Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was personally served on the landlord on February 26, 2015. I find that the Amended Application for Dispute Resolution/Notice of Hearing filed by the tenant was personally served on the landlord was personally served on or about March 10, 2015. I find that the Application for Dispute Resolution filed by the landlord was sufficiently served on the tenant by mailing, by registered mail to where the tenant resides on May 5, 2015.

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the landlord is entitled to a monetary order and if so how much?
b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
c. Whether the landlord is entitled to recover the cost of the filing fee?
d. Whether the tenant is entitled to a monetary order and if so how much?
e. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a tenancy agreement that provided that the tenancy would start on May 1, 2011. The tenancy agreement provided that the tenant(s) would pay rent of $900 per month payable on in advance on the first day of each month. The tenant paid a security deposit of $450 at the start of the tenancy.

In the Fall of 2014 the landlord served a two month Notice to End on the Tenancy under section 49(3) of the Act which stated that "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

On December 16, 2014 the tenant's application to cancel the two month notice was dismissed and the landlord was granted an Order for Possession. The tenant filed an application for review on the basis that they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control (they were unable to access the conference call). The original decision was suspended a new hearing was ordered. On February 2, 2015 the arbitrator dismissed the tenant's application to cancel the Notice to End Tenancy and granted an Order for Possession on 2 days notice.

Landlord's Application:

The Application for Dispute Resolution filed by the landlord claimed the sum of $900 and in the Details section it stated "Receipts to follow." The landlord failed to provide details of her claim. On May 19, 2015 the landlord mailed a package of evidence to the Tenant. The Monetary order worksheet included claimed the sum of $1414. A search of the Canada Post tracking service indicates the package was mailed in Squamish on May 19, 2015, arrived in Richmond for transit two days later and was delivered to the Post office box of the tenant on May 25, 2015. The tenant has not received that

package. He checked his Post Office box on May 24, 2015 and there were no packages relevant to this hearing at that time.

One of the fundamental principles of our legal system is that if a party wishes to make a claim they must clearly set out that claim in their Application and provide the respondent with an opportunity to defend the claim. The Rules of Procedure support this principle including the following:

> **2.5 Documents that must be submitted with an application for dispute resolution**
> To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit to the Residential Tenancy Branch:
>
> - a detailed calculation of any monetary claim being made;
>
> ….
>
> The only exception is when an application is subject to a time constraint, such as an application under *Residential Tenancy Act* section 38, 54 or 56 or an application under the *Manufactured Home Park Tenancy Act* section 47 or 49.
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> **Rule 3 – Serving the Application and Submitting and Exchanging Evidence**
> **3.1 Documents that must be served**
> The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:
>
> a) the application for dispute resolution
>
> b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
>
> c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
>
> d) a detailed calculation of any monetary claim being made;
>
> **3.14 Evidence not submitted at the time of Application for Dispute Resolution**
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> Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

> In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the Arbitrator will apply Rule 3.17.

The Application for Dispute Resolution filed by the landlord does not contain a detailed calculation of the monetary order claimed. The claim of $900 with the statement "receipts to follow" is not sufficient. The landlord did not amend her application. Rather, the landlord mailed the receipts and her increased claim on May 19, 2015 and it was not delivered to the tenant's post box until yesterday. The tenant has not received it. The tenant has been prejudiced in that he is not able to prepare a defense. In the circumstances I determined that it was appropriate to dismiss the landlord's claim with liberty to re-apply. I have not decided the matter on its merits.

Tenant's Claim:

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of $450 on or about May 1, 2011. I determined the tenancy ended on February 4, 2015. Tenant's witness #1 testified he taped a notice containing the tenant's forwarding address to the front door of the landlord's rental unit on February 7, 2015. The landlord denied receiving this Notice. She testified the first time she received the tenant's forwarding address was when she was served with the Application for Dispute Resolution filed by the tenant on February 26, 2015.

The Act requires that the landlord "receive" a copy of the forwarding address. An applicant has the burden of proof to establish his/her claim on a balance of probabilities.

In the circumstance I determined the tenant failed to prove that the landlord received his forwarding address on February 7, 2015. I determined the landlord received the tenant's forwarding address on February 26, 2015. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants. The landlord filed a claim within 15 days of receiving the forwarding address. As a result I determined the tenants are entitled to the return of their security deposit in the sum of $450 but not the doubling of their security deposit.

The tenant also seeks an order for the equivalent of double the monthly rent on the basis the landlord has failed to take steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice. Section 51(2) provides as follows:

> SECTION 51 OF THE RESIDENTIAL TENANCY ACT:
> Section 51 of the Residential Tenancy Act provides as follows:
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> Tenant's compensation: section 49 notice
> 51 (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 landlord obtained an Order for Possession after serving a two month Notice to End based on section 49(3) which provides as follows:

> 49(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The tenant and his witness testified they have visited neighborhood where the rental property is and it does not appear that the rental unit has been or is being occupied.

The landlord testified as follows:

- it was her intention that her daughter AC would occupy the rental unit.
- Her daughter began to occupy the rental unit on February 5, 2015 as she began to move in her belongings. AC (landlord's witness #1 confirmed this)
- While her daughter began to move in her belongings on February 5, 2015 she continues to sleep in the duplex occupied by the landlord because of problems with the rental unit including:
    - The window is not secure and this is a security risk;
    - The furnace is not working properly
    - The toilet does not stop flushing
    - Other miscellaneous problems with the rental unit.
- AC testified that she is painting and doing other work in the rental property but it is difficult to complete the work quickly as she commutes with her mother to the Vancouver area for work.
- The landlord lives in the next door duplex

The landlord alleged the problems referred to above was damage caused by the tenant. The tenant disputes this saying they were pre-existing problems or the result of a contractor (known to the landlord) who failed to complete the work properly.

The Residential Tenancy Act does not define the word "occupy." After hearing the conflicting evidence I determined the landlord has presented sufficient evidence to establish that her daughter has taken sufficient steps to accomplish the stated purpose for ending the tenancy within a reasonable period of time for the following reason:

- The daughter commenced the process of moving her belongings into the rental unit.
- The daughter is going through the process of repainting.

- The rental unit has not been rented to a third party.
- While the daughter does not sleep in the rental unit she does spend daytime hours there.

As a result I ordered that the application of the tenant be for a monetary for the equivalent of 2 months rent under section 51(2) be dismissed.

Monetary Order and Cost of Filing fee

In summary I ordered the landlord(s) to pay to the tenant the sum of $450 plus the sum of $50 in respect of the filing fee for a total of $500.

Should the respondent 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.

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: May 26, 2015

Residential Tenancy Branch