.

I accept the tenant's testimony that they both posted and served in person to the landlord's, written notice to vacate on January 16 and 18, 2012 and that the tenant's forwarding address was provided to the landlord at these same times. It was only after

being served with a notice of hearing in early February 2012 that the landlord returned the tenant's \$600.00 security deposit in early April 2012.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing; the landlord in this case has done neither.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit. Accordingly I find that the tenants are entitled to compensation in the amount of \$600.00.

In regards to the tenant's claim for 1 month's rent compensation after being served with the landlord's 2 month notice to end tenancy for landlord's use of property, the Act is very clear in this regard. Accordingly I find that the tenants are entitled to compensation in the amount of \$850.00.

In regards to the tenant's claim for 2 month's rent compensation for the landlord not using the rental unit for the purpose stated on the notice, I accept the tenant's testimony that the notice was given after an incident where the police were involved and that if the landlord had made the offer for the tenant's to stay in the rental unit they would not have uprooted their family in the middle of a school term. I also question whether or not the landlord 'in good faith' had intended for their mother in-law to stay in the rental unit or if she was simply in Canada for her annual visit. Accordingly I find that the tenants are entitled to compensation in the amount of \$1700.00.

Residential Tenancy Act **Tenant's compensation: section 49 notice, 51** speaks to:

(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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

As the tenants have been successful in their application the tenants are entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenants have established a monetary claim for \$3150.00 in return of the security deposit and compensation per section 49 (1), (2) of the Act. The tenants are also entitled to recovery of the \$50.00 filing fee. I grant the tenants a monetary order under section 67 for the amount of **\$3200.00**.

If the amount is not paid by the landlord(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 16, 2012

Residential Tenancy Branch