



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The parties provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. The landlord disputed that she received documentary evidence from the tenant. The tenant provided a Canada Post tracking number which confirmed the tenant sent his evidence to the landlord on June 05, 2015. Documents sent by registered mail are deemed served five days after they were posted pursuant to s. 90(a) of the *Act*. The landlord is therefore deemed served the tenant's evidence package on June 10, 2015. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover double the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on August 01, 2012 and was renewed on October 01, 2013 for a fixed term ending on September 30, 2014. At the end of the tenancy rent for this unit was \$1,650.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$875.00 on June 29, 2012. The tenancy ended on October 31, 2014 after the landlord served the tenant with a Two Month Notice to End Tenancy.

The tenant testified that the landlord has failed to return the security deposit within 15 days of receiving the tenant's forwarding address in writing. The tenant testifies that the forwarding address was provided to the landlord by mail on June 02, 2015. The tenant testified that the landlord did not give the tenant opportunity to attend a move in or move out condition inspection of the unit.

The tenant agreed the landlord sent the tenant a cheque for \$441.34 on or about November 13, 2014. The landlord has retained the balance of the security deposit of \$433.65. The tenant testified that he did agree that the landlord could keep a reasonable amount from the security deposit for carpet cleaning but no dollar amount was decided. The tenant agreed at the hearing that the landlord may retain \$200.00 of his security deposit for carpet cleaning. The tenant seeks to recover double the security deposit less the \$200.00 for carpet cleaning and less the amount already returned.

The tenant testified that the landlord served the tenant with a Two Month Notice to End Tenancy by putting it in the door crease on July 31, 2014. The tenant testified that as it was not deemed to be served until three days later this altered the effective date of the Notice. The reason put on the Two Month Notice was that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse. The tenant vacated the rental unit on October 31, 2014. The tenant testified that the landlord moved into the rental unit but the tenant calls the

landlord's good faith into question in issuing the Notice as the landlord moved out of the rental unit and put it up for sale in May, 2015. The tenant testified that he believes the landlord's intention was to always sell the unit and the unit was subsequently sold in August, 2015.

The tenant testified that the landlord must have made arrangements to sell the unit months before she moved out and the unit sat empty from around May 10, 2015 until it was sold. The tenant argued that the landlord did not use the property for a reasonable amount of time and asks the Arbitrator to consider the fairness requirement in considering whether the tenant is entitled to compensation equivalent to two months' rent.

The landlord testified that when the tenant moved into the unit the tenant wanted \$1,000.00 to have the unit cleaned and to clean the carpets. They agreed the maximum the landlord would pay would be \$800.00. At the end of the tenancy the tenant was expected to return the unit in that same clean condition as it was after the tenant had it cleaned for the landlord and to have the carpets cleaned. The tenant did not abide by this and the landlord deducted cleaning and carpet cleaning costs of \$433.65.

The landlord testified that she had nowhere to live and so served the tenant with a Two Month Notice to End Tenancy because the landlord needed to move into the rental unit. The landlord testified that she did move in on November 01, 2015. At the time her son was attending UBC and it was a long trip each school day for the landlord and her son to make. The landlord decided later to sell the unit and moved out on May 10, 2015 after finding a rental unit to move into. The landlord testified that she decided to move out in May as her friends and parents were coming to stay from overseas and it would be difficult trying to keep the unit clean for viewings and open houses. The unit was emptied and put on the market some time later in May, 2015. The landlord agreed the unit was sold in August, 2015.

The tenant cross examined the landlord and asked how long had the landlord been looking for a rental property before she moved out. The landlord responded that she did not look for very long and the rental unit was recommended by a friend. The tenant asked if Ms. S. is the landlord's listing agent and when did the landlord approach her to list her rental unit. The landlord responded that she does not remember the date.

The landlord declined to cross examine the tenant.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

S. 23(1) and 23(4) of the *Act* requires that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and to complete a condition inspection report and to provide a copy of it to the tenant. In failing to complete the condition inspection when the tenant moved in, I find the landlord contravened s. 23 of the *Act*. Consequently, s. 24(2) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit in full to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on June 02, 2015. The tenant did agree the landlord could keep a reasonable amount for carpet cleaning; however, as no dollar amount was agreed on the landlord should have returned the security deposit in full. As a result, the landlord had until June 17, 2015 to return all of the tenant's security deposit. As the landlord failed to do so, the tenant has established a claim for the return of double the security deposit to an amount of \$1,750.00, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

As the landlord has already returned the amount of \$441.35 and as the tenant has agreed at the hearing that the landlord may retain \$200.00 for carpet cleaning, I have deducted these amounts from the tenant's monetary award. The tenant will receive a monetary award for the amount of **\$1,108.65**.

The tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

With regard to the tenant's claim for compensation equal to two months' rent; the tenant argued that the landlord's intention in issuing the Two Month Notice was not in good faith and the landlord did not intend to live long term in the rental unit and later moved out and sold it. The landlord argued that when she issued the Two Month Notice she did intend to live in the rental unit and did so until May 10, 2015.

The tenant has asked me to consider the fairness requirement in this matter and that the landlord did not live in the rental unit for a reasonable amount of time. I am required to consider s. 51(2) of the *Act* which states:

(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.

As the landlord did occupy the rental unit the day after the tenant vacated the rental unit I find the landlord did comply with s. 51(2)(a) of the *Act*. Furthermore, I find the landlord lived in the rental unit from November 01, 2014 to May 10, 2015 which exceeds the six months mentioned under s. 51(2)(b) of the *Act*. This is the only requirement of the landlord when serving the tenant with a Two Month Notice and stating the reason that the landlord will occupy the rental unit. The landlord actually lived in the rental unit for a period of six months and 10 days and therefore I find the landlord has complied with s. 51(2)(b) of the *Act*.

The tenant's claim for compensation of an amount equivalent to two months' rent is therefore dismissed.

As the tenant's claim has some merit, the tenant is entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I hereby issue a Monetary Order in the tenant's favor in the amount of \$1,158.65 under the following terms:

Item	Amount
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Double the security deposit	\$1,750.00
Less amount returned	(-\$441.35)
Less amount for carpet cleaning	(-\$200.00)
Recover Filing Fee	\$50.00
Total Monetary Order	\$1,158.65

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: November 05, 2015

Residential Tenancy Branch

