



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was an application by the tenant for a monetary order for compensation including compensation from the landlord equivalent to double the monthly rent payable under the tenancy agreement pursuant to sections 51(1) and 51(2) of the *Residential Tenancy Act* (Act) and for the return of her security deposit including double the deposit amount. The hearing was conducted by conference call. The tenant participated in the hearing. The landlord did not attend although he was served with the application and Notice of Hearing by registered mail sent on October 3, 2013.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit including double the amount?

Is the tenant entitled to compensation pursuant to section 51 of the *Residential Tenancy Act*?

Is the tenant entitled to any additional monetary award?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy began on July 1, 2012 on a month to month basis. Monthly rent was \$1,500.00 payable on the first day of each month. The tenant paid a security deposit of \$750.00 on June 15, 2012.

The landlord served the tenant with a two month Notice to End Tenancy dated December 24, 2012. The ground for the Notice was that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse. The Notice required the tenant to move out of the rental unit by the end of February, 2013. The tenant gave the landlord a 10 day Notice that she intended to move out of the rental unit before the end of February. The Notice was dated February 2, 2013. In the Notice the tenant advised the landlord of his obligation to pay

her compensation for the portion of the month of February after she had moved out of the rental unit. She also provided her forwarding address. On February 11, 2013, the day she moved out of the rental unit she gave the landlord another letter with her forwarding address and she included a reminder that he had 15 days to return her security deposit as well as a further request for payment of the prorated compensation required under section 51 of the *Residential Tenancy Act*.

The tenant provided evidence, including advertisements and an e-mail statement from a realtor confirming that the rental unit was sold by the landlord in May, 2013. The tenant testified that neither the landlord nor any family member lived in the rental unit after she moved out until it was sold in May.

The landlord did not return the tenant's security deposit and he did not file an application for dispute resolution to claim the deposit. The landlord also did not pay compensation pursuant to section 51 of the *Residential Tenancy Act*.

In addition to compensation pursuant to section 51 and a claim for payment of the security deposit, the tenant claimed compensation for the lack of a dishwasher for three months and compensation for a lack of repairs for five months.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenant double the amount of the security deposit and pet deposit.

I am satisfied that the tenant provided the landlord with her forwarding address in writing, and I find that the tenant served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenant's security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$1,500.00.

With respect to the tenant's claim for compensation pursuant to section 51 of the Act, Section 51(1) of the Act provides that a tenant who receives a Notice to End Tenancy for landlord's use is entitled to an amount equivalent to one month's rent under the tenancy agreement. Section 50 states that a tenant who receives such a Notice may end the tenancy early by giving her own written 10 day Notice to the landlord and in such a case the landlord is obliged to pay the tenant a proportionate amount of the rent for the remainder of the month after the Notice was given. According to the tenant's letter to the landlord this amounted to the sum of \$964.29. The landlord did not pay the sum despite the tenant's request. I find that the tenant is entitled to an award in the amount of \$964.29 as claimed pursuant to the quoted provisions of the Act.

As noted, section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
 - (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
 - (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 seeks payment of compensation in the amount of double the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the landlord or a family member has not occupied the rental unit, instead it was sold to a third party several months after the tenancy ended.

Upon the evidence before me it is my finding that the applicant is entitled to the compensation sought. The landlord did not use the rental unit for the purpose stated in the Notice; instead he listed it for sale and sold it. The Act provides that compensation is payable, regardless of intention if the rental unit is not used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the Notice. The rental unit was not used for the stated purpose and instead it was sold. I

find that the landlord must pay to the tenants an amount that is the equivalent of double the monthly rent payable under the tenancy agreement which is the sum of \$3,000.00.

The tenant claimed an award for the lack of a working dishwasher; this claim was the subject of an earlier dispute; it has already been dealt with. As well, if the tenant had an issue with repairs it could have been dealt with in the earlier dispute resolution proceeding; these matters are *res judicata* and these claims are now dismissed on that basis.

I have awarded the tenant double her security deposit amounting to \$1,500.00, the sum of \$964.29 as compensation under section 51(1) and a further \$3,000.00 being double the monthly rent, pursuant to section 51(2) All other claims are dismissed without leave to reapply. The tenant is entitled to recover the \$100.00 filing fee for this application for a total claim of \$5,564.29 and I grant the tenant a monetary order against the landlord in the said amount. This order may be registered 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: January 16, 2014

Residential Tenancy Branch

