



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Amacon Property Management Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants: MNDC MNSD FF O

For the landlord: MNR MNDC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenants applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of all or part of the security deposit or pet damage deposit, and for an order compelling the landlord to comply with the *Act*, regulation or tenancy agreement, and “other” although details of “other” do not indicate additional matters of dispute.

The landlord applied for a monetary order for unpaid rent, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The male tenant, an agent for the tenant (the “tenant agent”), and an agent for the landlord (the “landlord agent”) attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed that they received evidence from the other party and that they had the opportunity to review the evidence prior to the hearing. The tenant confirmed that he did not serve evidence in response to the landlord’s application. I find the parties were served in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant explained that his application was for the return of the security deposit. As that matter was already decided upon by a different Arbitrator on December 11, 2012 and the tenant was granted a monetary order, I explained to the parties that I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

With respect to res judicata, the courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the above passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

In light of the above, I have not re-heard the matter related to the tenants' security deposit as a different Arbitrator heard that matter on December 11, 2012 and issued a Decision and Order on the same date, December 11, 2012, where the male tenant was granted a monetary order for double the security deposit plus interest in the amount of

\$677.55. The file number of that Decision has been included on the cover page of this Decision for ease of reference.

The tenant indicated that his monetary claim of \$1,500.00 was for aggravated damages due to the landlord not paying the monetary order in the amount of \$677.55.

Furthermore, the male tenant clarified that by requesting that the landlord be compelled to comply with the *Act*, regulation or tenancy agreement the tenant was seeking that the landlord pay the monetary order issued to the male tenant on December 11, 2012.

The remedy for the tenant is to enforce the monetary order through the Provincial Court of BC (Small Claims) and that failure to enforce a monetary order does not constitute a claim for aggravated damages under the *Act*. Therefore, the application of the tenant is **dismissed in full, without leave to reapply** as the tenant's remedy is to enforce the monetary order issued December 11, 2012 in the Provincial Court of BC (Small Claims).

The hearing continued with consideration of the landlord's application. I note that the tenant submitted an application in his name only, while the landlord submitted an application naming the male tenant, BI, and the female tenant, PM. I have included both tenants in the style of cause as the landlord has named both tenants, however, during the hearing, service was not proven on female tenant PM, and as a result, any resulting monetary order will only name the male tenant, BI.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A fixed term tenancy agreement began on July 1, 2008 and reverted to a month to month tenancy after December 31, 2008. Monthly rent in the amount of \$675.00 was due on the first day of each month, and was increased over the course of the tenancy to \$690.00 per month. The tenant vacated the rental unit on July 15, 2012.

The tenant confirmed during the hearing that written notice was not provided to the landlord during the tenancy. The tenant stated that on July 3, 2012 he spoke to Lisa, the property manager, to advise Lisa that the rental unit would be vacated on July 15, 2012. The tenant stated that Lisa advised him that he was not required to give written notice and accepted his verbal notice. The agent disputed the testimony of the tenant. The

agent stated that there was no agreement to end the tenancy and that Lisa did not have the authority to make such an agreement with a tenant.

The agent testified that he discovered that the tenant was vacating the rental unit around July 15, 2012. The agent stated that they placed an ad on a local popular website and in the local newspaper to find new tenants to rent the rental unit. The agent stated that new tenants moved into the rental unit starting October 1, 2012. The tenant disputed that testimony and wanted proof that a new tenancy agreement was signed starting October 1, 2012. The agent stated that he would submit the new tenancy agreement after the hearing to the Arbitrator and the tenant, at the request of the tenant and advocate for the tenant. A copy of the new tenancy agreement was received after the hearing on May 13, 2013. The new tenancy agreement supports that a new tenant rented the rental unit starting October 1, 2012 for \$675.00 per month and for a fixed term of six months, which reverts to a month to month tenancy after March 30, 2013.

The landlord is seeking \$690.00 for loss of rent for the month of August 2012 due to the tenants failing to provide proper notice to end the tenancy under the *Act*.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Notice from tenant – The tenant stated that he provided verbal notice that he was vacating the rental unit. The landlord disputes the tenant's testimony and stated that written notice is required under the *Act*. Section 52 of the *Act* states:
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.

[emphasis added]

Section 45 of the *Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

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

[emphasis added]

Based on the above, **I find** the tenants breached sections 45 and 52 of the *Act* by failing to provide written notice to end the tenancy in accordance with section 45 and in the proper form and content as required under section 52 of the *Act*. Therefore, **I find** the landlord has met the burden of proof and is entitled to rent for the month of August 2012 in the amount of **\$690.00**.

As the landlord's claim had merit, **I grant** the landlord the recovery of their filing fee in the amount of **\$50.00**.

I find that the landlord has established a total monetary claim of **\$740.00** comprised of \$690.00 for loss of August 2012 plus the \$50.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, in the amount of **\$740.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant's application was dismissed in full, without leave to reapply.

I find that the landlord has established a total monetary claim of **\$740.00** comprised of \$690.00 for loss of August 2012 plus the \$50.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, in the amount of **\$740.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: May 27, 2013

Residential Tenancy Branch