



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF
CNC, OLC, PSF, LRE, MNDC, MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlords for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security & pet damage deposit(s) / and recovery of the filing fee; and ii) by the tenant for cancellation of a notice to end tenancy for cause / an order instructing the landlords to comply with the Act, Regulation or tenancy agreement / an order instructing the landlords to provide services or facilities required by law / an order suspending or setting conditions on the landlords' right to enter the rental unit / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security & pet damage deposit(s) / and recovery of the filing fee.

Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

The unit which is the subject of this dispute is the upper portion of a house. The tenant was the former owner of the house, and she resided in the house for over 20 years. The tenant sold the house to the landlords. The completion date of the sale was August 29, 2013, and the possession date was August 30, 2013.

Pursuant to a written tenancy agreement, the parties then entered into a 7 month fixed term tenancy for the period from August 30, 2013 to March 29, 2014, whereby the tenant occupied the upper portion of the house. Monthly rent of \$1,800.00 was due and

payable on the 30th of each month. A security deposit of \$900.00 was collected, and a pet damage deposit of \$900.00 was collected.

Pursuant to an involved set of circumstances, each party came up with their own version of a move-in condition inspection report, neither of which was entirely acceptable to the other party.

Pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy for cause dated September 10, 2013. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is October 29, 2013. There are 4 reasons identified on the notice in support of its issuance. Thereafter, the tenant disputed the notice by way of her application which was originally filed on September 3, 2013. Subsequently, by way of e-mail to the landlord from the tenant's agent (realtor), dated September 19, 2013, the tenant notified the landlord that she had vacated the unit on September 18, 2013. The keys to the unit were later returned to the landlord on September 25, 2013. The tenant's forwarding address in care of her agent was provided in the aforementioned e-mail dated September 19, 2013.

As to a move-out condition inspection report, the tenant had the same third party complete a report who had completed the move-in condition inspection report on her behalf. This move-out condition inspection report was completed in the absence of the landlord. In short, the condition of the unit was assessed to be unchanged between the time when tenancy began and the time when the tenant vacated the unit 18 days later. For his part, the landlord did not complete his own move-out condition inspection report.

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, the various aspects of the respective applications and my findings around each are set out below.

TENANT

Cancellation of a 1 Month Notice to End Tenancy for Cause

As the tenant vacated the unit subsequent to issuance of the 1 month notice, I consider the tenant's application for cancellation of the 1 month notice to be withdrawn.

An order instructing the landlords to comply with the Act, Regulation or tenancy agreement;

An order instructing the landlords to provide services or facilities required by law; and

An order suspending or setting conditions on the landlords' right to enter the rental unit;

As tenancy ended subsequent to the tenant's filing of the application for dispute resolution, I consider the tenant's application for the above orders to be withdrawn.

\$290.32: *pro-rated 5 day reimbursement of rent from September 26 to 30, 2013.*

In fact, the calculation of daily rent for September is as follows:

$\$1,800.00$ (monthly rent) \div 30 (no. of days in September) = $\$60.00$ (daily rent)

$\$60.00$ (daily rent) \times 5 (no. of days when unit left vacant in September) = $\$300.00$.

Section 45 of the Act speaks to **Tenant's notice**, in part as follows:

45(2) A tenant may end a fixed term 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,
- (b) is not earlier than that date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

I have considered the application of the above provisions in concert with the landlord's issuance of a 1 month notice to end tenancy for cause. In the result, I find no basis upon which the tenant has established entitlement to reimbursement of rent for the 5 day period in question. Clearly, the tenant's notice to end the tenancy does not comply

with the above statutory provisions. Accordingly, this aspect of the application is hereby dismissed.

\$10,800.00: *reimbursement of 6 post-dated rental cheques from October 2013 to March 2014*

It is understood that the tenant put a stop-payment on her cheque issued for payment of rent for October 2013. My findings related to the disposition of entitlement to rent for October are included under my findings arising from the LANDLORDS' application. As to the post-dated rent cheques for the remaining 5 months of November, December 2013, January, February and March 2014, the landlord testified that they have been returned to the tenant. In the result, this aspect of the application is hereby dismissed.

\$650.00: *moving costs*

While the tenant filed an application to dispute the 1 month notice to end tenancy for cause dated September 10, 2013, she undertook to vacate the unit on September 18, 2013, and unit keys were returned on September 25, 2013. While an early end of the fixed term tenancy arose from unanticipated interpersonal difficulties encountered by the parties, I find that the tenant has failed to meet the burden of proving entitlement to recovery of costs associated with moving. This aspect of the application is therefore hereby dismissed.

\$3,600.00 [2 x (\$900.00 + \$900.00)]: *repayment of double the security / pet damage deposit(s)*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after 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 / pet damage deposit(s) or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security / pet damage deposit(s) and must pay the tenant double the amount of the security / pet damage deposit(s).

In the circumstances of this dispute I find that the tenant's forwarding address was provided to the landlord before tenancy ended, and that for all practical purposes the tenancy ended on September 25, 2013. The landlords' application was filed on September 26, 2013, and the landlords' application includes a request to retain the security / pet damage deposit(s). Accordingly, as the landlords' application was filed

within the 15 day period prescribed by the Act, I find that the doubling provisions of the Act do not apply, and this aspect of the application is therefore dismissed.

LANDLORDS

\$2,000.00: *estimated replacement cost of chandelier*

Having reviewed the contract of purchase and sale and the residential tenancy agreement, I find that the chandelier was the landlords' property. The tenant removed the chandelier when she vacated the unit. It is understood that while the chandelier has sentimental value for the tenant and the landlords do not require its return, they nevertheless seek compensation for its loss. In the absence of any conclusive evidence as to the monetary value of the chandelier, I find that the landlords have established entitlement to compensation in the amount of **\$900.00**.

\$200.00: *door bell replacement*

\$150.00: *staining stair rail*

\$500.00: *replacement of door glass*

\$1,000.00: *cleaning, miscellaneous repairs and painting*

I find that the circumstances surrounding attempts to complete move-in and move-out condition inspection reports with the participation of both parties, were involved and irregular. In the result, I also find on a balance of probabilities that the condition of the unit between the time when tenancy began on August 30, 2013 and when the tenant vacated on September 18, 2013, was virtually unchanged. Further to this, the landlord testified that all of the above costs reflect estimates, and so as no repairs have been completed, no related costs have been incurred. For all of the foregoing reasons, this aspect of the application is hereby dismissed.

\$1,800.00: *unpaid rent / loss of rental income for October*

Further to the provisions set out in section 45(2) of the Act, as above, section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement:**

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their

tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlord testified that he has not thus far advertised for new renters. Accordingly, in the absence of any evidence that the landlord has undertaken to mitigate the loss of rental income by advertising for new renters, I find that he has presently established entitlement limited to **\$900.00**, or ½ month's rent for October 2013.

Total entitlement: \$1,800.00 (\$900.00 + \$900.00)

Following from all of the above, I order that the landlords retain the security deposit of \$900.00, and the pet damage deposit of \$900.00.

The respective applications to recover the filing fee are hereby dismissed.

Conclusion

The tenant's application is hereby dismissed.

The landlords are hereby ordered to retain the security and pet damage deposits in the combined total amount of **\$1,800.00**. All other aspects of the landlords' application are hereby dismissed.

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: October 17, 2013

Residential Tenancy Branch

