



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 a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on December 1, 2011. Monthly rent of \$800.00 was due and payable in advance on the first day of each month, and a security deposit of \$400.00 was collected. Rent does not include hydro (Fortis / electricity), but the hydro account remained in the landlord's name. There is no move-in condition inspection report in evidence.

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 October 24, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is December 31, 2012. 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 tenant did not subsequently file an application to dispute the notice but, rather, gave notice to end tenancy and effectively vacated the unit on November 30, 2012.

There is no dispute that prior to the end of tenancy the tenant gave the landlord his forwarding address. There is no move-out condition inspection report in evidence.

Thereafter, by cheque dated December 4, 2012, the landlord repaid a portion of the tenant's security deposit in the limited amount of \$117.11. The landlord withheld the balance of \$282.89 for hydro (\$400.00 - \$117.11). While the tenant does not dispute that hydro was not included in the rent, he disputes the amount withheld by the landlord. Further, there is no documentary evidence before me that the tenant gave written consent to the landlord for the withholding of any portion of the security deposit.

Prior to the landlord's issuance of the 2 month notice, the parties had communicated in regard to the tenant's potential purchase of the unit from the landlord. Ultimately, however, no agreement was reached. The tenant claims that the landlord issued the 2 month notice to end tenancy, in order to then sell it for a higher price than the tenant was prepared to pay. The tenant also alleges that the landlord has not actually moved into the unit and actively still seeks to sell it. In relation to this allegation, the landlord testified that he ended his own lease for a unit in Squamish, and effectively completed the move back into the unit which is the subject of this dispute by January 5, 2013. In his written submission the landlord states, in part, as follows:

I am presently living in the house. I spend the majority of my days there, and have most of my belongings there. I travel to Squamish monthly to visit my son, and for business, as I did for the 4 years before [the tenants'] tenancy started. When in Squamish I stay in an apartment owned by a family member. I expect it could take a year or two to sell the house, and so have moved back with the intention of staying for an indefinite period.

I do not object to paying [the tenants] additional compensation if the house sells before the minimum term of my occupancy is past, however, this has not occurred and I do not expect it to occur.

Limited discussion around settlement of the dispute was undertaken between the parties during the hearing, however, no agreement was reached. There appears still to be some mutual feeling of animosity between them.

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

Based on the documentary evidence and testimony of the parties, the various aspects of the tenant's claim and my findings around each are set out below.

800.00 (2 x \$400.00): *double the amount of the original security deposit.*

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, and the tenant has not agreed in writing that the landlord may retain a portion of the security deposit, 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.

As previously noted, there is no documentary evidence before me that the tenant gave written consent to the landlord for the withholding of any portion of the security deposit. Further, I find that the landlord neither repaid the full amount of the tenant's security deposit, nor filed an application for dispute resolution within 15 days after the end of tenancy. Accordingly, I find that the tenant has established entitlement to compensation in the amount of **\$682.89**, which is calculated as follows:

\$800.00 (*double the amount of the original security deposit*)

MINUS: \$117.11 (*the amount repaid*)

\$682.89 (*balance owed*)

\$1,600.00 (2 x \$800.00): *double the monthly rent*

Section 51 of the Act addresses **Tenant's compensation: section 49 notice**, and provides in part as follows:

51(2) In addition to the amount payable under subsection (1), if

- (a) steps have not been taken to accomplish the stated purpose for ending 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 the tenant has failed to meet the burden of proving on a balance of probabilities, that “steps have not been taken to accomplish the stated purpose for ending tenancy under section 49 within a reasonable period after the effective date of the notice.” Accordingly, the tenant’s application for compensation in relation to that particular ground is hereby dismissed.

\$50.00: *filing fee*.

As the tenant has achieved partial success with his application, I find that he has established entitlement limited to recovery of half the filing fee in the amount of **\$25.00**.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$707.89** (\$682.89 + \$25.00). 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.

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 23, 2013

Residential Tenancy Branch

