



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; her advocate; and both landlords.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of the security deposit and August 2014 rent, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on November 1, 2013 as a month to month tenancy for the monthly rent of \$775.00 due on the 1st of each month with a security deposit of \$387.50 paid. The tenant testified she vacated the rental unit on August 1, 2014 but the landlords testified it was August 2, 2014.

The parties agree the landlords provided the tenant with a letter dated June 29, 2014 stating that the letter was to notify the tenant that her tenancy agreement had been "terminated". It goes on to say that they are giving the tenant a 3 month notice to vacate the unit and specifies the date the tenant must vacate the unit as "Sept. 30, 2014 or sooner" [reproduced as written].

There were 2 reasons given in the letter as to the "cause" of ending the tenancy:

1. "On going and failure to comply with a material term: A Continual pile of garbage and debris in prohibited areas, which have been clearly stated to you verbally and in writing on more than one occasion which has not been corrected within a reasonable time aft the landlords gave written notice to do so; (See attached copies.)

2. The house on [rental unit address] has recently been listed with the Real Estate agent, and we require you to vacate

We have enclosed a copy of the landlord and tenant acts.

Landlord's notice: cause

Section 47(h)

Section 49 – 5 (a)

Shelia, if you continue to refuse to comply with the garbage and debris issue you will leave us no other choice to file an eviction notice under the 1 Month requirement BC Landlord and Tenant Act. The place will need to be kept clean and tidy at all times.”
[reproduced as written with the exception of the removal of the rental unit address]

The landlord testified that a Notice to End tenancy taken from the Residential Tenancy Branch website was used as well, but she could not remember which Notice was used – either a 10 Day Notice; a 1 Month Notice or a 2 Month Notice.

The tenant submitted that she moved out of the rental unit based on the letter provided by the landlords. She stated she believed that the landlord would have wanted her to leave as soon as possible so when she found a new place she moved into it right away.

The landlords submitted that the tenant had move out without even notifying them at all and it wasn't until they saw her moving out that they knew she was doing so.

The parties agree rent for the month of August 2014 had already been paid directly from a third party on behalf of the tenant. The tenant seeks return of her rent for the month of August 2014 because she was moving out in compliance with the landlord's notice.

The parties agree the tenant provided the landlord with her forwarding address when she served them with her Application for Dispute Resolution. The tenant provided a Canada Post receipt showing it was sent by registered mail on November 3, 2014. The landlords testified that they had not filed a claim against the tenant to retain the security deposit.

The landlord testified that at the start of the tenancy a condition inspection was completed but that a Condition Inspection Report was not completed and provided to the tenant. The landlord also testified that the tenant had agreed to meet at the rental unit on August 2, 2015 and then changed that to August 5, 2015 to complete a move out inspection. However, the parties agreed the tenant did not attend. The landlords believe the tenant has extinguished her right to return of the deposit. The landlord confirmed that no written notice was provided to the tenant to return for a move out condition inspection.

Analysis

Section 23 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit on the day the tenant is entitled to possession of the unit or on another mutually agreed upon day. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 23(4) requires the landlord to complete a Condition Inspection Report with both the landlord and tenant signing the report. Pursuant to Section 18 of the Residential Tenancy Regulation the landlord must provide a copy of the Report to the tenant within 7 days after the inspection has been completed.

Section 24 of the *Act* states that the right of the landlord to claim against a security deposit for damage to the residential property is extinguished if the landlord does not comply with the requirement to offer the tenant 2 opportunities to attend the inspection; if the landlord has provided 2 opportunities the landlord does not participate in the inspection; or complete the condition inspection report and give the tenant a copy as required under the Regulation.

As per the landlord's testimony I find the landlords failed to comply with Section 23(4) of the *Act* and as such I find that they have extinguished their right to claim against the security deposit.

Section 35 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon date. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 17 of the Residential Tenancy Regulation stipulates that the landlord must offer a first opportunity to schedule the condition inspection by proposing one or more dates and times. If the tenant is not available at the time proposed the tenant may propose another time that the landlord must consider. If the time proposed by the tenant is not acceptable the landlord must propose a second opportunity by providing the tenant a notice in the approved form. The approved form is available on the Residential Tenancy Branch website.

Section 36(1) of the *Act* states that the right of a tenant to the return of the security deposit or pet damage deposit, or both, is extinguished if the landlord has complied with the requirements set out in Section 35 of the *Act* and Section 17 of the Regulation and the tenant has not participated in the inspection.

Section 36(2) stipulates that unless the tenant has abandoned the rental unit, the right of the landlord to claim against the deposits for damage to the residential property is extinguished if the landlord has not complied with the requirements of Section 35 of the

Act and Section 17 of the Regulation; or does not participate in the inspection or having completed the inspection does not complete a Condition Inspection Report and give a copy to the tenant within 15 days after it is completed and the landlord receives the tenant's forwarding address.

As to the move out condition inspection, I find, based on the landlord's testimony that the landlord did not provide the tenant with a written final opportunity to attend a move out inspection as is required under Section 35 of the *Act*. As such, I find it was the landlord who again extinguished their right to claim against the deposit, pursuant to Section 36.

As the landlord did not provide the tenant with a written notification of a final opportunity to schedule an inspection I find the tenant has not extinguished her right to return of the deposit because the landlord had already extinguished their right to claim against the deposit both at the start and the end of the tenancy.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Despite my finding above that the landlord had extinguished their right to claim against the security deposit both at the start of the tenancy and at the end of the tenancy the *Act* still requires, under Section 38 that the landlord either return the deposit in full or file claim against it within 15 days of the end of the tenancy and receipt of the tenant's forwarding address.

Based on the testimony of both parties I find the landlords received the tenant's forwarding address after she sent it by registered mail on November 3, 2014. Allowing 5 days for delivery I find the landlords had received the tenant's forwarding address by November 8, 2014 and had until November 23, 2014 to either return the deposit or file a claim against it to be compliant with Section 38(1) of the *Act*.

I further find the landlord has failed to either return the deposit or file a claim against the tenant within 15 days of receipt of the tenant's forwarding address. As such, I find the landlords have failed to comply with Section 38(1) and the tenant is entitled to double the amount of the security deposit, pursuant to Section 38(6).

As to the return of rent for the month of August, I find that landlords notice to end tenancy, as submitted into evidence, did not comply with any of the legislation that speaks to the reasons to end a tenancy; the effective dates to end a tenancy; or the requirements for the form of a notice to end a tenancy.

As a result, I find that the landlords' notice to end tenancy was written in a manner that is unclear. I find that the tenant's reliance upon and interpretation of the effective date

clause is a reasonable interpretation that allowed her to move out of the rental unit prior to the final date of September 30, 2014. I find there was no requirement in the landlords' notice that the tenant must inform them if she intended to vacate sooner than September 30, 2014.

I therefore find that the landlords are not entitled to any rent for the month of August 2014 with the exception of 2 days' worth of overholding. As rent was \$775.00 a per diem rate for the month of August 2014 would be \$25.00 per day.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,500.00** comprised of \$725.00 returned rent and \$775.00 for double the amount of the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: June 23, 2015

Residential Tenancy Branch

