



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order compelling the landlord to return his security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?
Should the landlord be ordered to return the security deposit?

Background and Evidence

The parties agreed that the tenancy began some time in early 2010 and ended on May 4, 2013. They further agreed that monthly rent was set at \$650.00 and that at the beginning of the tenancy, the tenant paid a \$325.00 security deposit.

The parties agreed that on April 8, the landlord personally served the tenant with a letter which read as follows:

Due to expansion in my family i want more space for my family. I want full space in my house so i cant rent my suit. As per Agreement i want to Declair 30 Days Notice To Suit Holder to move out suit Basement of House No. [rental unit address]. Its Date today is 8 April Monday 2013 So Please evacuate suit within month.

The tenant testified that the landlord wanted him to move by the end of April, but he was unable to find a new residence until May 4, which is the date he vacated the rental unit.

The tenant testified that upon receiving the letter, he learned that he was entitled to compensation. The tenant attended at a Service BC office on April 10 and filed a claim for the equivalent of one month's rent and the return of his security deposit.

The landlord testified that he re-rented the unit after the tenant moved out and that he had never had any intention of using the space for his family, but he did not want to hurt the tenant's feelings by telling him the real reason he no longer wanted the tenant living in the unit. The landlord claimed that the tenant had caused damage to the unit which cost him approximately \$1,000.00 to repair.

The landlord stated that he was unaware that he was required under the law to provide the tenant with 2 month's notice. Neither party was aware that the letter given by the landlord was not a legal notice as it was not on a Residential Tenancy Branch form.

The tenant testified that he has not given the landlord his forwarding address.

Analysis

Section 38 of the *Residential Tenancy Act* provides that within 15 days of the end of the tenancy and of receiving the tenant's forwarding address in writing, the landlord must either return the security deposit in full or file an application for dispute resolution claiming against the deposit. Failure to deal with the deposit within 15 days renders the landlord liable for double the deposit.

I find that because the tenant has not yet provided the landlord with his forwarding address in writing, the landlord is not legally obligated to return the deposit. I therefore dismiss the tenant's claim for the return of the deposit with leave to reapply if the landlord fails to either return it or file a claim within 15 days of having received the tenant's forwarding address in writing.

Section 52 of the Act provides that when a landlord wishes to end a tenancy, he must provide the tenant with a notice in the approved form. This notice outlines the rights and responsibilities of both parties. I accept that neither party was aware that the letter given by the landlord was not a legal notice. However, the letter had the effect desired by the landlord in that it made the tenant believe that he was compelled to move out of the rental unit.

I find that because the tenant acted on the illegal notice and vacated the unit as desired by the landlord, he is entitled to the compensation to which he would have been entitled had the landlord followed the law and served on the tenant what is known as a section

49 notice, which ends the tenancy because the landlord or a close family member intends to occupy the rental unit.

Section 51 of the Act provides as follows:

51. Tenant's compensation: section 49 notice

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.

51(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.

51(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that section, the landlord must refund that amount.

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

51(2)(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

51(2)(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.

The tenant has not made a claim for compensation under section 51(2), so the only award I can make on this application is an award under section 51(1). I find that the tenant is entitled to recover from the landlord \$650.00, which is the equivalent of one month's rent.

The parties agreed that the tenant did not pay rent for the first 4 days of May, so I find that the \$650.00 must be reduced to reflect that the tenant enjoyed 4 days of rent free housing. Applying a daily rate of \$20.97 multiplied by the 4 days the tenant did not pay rent, I find that the \$650.00 award must be reduced by \$83.88, leaving a balance of \$566.12.

As he has been substantially successful in his application, I find that the tenant is entitled to recover the filing fee paid to bring this application and I award him \$50.00.

I grant the tenant a monetary order under section 67 for \$616.12. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The claim for the return of the security deposit is dismissed with leave to reapply. The tenant is granted a monetary order for \$616.12 which represents \$566.12 in section 51(1) compensation and the \$50.00 filing fee.

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: July 05, 2013

Residential Tenancy Branch

