Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MNR, FF

Introduction

This hearing convened as a result of cross applications.

In the Landlord's Application for Dispute Resolution filed on June 11, 2015 she sought monetary compensation in the amount of $24,940.00 for unpaid rent or utilities, and money owed or compensation for damage or loss under the *Residential Tenancy Act,* the Regulations, or tenancy agreement; authority to retain the security deposit, and recovery of the filing fee.

In the Tenant's Application for Dispute Resolution filed March 17, 2015 and amended June 1, 2015, the Tenant sought a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act,* the Regulations, or tenancy agreement; return of double her security deposit; the equivalent to two month's rent pursuant to section 51(2) of the *Act*; and recovery of the filing fee. On her application for dispute resolution, the Tenant named both her previous Landlord, C.T., as well as the Landlord's power of attorney, P.H.

Both parties attended the hearings on August 27, 2015 and November 5, 2015. The Tenant appeared on her own behalf at both hearings. P.H. appeared on her own behalf and as agent for C.T. the Landlord and former property owner. P.H. confirmed that she also acted as agent for the purchaser, P.S., in the real estate transaction which saw the rental property ownership transfer from C.T. to P.S.

As set out in the "Details of Dispute" section on the Landlord's Application for Dispute Resolution filed June 11, 2015, the basis of the Landlord's application was the Landlord's claim that the Tenant underpaid rent from January 1, 2008 until February 28, 2015.

Introduced in evidence by the Tenant was a Decision of the Residential Tenancy Branch dated September 25, 2007 which authorized the Tenant to reduce her rent by

$290.00. During the hearing on August 27, 2015, P.H. claimed she was unaware of the September 25, 2007 decision and in any case confirmed that she wished to withdraw her application. The Landlords' Application is noted as withdrawn and I make no findings of law or fact with respect to the Landlords' Application.

Issues to be Decided

1. Is the Tenant entitled to return of double her security deposit pursuant to section 38?

2. Is the Tenant entitled to monetary compensation equivalent to two month's rent pursuant to section 51 of the *Act?*

3. Should the Tenant recover her filing fee?

Background Evidence

The Tenant testified that the tenancy began in November of 2003. In January of 2006, C.T. purchased the rental property thereby becoming the Landlord. Introduced in evidence was a copy of the residential tenancy agreement between C.T. and W.C. which confirmed Rent was payable in the amount of $1,290.00 and the Tenant paid a $650.00 security deposit on December 31, 2005.

At the time the tenancy ended rent was payable in the amount of $1,000.00 pursuant to the September 25, 2007 decision.

P.H. confirmed that she had power of attorney for C.T. Introduced in evidence by the Tenant was a letter from P.H. to the Tenant dated September 4, 2013 in which P.H. confirms she is acting on behalf of C.T. P.H. also informs the Tenant in this correspondence that the property is for sale.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's use on November 28, 2014 (the "Notice"). P.H. testified that the Tenant was served on either December 7, or 9, 2014. Handwritten on the Notice is P.H.'s contact email. The reasons cited on the Notice were, "that all the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchase or a close family member intends in good faith to occupy the rental unit." The effective date of the Notice was February 28, 2015 and the tenancy ended on February 28, 2015.

Introduced in evidence by the Landlord was a copy of the contract of purchase and sale dated November 22, 2014. P.H. confirmed that the handwriting on this document was hers. The contract of purchase and sale contains page numbers which are indicated as follows: “1 of 10”; “2 of 10”; etc. The signature of the purchaser, P.S., on pages 5, 6, 7, 8, and 9 of the contract of purchase are similar.

Also introduced in evidence was an undated letter purportedly from the new owner, P.S., wherein she writes as follows:

> *“I P.S. as the buyer would like to inform that my family will move into the property upon completing.*
>
> *Please serve notice to the tenants accordingly.”*

The letter purportedly from P.S. contains a signature that is not the same as the signatures on pages 5, 6, 7, 8 and 9 of the contract of purchase and sale. I brought this to the attention of P.H. and she insisted the purchaser, P.S., signed the undated letter.

The Tenant provided the Landlord a copy of her forwarding address for the purposes of returning the security deposit. The Tenant testified that the Landlord refused to conduct a move out condition inspection. The Tenant sought double her security deposit on the basis that the Landlord failed to conduct the required condition inspection.

The Tenant alleged that as of June 1, 2015 the new owner had yet to move into the rental unit, as was claimed on the Notice. The Tenant further alleged that the undated letter introduced in evidence by the Landlords was not signed by the purchaser, but signed by P.H.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords are in breach of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlords could retain any portion of the security deposit, plus interest.

The effect of the Landlords, having withdrawn their Application for Dispute Resolution, is that their application was never made. Therefore, the result is that the Landlord failed to apply 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, plus interest.

In any case, I accept the Tenant's testimony that the Landlords failed to perform am outgoing condition inspection report. As such, the Landlords have extinguished their right to claim against the security deposit, pursuant to sections 36(2) of the Act.

I find that the Landlords have breached section 38 of the *Residential Tenancy Act*. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies. The security deposit is held in trust for the Tenant by the Landlords and the Landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the Landlords did not have any authority under the Act to keep any portion of the security deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue. Accordingly I grant the Tenant's request for an award of double her security deposit ($650.00), in the amount of **$1,300.00.**

I also grant the Tenant's request for compensation pursuant to section 51(2) which reads as follows:

> **51** (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
>
> (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
>
> (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
>
> (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 reasons cited on the Notice were as follows,

> "all of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

After careful consideration of the evidence filed, I find that the undated letter purportedly signed by the purchaser, P.S., was in fact signed by P.H. I do not accept P.H.'s testimony that P.S. signed the undated letter. It is notable that during the second day of the hearing P.H. stated that she had spoken to P.S. prior to the hearing. At that time, I gave P.H. the opportunity to call P.S. to provide evidence with respect to the letter. I also informed P.H. that I had concerns that she (P.H.) rather than P.S. had signed the undated letter. P.H. responded the P.S. was not available to speak on the phone, despite advising me she had spoken to her that morning.

In all the circumstances, I am unable to find that the *purchaser*, P.S., asked the Landlord, to give Notice to the Tenant.

The Tenant was not able to provide any evidence as to the use the purchaser has put the rental unit to. She conceded that she had not been in the rental building since vacating the rental unit.

P.H. testified that the purchaser had yet to move into the rental unit but that it remained her intention to occupy the rental unit; P.H. further stated this was due in part to renovations. As I have rejected her testimony with respect to the signing of the undated letter, I am not persuaded by P.H.'s testimony that P.S., or a close family member, occupies the rental unit, or that the rental is undergoing renovations. I gave P.H. the opportunity to call P.S. as a witness to clarify any confusion in this regard and P.H. declined this opportunity. P.H. also did not ask for an adjournment to make P.S.'s evidence available to me. In all the circumstances, I reject P.H.'s evidence with respect to the purchaser's use of the property, and I find, on a balance of probabilities, that the rental unit is not used for the purpose stated on the Notice.

Accordingly, I grant the Tenant's request for compensation pursuant to section 51(2). As the rent payable at the date the Notice was issued was $1,000.00 per month, I

award her double the monthly rent: **$2,000.00.** As the Tenant's application had merit, I also award her the **$50.00** filing fee.

The Tenant is entitled to compensation in the amount of **$3,350.00** for the reasons set out above. The Tenant is granted a Monetary Order for **$3,350.00** and must serve the Monetary Order on the Landlords. Should the Landlords fail to pay this sum, the Tenant may file the Monetary Order in the B.C. Provincial Court (Small Claims Division) and enforce the Monetary Order as an Order of that Court.

Conclusion

The Landlord failed to conduct a move out condition inspection and the Tenant is therefore entitled to recovery of double her security deposit in the amount of $1,300.00.

The Tenant is also entitled to compensation equivalent to two month's rent, which at the time the Notice was issued was $1,000.00 per month, for a total of $2,000.00 pursuant to section 51(2). The Tenant is also entitled to recover her filing fee. In total, the Tenant is entitled to a Monetary Order in the Amount of **$3,350.00**.

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: December 02, 2015

Residential Tenancy Branch