



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested return of the balance of the deposit paid; compensation in accordance with section 51 of the Act 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.

Preliminary Matter

The parties agreed that the landlord present at the hearing had been served with Notice of the hearing and evidence; that was sent to the landlord's mother, who was named as the respondent. As the landlord was sufficiently served with Notice of the hearing and, based on the agreement of the parties, the application was amended to include the landlord who attended the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of the balance of the deposit in the sum of \$475.00?

Is the tenant entitled to compensation in the sum of \$995.00 as provided by section 51 of the Act?

Is the tenant entitled to filing fee costs?

Background and Evidence

On July 10, 2011 the tenant and both landlord's signed a tenancy agreement that was to commence on August 1, 2011. Rent was \$995.00 per month, due on the 1st day of each month. A deposit in the sum of \$500.00 was paid. The agreement indicated that deductions would be made from the deposit for any damage caused to the unit and that 2 month notice must be provided to either party, should the tenancy end. A copy of the agreement was supplied as evidence.

Move in and move out condition inspection reports were not completed.

On May 1, 2012, the tenant and landlord's signed a "Notice of Evacuation", in which the parties were acknowledging that Notice was being given as set out in the tenancy agreement. The document also stated:

"Please accept this letter as a formal 2 month notice to terminate our previous tenancy agreement and vacate the premise by July 1, 2012."

The parties agreed that the landlord and tenant had signed the Notice, as the property had been sold and the new owners wanted vacant possession of the unit. The tenant stated that she signed the Notice under duress; that she was crying and did not want to end the tenancy.

The tenant is claiming compensation as provided by section 51(1) of the Act, as she perceives the Notice as equivalent to that issued in accordance with section 49 of the Act; a 2 Month Notice to End Tenancy for Landlord's use of the property, as a result of the sale of the home.

The landlord confirmed that the home had been sold and that her intention was to obtain vacant possession of the unit, as the purchasers wished to occupy the home.

The parties confirmed that a 2 Month Notice to End Tenancy for Landlord's Use was not issued to the tenant.

The tenant supplied a copy of a May 25, 2012 letter in which she informed the landlord that she would vacate the unit on June 11, 2012. The note provided the tenant's forwarding address. A copy of this note was supplied as evidence.

The landlord returned a pro-rated portion of the June rent the tenant had paid, in the sum of \$630.16 by way of a cheque issued on June 11, 2012.

The landlord retained \$475.00 of the deposit; \$200.00 for utility costs and \$275.00 for front door replacement. A copy of a note signed by the landlord detailing the amounts paid and deducted was supplied as evidence. The tenant did not sign this note. The tenant does not dispute the utility costs, but does not agree that a deduction should have been for damage to the door. The tenant did not sign, agreeing to the deductions made by the landlord from the deposit.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I have considered the tenant's claim for compensation as provided by Section 51(1) of the Act, which provides:

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.

The parties agreed that they each signed a "Notice of Evacuation" which required the tenant to vacate the rental unit by July 1, 2012.

Section 49 of the Act provides, in part:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy...

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit...

(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

I have considered the "Notice of Evacuation" which was signed by the parties on May 1, 2012, and have determined that the Notice did not meet the required form and content, as provided by section 52 of the Act. Section 52 provides:

Form and content of notice to end tenancy

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

*(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
(e) when given by a landlord, be in the approved form.*

I find that the "Notice of Evacuation" signed by the parties on May 1, 2012, was more a mutual agreement ending the tenancy, than Notice to End the tenancy in the approved form. The Notice provided no indication that the unit had been sold and although the sale was not in dispute, I find that the Notice was not in the approved form, as required by section 52 of the Act. The tenant did not have to vacate the home until a proper Notice, issued in accordance with the Act, was given to the tenant.

The tenant did not provide any evidence that she signed the Notice as the result of duress caused by the landlord. She may have been upset, but she did not have to sign the agreement to end the tenancy. The term of the tenancy agreement included a clause requiring 2 months notice, by either party, while not in compliance with the Act, that does align with what I find was a mutual agreement to end the tenancy, signed by the parties on May 1, 2012.

Therefore, in the absence of a 2 Month Notice to End Tenancy for Landlord's Use, in the approved form, as required by sections 49 and 52 of the Act, I find that the document signed on May 1, 2012, was a mutual agreement to end the tenancy and that the tenant's claim for compensation as provided by section 51 of the Act is dismissed.

In relation to the deposit, a tenant may sign agreeing to deductions from a deposit, only at the end of a tenancy. There was no evidence before me that the tenant signed agreeing to deductions from the deposit; although she does now agree that the landlord was entitled to utility costs in the sum of \$200.00

The landlord was given the written forwarding address on May 1, 2012; the tenancy ended on June 11, 2012. On June 11, 2012, the landlord returned a portion of the deposit; in the sum of \$25.00.

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 or return the deposit, less any deductions agreed to in writing, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

Therefore, in the absence of evidence that the tenant signed agreeing to deductions from the deposit I find that the tenant is entitled to return of double the \$500.00 deposit; less \$200.00 for utility costs she agrees the landlord is owed and the \$25.00 previously returned to the tenant.

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

Conclusion

The claim for compensation pursuant to section 51 of the Act is dismissed.

I find that the tenant has established a monetary claim, in the amount of \$825.00, which is comprised of double the \$500.00 deposit less \$200.00 for utility costs the tenant agreed is owed to the landlord, less the \$25.00 previously returned to the tenant, plus \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary order in the sum of \$825.00. 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 final and binding on the parties, unless otherwise provided under the Act, and 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: October 12, 2012.

Residential Tenancy Branch