



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was the hearing of an application by the tenant. . The tenant applied for a monetary order, including compensation from the landlord equivalent to double the monthly rent payable under the tenancy agreement pursuant to section 51(2) of the *Residential Tenancy Act* (Act). The tenant also applied for payment of the security deposit, including double the amount of the deposit. The hearing was conducted by conference call; the tenant participated as did the landlord and his translator. The parties acknowledged receipt of documentary evidence exchanged prior to the hearing.

Issues(s) to be Decided

Is the tenant entitled to compensation equivalent to two months' rent pursuant to section 51 of the *Residential Tenancy Act*?

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

Background and evidence

The rental property is a house in Vancouver. The tenancy began on November 1, 2011. Monthly rent was \$2,650.00 payable on the first of each month. The tenants paid a security deposit of \$1,325.00 on October 31, 2011. The rent increased 2,708.00 per month effective February 1, 2014.

On April 2, 2014, the landlord served the tenants with a two month Notice to End Tenancy for landlord's use. The Notice to End Tenancy required the tenants to move out of the rental unit by June 30, 2014.

The tenant testified at the hearing that the tenants moved out of the rental unit in the second half of July, 2014. He later said that the tenants had mostly moved out by June 30th, but they left some items of furniture in the garage that were not moved until after July 31st. The tenants did not pay rent for the months of June or July.

The tenant testified that he learned that the rental property was listed for sale after the tenancy ended. He testified that he attended a real estate agent's open house at the rental property in September 2014. At that time the house was vacant and offered for sale for immediate occupancy.

On September 8, 2014 the tenants wrote a letter to the landlord. The letter was sent to the landlord by registered mail and the landlord acknowledged receiving it. In the letter the tenants said that they intended to claim compensation of two months rent because the landlords had not used the rental property for the purpose stated in the April 2nd Notice to End Tenancy for landlord's use. The tenants also provided their forwarding address and requested the return of their security deposit.

The tenant testified that the security deposit was not returned.

The landlord testified at the hearing with the assistance of a translator. The landlord acknowledged that he and his family did not move into the rental property pursuant to the Notice to End Tenancy, but instead the house has been sold to new owners. The landlord testified that this occurred due to an unforeseen change of circumstances. He said that his daughter was to attend a public school close to the rental property and he planned to move there with his family until there was a teachers' strike. The strike caused the landlord and his family to change their plans; his daughter was enrolled in a private school the landlord and his family chose to live elsewhere and the rental property was listed for sale and eventually sold.

The landlord testified that the tenant was given the month of June free of rent as required by the two month Notice to End Tenancy, but the tenants continued to live in the rental unit for the month of July and did not pay rent. The landlord referred to an e-mail sent to him by the tenant's wife on July 31, 2014 wherein she said:

Hi (name of landlord)

the house is empty and cleaned up now. however I have 2 dining chairs and a small table & mirror that is in your garage that I have sold but the person I sold it to can't pick it up till after long weekend, is it ok that I store it there till they can come get it?

besides that the house is ready for you. I will be busy all day tomorrow and can give you the keys on Friday afternoon if that works for you?

The landlord testified that the tenants told him verbally that they would not be able to move out by the end of June and the above e-mail was the only written communication he received from them to advise of their move-out. The landlord said that he did not return the tenants' security deposit because they failed to pay rent for July. The landlord also said that he had to pay \$600.00 to have the rental property cleaned after the tenant moved out. The landlord has not applied for a monetary order for unpaid rent

or to claim the security deposit because he was unfamiliar with the procedure for making an application. The landlord submitted a monetary worksheet as evidence in response to the tenant's application.

Analysis and Conclusion

Section 51(1) of the *Residential Tenancy 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 applicant 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 did not move into the rental unit; instead he sold the property to a new owner without ever having moved into the rental unit. The landlord said that he did not move in because of a change of circumstances, namely: the teachers' strike that occurred in 2014.

Upon the evidence before me it is my finding that the applicant is entitled to the compensation provided by section 51(2). 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 landlord did not live in the rental unit and the property has been sold to new owners. The landlord acknowledged that the property has not been used for the stated purpose. I find that the landlord must pay to the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement, namely: the sum of \$5,416.00.

With respect to the tenant's claim for payment of the security deposit, including double the amount, 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 tenants double the amount of the security deposit and pet deposit.

The landlord acknowledged that he received the tenants' September 8, 2014 letter with their forwarding address. Upon the evidence presented, it appears that the landlord has a valid claim for unpaid rent for July and he may be entitled to claim costs for cleaning the rental unit, but it was up to the landlord to file his own application to make the claim and he failed to do so. Although the landlord has lost the right to claim the security deposit, it is still open to him to make his own claim against the tenants for a monetary award for unpaid rent and other expenses.

The tenants' 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 him the sum of \$2,650.00, being double the amount of the deposit. The tenant has also been awarded compensation pursuant to section 51 in the amount of \$5,416.00. The tenant is entitled to recover the \$100.00 filing fee for this application for a total claim of \$8,166.00 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: April 21, 2015

Residential Tenancy Branch

