



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANE'S END HOLMES SEDONA LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. In the Landlord's Application for Dispute Resolution, they sought an Order for Possession for Landlord's Use, a Monetary Order for Damage to the rental unit, and to recover the filing fee. In the Application by the Tenants they sought a Monetary Order for: return of double the security deposit paid to the Landlord; one month's rent as compensation pursuant to sections 49 and 51(1); as well as two months rent as compensation pursuant to sections 49 and 51(2); and, for the return of the filing fee for the Application.

The Landlord was represented by an Agent, K.K. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

At the outset of the hearing the Landlord confirmed that the Tenant moved out on July 14, 2014 such that an Order of Possession was no longer required. Accordingly, I dismiss that application.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

1. Has there been a breach of Section 38 of the Act by the Landlord entitling the Tenant to double the security deposit?
2. Is the Tenant entitled to one month's rent in compensation pursuant to section 51(1)?
3. Is the Tenant entitled to two month's rent in compensation pursuant to section 51(2)?

4. Is the Landlord entitled to monetary compensation from the Tenants for damage to the rental unit?
5. Should either party recover the fee paid to file their respective applications?

Background and Evidence

The tenancy began April 1, 2013. Monthly rent was paid in the amount of \$1,600.00 per month. The Tenant paid the Landlord a security deposit of \$800.00 prior to moving in.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's use on April 28, 2014. The reasons cited in the Notice were that the Landlord intended to convert the rental unit to strata lots. The Landlord confirmed that the intention was to demolish the rental unit. The Landlord confirmed that the Tenant was served on April 28, 2014.

When asked if the Tenant received her one month rent in compensation pursuant to sections 49 and 51 of the Act, the Landlord responded that the Tenants had purchased a home and were going to give notice.

The Landlord confirmed that the Tenants did not give a formal written notice to end their tenancy. The Tenants paid half a month's rent in July of 2014, and vacated the premises on July 14, 2014.

The Landlord testified that they made an application for a development permit on May 3, 2014 and were approved on July 29, 2014 with demolition beginning on August 5, 2014.

The Landlord claimed \$1,830.96 for damage to the rental unit which was itemized on a Monetary Order Worksheet submitted in evidence.

When asked why the Landlord would claim for damages to a rental unit they intended to demolish, the Landlord responded that the Tenants damaged items which were subsequently salvaged and that accordingly the Landlord lost potential profit.

The Landlord did not complete a Move-out Condition Inspection Report. The Landlord confirmed that the Tenant was only given one opportunity to do the inspection.

On July 16, 2014, the Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to by email. The Landlord confirmed receipt of this email in a return email thanking the Tenant for this information.

The Tenant did not sign over a portion of the security deposit.

The Landlord testified that they mailed a cheque to the Tenant for \$800.00 on July 31, 2014. The Tenant denied receiving the cheque. The Landlord failed to introduce any evidence to support their claim that they mailed the security deposit to the Tenants. Further, despite the Landlord's claim that the cheque was sent with a covering letter, no copy of the letter was provided, nor does it appear the Landlord sent any communication to the Tenant regarding the fact the cheque had not been cashed.

The Landlord claimed the Tenant had left the rental unit unclean or damaged and submitted a claim for monetary compensation in the amount of \$1,830.96 for the following:

Cleaning	\$321.00
Re-keying locks	\$145.60
Landscaping cleanup	\$250.00
Wardrobe closet	\$199.36
Curtains	\$250.00
Fridge drawer	\$100.00
Rod/curtains	\$110.00
Boot planter	\$150.00
Professional services regarding an inspection of the rental unit	\$105.00
Repair of walls	\$200.00
TOTAL	\$1,830.96

The Landlord testified that the cleaning related to windows which were intended to be salvaged.

The Landlord stated that only one key was returned, such that they re-keyed the locks. The Landlord further testified that the landscaping was done as a result of a neighbor complaint.

In response to the Landlord's monetary claim the Tenant testified as follows:

- She believed that the rental unit was to be demolished and accordingly did not clean or tend to the landscaping as she would have in the event the rental unit was to be re-rented. Further, she stated that she was told at the time she moved out that she had adequately cleaned the rental unit.
- She did not have an extra key and informed the Landlord of this.
- The boot planter had been accidentally moved by one of her friends on the date she moved out and she would return the planter.
- She used her own curtains during the tenancy and the Landlord's curtains were not damaged.

- The wardrobe and fridge drawer were not damaged.
- The kitchen cabinets were from the late 60's and damage was merely reasonable wear and tear. She did not believe they had any resale value.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act. There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38.

By failing to perform an outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

Therefore, I find the Landlord has breached section 38 of the Act.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$1,600.00**, comprised of double the security deposit (2 x \$800.00)

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use, pursuant to section 49. Section 51(1) provides that the Landlord must provide the Tenant with an amount that is the

equivalent of one months' rent payable under the tenancy agreement. Accordingly, I Order, pursuant to sections 67 and 51(1) that the Landlord pay to the Tenant the sum of **\$1,600.00**.

Introduced in evidence by the Tenant was an email from the Landlord to the Tenant dated July 14, 2014 and in which the Landlord references a "new tenant". I accept the Landlord's evidence that their insurance company required an occupant in the property and that despite having a person stay in the rental unit, the Landlord intended to demolish the rental unit upon receipt of the necessary approvals.

Further, I accept the Landlord's evidence that they took steps to convert the rental unit to strata lots within two months of the effective date of the notice and find this to be a reasonable period of time as required by section 51(2)(a). Accordingly, I dismiss the Tenant's application for compensation equivalent to double the monthly rent as provided for in section 51(2).

I dismiss the Landlord's monetary claim in its entirety.

The rental unit was to be demolished, and as such, costs relating to cleaning, landscaping, re-keying the locks and repair of walls is unnecessary and therefore not recoverable from the Tenant.

The Landlord failed to introduce sufficient evidence to support their claim that the wardrobe closet, curtain rods, curtains, and fridge drawer were damaged by the Tenants. The Tenant denied any such damage. The Landlord bears the burden of proving their claim and I find that they failed to meet this burden. Accordingly, I dismiss the Landlord's claim for compensation for these items.

The Landlord chose to retain professionals to conduct their inspections. This is a business choice by the Landlord and is not recoverable from the Tenant. Accordingly, I dismiss their claim for monetary compensation from the Tenant for this expense.

The Tenant, having been substantially successful, is entitled to recover the **\$50.00** fee for filing this Application.

In sum, I grant the Tenant a Monetary Order in the amount of **\$3,250.00**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant's application for double the security deposit and one month's rent as compensation pursuant to section 51(1) is granted. The Tenant's application for two month's rent, pursuant to section 51(2) is dismissed. The Tenant, having been substantially successful, is entitled to recover the \$50.00 fee paid to file her application.

The Landlord's application for a Monetary Order is dismissed. The Landlord's application for an Order of Possession is similarly dismissed.

The Landlord is ordered to pay the Tenant the sum of \$3,250.00 and the Tenant is given a formal Order in the above terms.

The Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Dated: April 02, 2015

Residential Tenancy Branch

