Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNSD
Tenant: MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

The tenant submits the landlord served the hearing documents related to his Application for Dispute Resolution to a wrong address. She states that he sent his hearing documents to her old address and that she had provided a current address to him in writing by registered mail.

The tenant submits that she sent her new address to both the residential tenancy branch on July 31, 2015 to be effective August 1, 2015. She states that on:

> "**August 14, 2015 at 14:46PM** Mr. [landlord] attempted to send me a registered letter containing what appears to be a "CROSS APPLICATION if though he did not indicated that in fact that is what it was. The "Notice of a Dispute Resolution" however was sent to the INCORRECT ADDRESS. **It was sent to my old address [address provided] even though he had received the registered letter on AUGUST 12, 2015 at 12:13 indicating that I had moved to [address provided]**.

As the landlord's Application was seeking solely to retain the security deposit and the tenant had applied for the return of the security deposit which was, in part, the reason for this hearing to originally be scheduled, I find the tenant has suffered no prejudice as a result of the landlord sending these items to the address the tenant had originally provided on her Application for Dispute Resolution.

Section 59(2) of the *Residential Tenancy Act (Act)* stipulates that an application for dispute resolution must:

a) Be in the applicable approved form;
b) Include full particulars of the dispute that is to be the subject of the dispute resolution proceedings; and
c) Be accompanied by the fee prescribed in the regulations.

In reviewing the landlord's Application for Dispute Resolution, I find that he has asked only to retain the security deposit but he does not indicate what debt or liability resulted from the tenancy for which he seeks this compensation. As such, I find the landlord has failed to disclose sufficient information in his Application for Dispute Resolution that would allow the tenant to understand and prepare for his claim.

As a result, I find the landlord has failed to comply with Section 59(2)(b) and I dismiss his Application for Dispute Resolution with leave to reapply. However, I note that since the tenant has applied for return of the security deposit the matter of the disposition of the security deposit is dealt with in this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the return rent paid; compensation for moving costs, in and out of the rental unit; compensation for modifications the tenant made to the rental unit; to various items and expenses the tenant incurred; for non-pecuniary damages; for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Act.*

Background and Evidence

Both parties have submitted into evidence a copy of a tenancy agreement signed by the parties on February 14, 2015 for an 11 month and 11 day fixed term tenancy beginning on February 17, 2015 for a monthly rent of $1,520.00 due on the 1st of each month with a security deposit of $760.00 paid. The tenancy ended on March 31, 2015.

The landlord submitted into evidence a copy of an email dated April 2, 2015 from the tenant advising him of her forwarding address. The landlord could not confirm what date he actually received the email. The parties agree the landlord has not returned any portion of the security deposit. The landlord filed his Application for Dispute Resolution seeking to retain the deposit on August 10, 2015.

The landlord submits that he was advised by an Information Officer at the Residential Tenancy Branch that because the tenant did not provide him with a notice to end tenancy he was not required to file an Application for Dispute Resolution to claim the security deposit. However, I note that the landlord also submitted into evidence an email from the tenant dated March 18, 2015 informing the landlord of the tenant's intent to end the vacate the rental unit.

Despite the landlord's written submission on his Application for Dispute Resolution that the tenant was "advised verbally the suite is new and technically not legal…" the tenant submits that she was never informed by the landlord that rental unit was not authourized by the local municipality.

The tenant submits that based on the landlord's evidence the landlord was made aware that the unit was not authourized prior to the start of the tenancy and the date that he informed the tenant of the situation (March 6, 2015). The landlord's evidence referred to by the tenant is a letter dated February 11, 2015 from the local municipality identifying that a complaint had been lodged of the potential for a unauthourized dwelling or secondary suite.

The tenant submits that she never would have entered into a tenancy agreement if she had known that the unit was not authourized. As result the tenant claims compensation for all of her costs to move in to the rental unit including such items as: movers; boxes and packing paper; packing; cable connections charges for the rental unit and the return of rent and utilities paid for the duration of the tenancy.

The parties acknowledge that after the tenant moved into the rental she undertook several modifications and renovations. The tenant submits that she undertook these changes on the understanding that she would be staying in the rental unit for several years.

The parties both provided several email exchanges and a hand written addendum to the tenancy agreement signed by both in regards to some of the changes made to the unit. The changes the tenant made include: installation of a railing on the exterior of the unit; installation of glass door; shelving for the bathroom and storage room; adjustments to the door/add deadbolt/repair cupboard; and installation of cable connections and electrical hookup. The addendum includes a clause that states the tenant will install a handrail at her own expense.

The landlord submitted into evidence copies of an email exchange between the parties dated February 22, 2015. The exchange begins with the tenant writing to the landlord and advising him that she has had

her handyman install a railing on the upper set of stairs and that he will be returning to install cement posts for the lower level and will be installing the lower railing the following week.

She goes on to indicate she will have her handyman check the “circuits” the following day. She states that he will also install cupboards over the washer/dryer and curtains rods in the bedrooms.

The landlord responded by requesting that he will need to ensure that any cement blocks installed do not impact the length of the steps. He goes on to say that while he appreciates her enthusiasm they should discuss any possible changes she intends to make because there are some things that the landlord’s responsibilities and some things that she can do as long as she takes them with her when she leaves. In this email the landlord thanks the tenant for having her handyman deal with the railing and states: “…thank you for having your handyman attending to the handrail, which is something the landlord should pay for,….”

The tenant responded to this by stating that she wants to reassure the landlord “I am very happy with the suite and I am just trying to do some minor renovations to ‘enhance’ my life here and I am prepared to pay for such enhancements.” She states I am not asking for reimbursement unless you and I agree that it is truly the owner’s responsibility (e.g. paint for the doors)

The tenant goes on, in the remainder of this email, to talk about changes she has already made and changes that she is still planning on making

The landlord responded the following day indicating that he had booked person to come to the property after he has confirmed the arrival of appliances; asking the tenant to take photos of the bird nest areas and asking how much the tenant’s handyman charges.

The tenant submits that on March 6, 2015 she was advised by the landlord that she may be evicted because a complaint had been filed with the local municipality and that the building would be inspected by local authourities to determine if it would be considered an authourized suite.

She also submits that on March 17, 2015 the rental unit was inspected by two inspectors and that on March 18, 2015 she was informed by the landlord that the rental unit was illegal and that it would have to be vacated.

The tenant has submitted an email she wrote to the landlord on March 17, 2015 asking what happened with the inspectors and advising the landlord of her concerns and how the situation is impacting her plans and her health. She also submitted an email from the landlord in response dated March 18, 2015 at 5:54 p.m.

In the landlord’s response he states that inspector did advise the rental unit was illegal and that it would have to be vacated. The landlord states that he hopes he will be able to obtain an extension of time to deal with the issues and that he believes that inspector has the right to evict with a 30 day notice. He goes on to say: “It’s too early to know all the options that may be a available and the owners are away for a few months. They may decide to try and make the suite conform and depends on what the city may require” [reproduced as written]. He closes by stating that he will assist in any way he can and asks the tenant to let him know if he can do anything to assist her in this situation.

The landlord submitted into evidence an email from the tenant dated March 18, 2015 at 6:05 p.m. stating she will vacate the rental unit by 3:00 p.m. April 1, 2015. The email also states that the tenant will send the landlord a letter by the end of the week outlining all expenses she has accrued to date and that she will expect a reimbursement of all costs.

In her written submission the tenant explains that she had told the landlord that one of the reasons she was moving into the unit was to free herself up to travel but when the landlord informed her of the results of the inspection it raised a fear for her that she may be evicted while she is away travelling. She writes:

"By giving notice to leave on April 1, 2015, I knew I could move back into my condo as it had not been sold."

I note, however, in the hearing the tenant submitted that she did not move back into her condo. I questioned the tenant as to why the difference in her moving costs from the time she moved into the rental unit to the time she moved out of the rental unit – the tenant's claim showed a $400.00 in moving costs. The tenant was reluctant to answer my questions regarding where she moved to but stated she did not move back into her condo.

The tenant goes on to say that as a result of all of the uncertainty she could not unpack all over her belongings so she stopped unpacking; further decorating and renovating. She states she was not prepared to live out of boxes for months "with an eviction hanging over my head" so she informed the landlord she would vacate the rental unit.

The tenant also submits that as a result of being informed of the circumstances on March 6, 2015 she suffered a flare up of a pre-existing condition called Irritable Bowel Syndrome for which her doctor "reluctantly" prescribed her prednisone to "subdue" it. The tenant submitted a receipt for prednisone dated March 10, 2015. The tenant did not provide any medical documentation confirming a diagnosis or reason for the prescription from her doctor.

The tenant also wrote in her submission the following statements:

> "I did not leave the suite because I was evicted by the District. At the time I left, the status of the suite had not been "officially" determined as the inspectors had not had an opportunity to meet with the owners as they were out of the country I left the suite because the status was uncertain and I could not cope with the uncertainty of an eviction. I left the suite because I was encouraged by [landlord] to do so and for him to suggest that 'I broke the lease without notice' is incredulous. I vacated the premises with his implicit permission and I notified him of my intentions as such, I stand by my grievance.
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> In the Guideline put out by the Province of British Columbia, entitled 'Ending a Tenancy a Special Circumstances' the following is stated: "There are some circumstances when it's necessary to end a tenancy as soon as possible – when waiting for a regular notice to take effect would be unreasonable or unfair'. The situation [landlord] put me in was both unreasonable and unfair. For that reason I am still asking for the monetary compensation as outlined in the original submission to cover all costs associated with my brief stay in the lower suite at [dispute address] from February 21st, 2015 to March 31, 2015 as well as double the security deposit as [landlord] has not returned the money, nor did he make any attempt to do so, even though he says he has." [reproduced as written – except for my insertions to replace the landlord's name and the dispute address].

The tenant's total claim for compensation is as follows (this table does not include the claim for double the security deposit):

Description	Amount
Rent and Utilities	$2,321.00
Moving In Costs	$1,742.00
Moving Out Costs	$1,740.00
Renovations	$2,547.34
Cable connections for this unit and new location	$300.00
Miscellaneous purchases (to make suite suitable for tenant's needs)- such as: garbage bags; markers; shower curtain/rings; bathroom fittings; carpet; spice rack; street numbers; paint; brackets for shelving	$618.90
Non-pecuniary damages – including loss of sleep; anxiety and depression; IBS	$2,000.00

flare-up medication; time spent on phone/emails; loss of opportunity (trip to Cuba); loss of enjoyment	
Total	$11,269.24

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

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.

As the landlord confirmed he received the tenant's email dated April 2, 2015 providing her forwarding address but cannot remember when he actually received allowing 5 days for it to be considered received (or April 7, 2015), I find the landlord had until April 22, 2015 to either return the deposit in full to the tenant or file a claim against the deposit with the Residential Tenancy Branch. As the landlord did not submit his Application for Dispute Resolution to claim against the deposit until August 10, 2015 I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to double the amount of the deposit, pursuant to Section 38(6).

As to the tenant's claim for costs associated with moving into the rental unit; cable connection charges; and rent and utilities paid, the tenant submits that she never would have moved into the rental unit had she known that it was not a rental unit that had been authourized by the local municipality.

However, from the tenant's own testimony and submissions the issue of whether or not the rental unit was authourized by the local municipality was never discussed at any time prior to the signing of the tenancy agreement. I find that if this issue was of such great importance to the tenant she herself would have raised the issue and been satisfied that it had approval from the authourities, prior to signing any agreement.

I find that if she did not raise the issue prior to entering into the tenancy agreement she cannot claim a loss or damage was suffered as result of her not pursuing confirmation of authourization. I dismiss the tenant's claims for all moving in costs; cable connection charges and all rent and utilities paid.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

While the tenant quoted, in her written submission, part of the information from the Residential Tenancy Branch website regarding ending tenancies early she did not quote the entire section on how a tenant would go about ending a tenancy early.

The website explains the tenant may end a tenancy if the landlord has breached a material term as follows:

> "A tenancy agreement may be breached when someone goes against one of its terms. Material terms are considered so important that even the smallest breach gives the other party the right to end the tenancy. For example, a landlord refuses to make repairs or provide essential services such as heat, electricity or water.
>
> If a landlord has breached a material term of the tenancy agreement, the tenant may be able to end the tenancy without giving the full months' notice required to end a month-to-month tenancy.
>
> Before ending a tenancy for breach of a material term, a tenant must provide a "breach letter" to the landlord that states:
>
> What the problem is and why it's a breach of a material term of the tenancy agreement
> The reasonable deadline that the problem must be fixed by
> If the problem isn't fixed by the deadline, the tenant will end the tenancy
>
> If the landlord has broken a material term and refuses to correct the problem within a reasonable period of time after receiving the "breach letter," then the tenant can give the landlord written notice to end the tenancy and may apply for dispute resolution claiming compensation from the landlord. The tenant must be prepared to show evidence that supports their reasons for ending the tenancy."

I find that from the documentary submissions of both parties the tenant did not provide the landlord with a breach of a material letter nor did the tenant provide the landlord with any time at all to correct such a breach, if one existed.

In fact, I note that the email the landlord sent to the tenant on March 18, 2015 outlining the results of the inspection, which clearly indicated the landlord was not clear on all of the options yet available to deal with the results, was time stamped as being sent to the tenant at 5:54 p.m. and the tenancy response time stamped as 6:05 p.m. the same day says only that the tenant is moving out. She did not identify a breach of a material term nor did she provide the landlord any time at all to correct the breach.

In addition, the tenant is very clear in her written submissions that she chose to move out of the rental unit – she states and emphasizes that she the district did not require her to move out.

While the tenant states she had the landlord's "implicit" permission that he accepted the end of the tenancy, I find that there is no documentation submitted by either party that confirms that the landlord had agreed to allow the tenant to end the tenancy any time prior to the end of the fixed term.

As such, I find the tenancy ended as a result of the tenant issuing a notice to the landlord to end the tenancy. Therefore, I find that it was the tenant's choice to move out of the rental unit and the landlord cannot be held responsible for the costs associated with the tenant moving out of the rental unit.

I therefore dismiss the tenant's claim for moving out costs; cable connection costs for her new accommodation; and any miscellaneous purchases "to make suite suitable for the tenant's needs".

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and

having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states the tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

While Section 32 outlines who, in a tenancy, is responsible for what type of repairs and maintenance any renovations; modifications or alterations to a rental unit or residential property must be approved by the landlord. That is to say that a tenant cannot make alterations or modifications to a residential property without the landlord having an opportunity to determine if the modifications are necessary and then provide the tenant with written consent.

While I accept that the landlord did not at any time discourage the tenant from making any modifications I find the landlord was very clear in his email dated February 22, 2015 that he and the tenant must have a discussion about who would pay for what renovations. Yet the tenant continued to make modifications to the rental unit.

However, I do find that while the addendum signed by the parties did state that the tenant would be responsible for the installation of the exterior handrail the landlord's email dated February 22, 2015 does confirm that even the landlord believes the landlord should have paid for the handrail.

As such, I dismiss the tenant's claim for compensation for all renovations with the exception of the installation of the railing in the amount of $689.17.

In relation to the tenant's claim for non-pecuniary damages, I find the tenant has failed to provide any evidence that the landlord had violated the *Act*, regulation or tenancy agreement. As there is no evidence of such a violation I find the tenant is not entitled to any compensation. I dismiss the tenant's claim for $2,000.00 for non-pecuniary damages.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$2,234.17** comprised of $1,520.00 double the security deposit; $689.17 railing installation; and $25.00 of the $100.00 fee paid by the tenant for this application as she was only partially successful.

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: September 03, 2015

Residential Tenancy Branch