



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order under the Residential Tenancy Act (the Act) for unpaid rent and utilities as well as the cost of carpet cleaning at the end of the tenancy. The application includes a request to recover the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The parties acknowledged receiving the evidence of the other. The parties were also given opportunity to discuss and mutually resolve their dispute. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The hearing had benefit of an abundance of document and digital evidence including the tenancy agreement. The following is undisputed by the parties. The tenancy effectively began August 01, 2013 as a fixed term tenancy to May 31, 2014 and then continued as a *month to month* tenancy thereafter. Rent in the amount of \$1400.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$700.00 which they retain in trust. The parties agreed the tenant would be responsible for utilities. The tenancy ended June 28, 2014 when the tenants vacated. The parties agreed there was no start of tenancy, or end of tenancy condition inspections conducted, nor any condition inspection reports completed, however, after discussion during the hearing the parties agreed the rental unit was left “reasonably clean” and, specifically, the carpeting of the unit was left reasonably clean. The parties additionally agreed that a sum of

unpaid utility charges remained unpaid at the end of the tenancy and the landlord agrees with the tenant's calculation that the sum of those charges is \$603.52.

The landlord provided that on April 09, 2014 they verbally notified the tenant to vacate the unit June 30, 2014 as a new family would be moving into the unit pursuant to a sale/'rent to own' contract. The landlord testified they wanted the tenant to act on their notice to vacate and pay the rent to the end of the tenancy. However, the tenant failed to pay the last month's rent and the landlord now seeks the unpaid June 2014 rent.

The tenant testified that the landlord's verbal notice to end tenancy served as a 2 Month Notice to End Tenancy for landlord's use and despite the fact that the Notice was not given in the correct form, the tenants should still be entitled to the compensation provided by the *Residential Tenancy Act*. The tenant further testified that despite not wanting to move, they accepted the landlord's request that the rental unit was effectively sold and they acted on the landlord's request. The tenant determined to factor their last month's rent for June 2014 as compensation owed to them had the landlord given them a 2 Month Notice to End Tenancy. The landlord's position is that the tenants agreed to move out on verbal notice and they did not give the tenants a 2 month Notice to End Tenancy and the tenants are therefore not entitled to receive one month's rent compensation of June 2014 rent.

Analysis

A full version of references to the Act and Policy Guidelines can be found at: <http://www.gov.bc.ca/landlordtenant>. Only evidence relevant to the landlord's claims has been considered. On preponderance of all the *relevant* evidence provided I have reached a Decision.

I find the parties agree the carpeting was left reasonably clean at the end of the tenancy as is required by **Section 37** of the Act. As a result **I dismiss** the landlord's claim for carpet cleaning.

I find the parties agree the tenant owes the landlord for unpaid charges for utilities in the amount of **\$603.52**. As a result **I grant** this amount to the landlord.

In respect to the landlord claim for unpaid rent for June 2014, I find that **Section 51(1)** of the *Residential Tenancy Act* provides that 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.

I find that the landlord verbally notified the tenant to vacate at the end of June 2014 to facilitate the landlord's sale/'rent to own' contract. I find that the tenant was not legally required to vacate on this Notice, but acted on the landlord's notice - to the landlord's benefit - so as to accommodate the landlord's plans.

Section 52 of the *Act* sets out the law governing Notices to End a Tenancy. It provides that to be effective a notice given by a landlord must be in the *approved form*. The landlord's April 09, 2014 verbal notice was not in the approved form, however the landlord intended that the tenants comply with the notice and the tenants accepted the notice and moved out in accordance with it. In the absence of any documentary evidence from the landlord I do not accept the landlord's testimony the tenants always intended to vacate June 30, 2014; I find that they moved out in response to the landlord's April 09, 2014 notice.

It must be noted that **Residential Tenancy Policy Guideline #18 - Use of Forms**, in part, provides:

A form not approved by the Director is not invalid if the form used still contains the required information and is not constructed with the intention of misleading anyone. As a result, it is advisable to apply to an Arbitrator to dispute the notice, so that the validity of the notice can be determined. Where a tenant accepts a Notice To End A Tenancy that is in the old form or is not in the required form and the tenant vacates in response to the notice, the landlord cannot rely upon the failure to give notice in the required form and allege that the tenant owes the landlord rent as a result of the improper ending of the tenancy.

In the same spirit as the quoted Policy Guideline, I find that a landlord should not be able to give an incorrect form of notice – in this case, verbal notice - as a means to avoid paying tenants the compensation provided for by the Act. I find the tenants did move out in response to the landlord's verbal 2 month notice and it would be unconscionable to allow the landlord to avoid their obligations under the Act due to a failure to follow the requirements of the legislation. I find that the tenants withheld the amount authorized in compensation pursuant to **Section 51(1)** of the Act, being the equivalent of one month's rent under the tenancy agreement.

The end result is that the landlord regained possession of the unit for their use and the tenant received the requisite compensation for surrendering the unit to the landlord for

their use, as required by the Act. Therefore, I find the landlord is not entitled to the payable rent for June 2014, and **I dismiss** this portion of their claim.

As the landlord was partially successful in their application they are entitled to recover their filing fee. The security deposit will be offset from the award made herein.

Calculation for Monetary Order is as follows:

Unpaid utilities	\$603.52
Landlord's filing fee	\$50.00
landlord's award	\$653.52
<i>less tenant's security deposit held by landlord in trust</i>	<i>- \$700.00</i>
Monetary Order for tenant	(\$46.48)

As the tenant's security deposit exceeds the landlord's award, it is appropriate that I return any balance to the tenant.

Conclusion

The landlord's application, in part, has been granted and the balance is dismissed.

I Order that the landlord may retain \$653.60 of the tenant's security deposit in full satisfaction of their award, and must return the remainder to the tenant. **I grant** the tenant a Monetary Order under Section 67 of the Act for the balance of **\$46.48**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 30, 2015

Residential Tenancy Branch

