# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, MNSD, PSF, RR, FF, O

Introduction

This matter dealt with an application by the Tenants for compensation for harassment, for the return of a security deposit and to recover the filing fee for this proceeding. As the tenancy has ended, I find that there are is no basis upon which to proceed with the Tenants' application for a rent reduction or for an Order that the Landlord provide services and facilities and those parts of the Tenants' application are dismissed without leave to reapply.

At the beginning of the hearing, the Tenants claimed they did not receive the Landlord's evidence package. The Landlord said the Tenants did not provide her with a forwarding address so she sent her evidence package to their address for service set out on the Tenants' application for dispute resolution (ie. the rental unit address). The Tenants claim that they gave the Landlord their forwarding address on April 30, 2012. I find that it is of no consequence if the Tenants did not receive the Landlord's evidence package as in addition to written submissions, it contained photographs and receipts that I find are not relevant to the issues in dispute in this hearing.

Issue(s) to be Decided

1. Are the Tenants entitled to compensation for harassment and if so, how much?
2. Are the Tenants entitled to the return of a security deposit and pet damage deposit?

Background and Evidence

This fixed term tenancy started on August 1, 2011 and was to expire on August 1, 2012 however it ended on April 30, 2012 when the Tenants moved out. Rent was $1,000.00 per month until January 2012 when it was reduced to $950.00 per month. The Tenants paid a security deposit and a pet damage deposit of $500.00 each at the beginning of the tenancy.

The Parties agree that in early January 2012 the Landlord approached the Tenants and told them that she was going to have to list the property for sale for financial reasons. The Tenants said the Landlord also told them that they should look for another place to live because she wanted to move in and do some renovations prior to listing the property for sale. Within a few days, the Landlord's former spouse arrived at the rental

unit and advised the Tenants that they could stay and reduced the rent by $50.00 per month as an incentive for the Tenants to stay. The Parties also agree that at on March 10, 2012, the Landlord approached the Tenants again and advised them that she had to sell the property and asked if the Tenants could move out by April 15, 2012. The Tenants said they told the Landlord they would not be in a position to move until May 1, 2012 at the earliest.

The Tenants said about a month later, during the Easter long weekend, the Landlord advised them that she would not be moving in so they could stay until the property sold. The Tenants said they had already found other accommodations and therefore agreed to enter into a Mutual Agreement to End Tenancy on April 11, 2012. Consequently, the Landlord decided to re-rent the rental unit and wanted to show the suite to potential tenants. The Tenants said the Landlord then began harassing them by demanding that the suite was clean during showings, by demanding to do showings without proper notice and by demanding that they leave during showings. On one occasion, the Tenants said the Landlord sent them hostile text messages in which she referred to one of the Tenants as an “a**hole” and a “chug.”

The Landlord said she believed the Tenants were making it difficult for her to show the rental unit by requiring her to drive across town to deliver 24 hour notices, by not responding to her text messages and by refusing to leave during showings. The Landlord said she believed the Tenants were playing games with her and deliberately making it uncomfortable for prospective tenants viewing the rental unit. The Landlord admitted that she called one of the Tenants a “chug” but claimed that it was in response to him calling her “crazy” and making threats to report her to the Strata. The Landlord said she later apologized to the Tenants for her derogatory remark.

The Tenants said the Landlord told them she did not have the funds to return their security deposit and pet damage deposit and agreed that they could apply those deposits to rent for April 2012. They Tenants said they only discovered after the tenancy ended that the Landlord should have given them a 2 Month Notice to End Tenancy and that they should have received one free month’s rent as compensation. The Landlord argued that the Tenants agreed to leave because they did not want to deal with showings until the property sold.

The Parties did a move out inspection on April 30, 2012. The Tenants said at that time, they gave the Landlord some mail and placed a piece of paper with their forwarding address on top of it and asked the Landlord to forward any mail to that address. The Landlord denied that the Tenant gave them their forwarding address and claimed instead that they simply asked her to hold their mail for them until they could pick it up. The Tenants provided the Landlord with their forwarding address during the hearing.

Analysis

Section 49 of the Act says that a Tenant who receives a 2 Month Notice to End Tenancy for Landlord's Use of Property is entitled to receive compensation equal to one month's rent payable under the tenancy agreement. However, I find that this section of the Act does not apply in this matter because the tenancy did not end as a result of the Tenants receiving a 2 Month Notice but instead ended as a result of the Parties signing a Mutual Agreement to End Tenancy. Consequently, the Tenants' application for compensation under s. 49 of the Act is dismissed without leave to reapply.

The Parties agree that the Tenants' security deposit of $500.00 and pet deposit of $500.00 were applied to rent of $950.00 for April 2012 with the result that $50.00 is still held by the Landlord. Section 38(1) of the Act says that a Landlord has 15 days from the end of the tenancy or the date she receives the Tenants' forwarding address in writing (whichever is later) to return the Tenants' security deposit. I find that the tenancy ended on April 30, 2012. Given the contradictory evidence of the Parties as to whether the Tenants gave the Landlord their forwarding address in writing or not, I find that there is insufficient evidence to conclude that the Landlord received it. However I find that as of the date of the hearing the Landlord has received the Tenant's forwarding address in writing and has 15 days from that date (May 14, 2012) to return the balance of $50.00 to the Tenants. As the Tenants' application is premature, it is dismissed with leave to reapply for double the balance of the security deposit if the Landlord does not return it within the stipulated 15 days.

RTB Policy Guideline #6 at p. 1 says that a breach of quiet enjoyment may occur where there has been a "*substantial interference with the ordinary and lawful enjoyment of the premises by the Landlord's actions that rendered the premises unfit for occupancy*." Page 2 of the same guideline defines harassment as "*engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome*."

I find that there is insufficient evidence to conclude that there was a ***substantial interference*** with the Tenants' use and enjoyment of the rental unit due to the Landlord showing it to prospective tenants. The Tenants claim that the showings commenced approximately April 10, 2012 to multiple prospective tenants and she often left on the lights and/or didn't shut doors. The Tenants also claimed that when they objected to the frequent showings or showings on short notice, the Landlord became verbally abusive or sent threatening e-mails.

Section 29 of the Act requires a Landlord to give a Tenant a Notice in writing 24 hours before they enter into the rental unit *unless the Tenants give verbal consent to the entry*. In this case, I find that that many of the Landlord's requests to show the rental unit were by text messaging and that the Tenants initially agreed to waive formal notice but later demanded formal notice. I also find that by April 11, 2012, the Landlord agreed to limit the showings to only day time hours. Consequently, I cannot conclude that there was a

substantial interference with the Tenants' use and enjoyment of the rental unit for a three week period in April 2012 that render it unfit for occupation.

Although I find that the Landlord sent 2 text messages to the Tenants on April 10, 2012 in which she referred to one of the Tenants by derogatory names, I find that those remarks were confined to one single, angry argument with the Tenant that day over arranging showings. I also find that the Landlord immediately apologized for those comments. Consequently, I cannot conclude that the Landlord engaged in a course of vexatious comment or conduct. The Tenants argued that the Landlord's comments were also discriminatory, however, that is not a matter that falls under the jurisdiction of the Act but rather under the Human Rights Code of B.C. For all of these reasons, the Tenants' claim for compensation for harassment is dismissed without leave to reapply.

Conclusion

The Tenants' application is dismissed in its entirety. 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: May 15, 2012.

Residential Tenancy Branch