Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   FF, MNR, OPM, MNSD, MNDC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

a. A monetary order in the sum of $3571.
b. An order that he landlord provide services or facilities required by law
c. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord makes the following claims:

a. A monetary order in the sum of $1113 for unpaid rent
b. An order to recover the cost of the filing fee

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. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was personally served on the Landlord on August 24, 2015. I find that the Application for Dispute Resolution filed by the landlord was personally served on the Tenant on February 4, 2016. :

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the tenant is entitled to a monetary order and if so how much?
b. Whether the tenant is entitled to the cost of the filing fee?
c. Whether the landlord is entitled to A Monetary Order and if so how much?
d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on September 21, 2002. The monthly rent was $975. The Tenant paid a security deposit of $487.50 prior to the start of the tenancy. By the time the tenancy ended the rent had been increased to $1076 per month.

In late March 2015 the landlord served a 2 month Notice to End Tenancy on the Tenant. The grounds set out in the Notice state "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse. The tenant filed an Application for Dispute Resolution disputing the Notice. A hearing was held on May 12, 2015. The decision letter of the arbitrator records a settlement which provided that the tenancy would end on July 31, 2015 and that "In the event that the Owner does not move into the rental unit within a reasonable time after the end of the tenancy, and does not live in the rental unit for at least 6 months afterwards, the Tenant is at liberty to apply for compensation that may be granted under section 51(2) of the Act."

The tenant vacated the rental unit at the end of July 2015. The owner did not move into the rental unit.. The rental unit was demolished shortly thereafter and the owner is in the process of constructing a new home on the property.

The tenant provided the landlord with his forwarding address in writing on July 31, 2015. The landlord returned the security deposit by mail on August 15, 2015. The cheque was received by the Tenant on August 18, 2015.

Tenant's Application:

With respect to each of the tenant's claims I find as follows:

a. The tenant seeks a monetary order in the sum of $1131.06 for the doubling of the security deposit plus interest. The tenant has received the security deposit plus interest but submits he is entitled to a doubling of as he did not receive it until August 18, 2015. Section 38(1) and (8) of the Residential Tenancy Act provides as follows:

   Return of security deposit and pet damage deposit

   38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

          (a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

38(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

Section 88 provides as follows

88 All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

The tenancy ended on July 31, 2015. The tenant provided the landlord with his forwarding address in writing on that date. The landlord mailed the cheque for the security deposit plus accrued interest on August 15, 2015 to the forwarding address provided by the Tenant.. I determined the landlord has complied with Act by repaying the security deposit within 15 days in accordance with section 38(8) and 88 of the Act even though the tenant did not receive it within 15 days. As a result I dismissed the claim for the doubling of the security deposit.

b. The tenant seeks a monetary order in the sum of $2152 for the equivalent of 2 months rent under section 51(2) of the Act which provides as follows:

"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 Notice to End Tenancy served by the Landlord provides that the Landlord was to move into the rental unit. The tenant testified the landlord confirmed this with the owner during the course of the previous arbitration hearing. Rather than moving into the rental unit, the owner immediately demolished it. I determined the landlord failed to take steps to accomplish the stated purpose and the tenant is entitled to the equivalent of two months rent or the sum of $2152.

c. The tenant claimed the sum of $247.92 for 2 days of lost wages to attend the two residential tenancy hearings. This claim relates to the cost of litigation. The only jurisdiction an arbitrator has relating to costs is the cost of the filing fee. I dismissed this claim.

d. I determined the tenant is entitled to $50 for the cost of the filing fee.

In summary I determined the Tenant has established a claim against the sum of the sum of $2152 plus $50 for the cost of the filing fee for a total of $2202.

Landlord's Application - Analysis - Monetary Order and Cost of Filing fee:
The landlord claimed the sum of $1113 for non-payment of rent. After carefully considering all of the evidence I determined the landlord failed to prove this claim and accordingly this claim is dismissed for the following reasons:
- The landlord relies on a Tenant's ledger as proof of this claim. However, the representative of the landlord who prepared the ledger did not appear or testify at the hearing.
- The landlord filed the claim only two weeks prior to the hearing. The first time the tenant had an opportunity to view this ledger was when he received the

landlord's Application. The Landlord failed to provide a sufficient explanation for the delay in bringing this claim.

- The tenant denies that he was in arrears at the time the tenancy ended.
- The landlord failed to provide sufficient evidence that they took the position the tenant was in arrears at the time the tenancy ended..
- The landlord served a letter dated January 14, 2014 and a 10 day Notice to End Tenancy dated January 23, 2014 indicating $1053 is owed in rent. The tenant testified he paid $1078. The ledger shows a payment of $1078 (Vancity bank draft (01/14 rent + NSF) on January 23, 2014.
- The tenant testified he made arrangements to pay arrears with the then building manager. That person did not appear at the hearing.
- The landlord failed to provide sufficient evidence they took the position the tenant was in arrears. At the end of the tenancy the landlord returned the security deposit plus interest rather than filing a claim with the Residential Tenancy Branch to retain the security deposit for non-payment of rent.

In summary I determined the landlord failed to prove a claim for non-payment of rent.

Conclusion:
I dismissed the landlord's application. I ordered that the landlord pay to the tenant the sum of $2202.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

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: February 20, 2016

_____
Residential Tenancy Branch