



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNDC, MNR, MNSD, FF
Tenant: CNL, MNDC, MNSD, O, OLC, FF

Introduction

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

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

At the outset of the hearing the parties confirmed that the tenants had vacated the rental unit. I confirmed with the tenant that as a result there was no longer a need to dispute a 2 Month Notice to End Tenancy for Landlord's Use of Property and I have amended the tenant's Application for Dispute Resolution to exclude the matter of seeking to cancel a 2 Month Notice.

Also at the outset of the hearing, the tenant confirmed that he was seeking compensation for moving costs under Section 145(2) of the Strata Act. I advised the tenant that I had no jurisdiction over the Strata Act. I advised the tenant that he could withdraw this portion of his Application and pursue it through a court of competent jurisdiction or I could adjudicate the claim under the *Residential Tenancy Act (Act)*.

I also advised the tenant that if I adjudicated this part of his claim and dismissed it he would not be able to pursue this part of claim elsewhere as the matter would be considered *res judicata*.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgment on the merits has been made; and the involvement of the same parties.

The tenant instructed that he would like the claim considered under the *Residential Tenancy Act*.

I also clarified with the landlord that while he had named two tenants in his Application for Dispute Resolution only the male tenant had signed the tenancy agreement. As a

result, I advised the landlord he could not pursue a claim against the female tenant and I amended his Application for Dispute Resolution to exclude the female tenant's name.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 26, 37, 38, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to a monetary order for compensation for the return of rent; for moving costs; 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, 51, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on July 6, 2013 for a 1 year fixed term tenancy that began on August 1, 2013 and converted to a month to month tenancy on August 1, 2014 for a monthly rent of \$3,300.00 due on the 1st of each month with a security deposit of \$3,300.00 paid; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued on July 21, 2015 with an effective vacancy date of August 31, 2015 citing the rental unit must be vacated to comply with a government order. I note however, the landlord has altered the Notice to change it to read "comply with Strata Bylaws".

The tenant submitted into evidence the following relevant documents:

- A copy of the same tenancy agreement as noted above;
- A copy of a letter from the landlord to the tenant dated June 29, 2015 entitled "Two Months Notice to End Tenancy August 31, 2015" [reproduced as written]. The letter goes on to explain that the strata is requiring the landlord to discontinue renting is unit so that other strata members may rent out their unit. It further states that this letter will serve as a two month notice to the tenants for them to leave before August 31, 2015;
- A copy of an email response from the tenants, dated July 16, 2015, that documents that they had contacted the Residential Tenancy Branch. The letter states they found out that the landlord could not end the tenancy for the reasons stated and that he must provide a notice in a "specific way, on a specific document, for specific set reasons that don't include the reason given. The email further suggests the tenants are ok with moving out but ask the landlord for some compensation; and

- A copy of an email dated July 31, 2015 from the tenant to the landlord advising the landlord that they will be vacating the rental unit by “the 10th” and that they would not be paying the landlord any rent for August 2015.

The parties agree the tenants vacated the rental unit as of August 10, 2015; that they did not pay rent for the month of August 2015; and that they returned the last of the keys on August 17, 2015.

The landlord seeks rent for the month of August 2015 in the amount of \$3,300.00. The tenant submits that he should not have to pay rent for the month of August pursuant to Section 51 of the *Act* after receiving the landlord’s letter of June 29, 2015 giving the tenants until August 31, 2015 to vacate the rental unit.

The tenant also seeks compensation in the amount of \$2,282.90, pursuant to Section 50 of the *Act*, after he gave the landlord 10 days’ notice that he intended to vacate the rental unit after receiving the letter from the landlord giving the tenant until August 31, 2015 to vacate the rental unit.

The tenant also seeks an additional one month’s rent (\$3,300.00) for “improper use of property eviction as per [RTA 51(2a,b)]” [reproduced as written]. The tenants also seek moving costs in the amount of \$3,200.40 for requiring the tenant to vacate the rental unit because of a strata rule and through no fault of his own.

The parties agreed that on or about August 10, 2015 the tenants provided the landlord with their forwarding address. The tenant also acknowledged that a couple of days later the postal code was corrected by email. The landlord submitted his Application for Dispute Resolution seeking to claim against the deposit on August 20, 2015.

The landlord claims compensation for the repair of a door handle in the amount of \$240.00. The tenant acknowledges the door handle was damaged during their move out and does not dispute this claim.

The landlord also submits that there was a broken screen that he had repaired at a cost of \$15.03 and he had to replace the locks on the door because the tenant failed to return all the keys at the end of the tenancy and he had changed to locks prior to the tenants returning them on August 17, 2015.

The landlord submitted into evidence a copy of a Condition Inspection Report signed by the landlord’s agent and the tenant on August 10, 2015 acknowledge there was a tear in one of the window screens. The tenant testified that the tear had been in the screen since the start of the tenancy. The Report signed by the female occupant and the landlord on July 26, 2013 does not record any damage to the screens at the start of the tenancy.

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 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);
 - ii. Section 46 (landlord's notice: non-payment of rent);
 - iii. Section 47 (landlord's notice: cause);
 - iv. Section 48 (landlord's notice: end of employment);
 - v. Section 49 (landlord's notice: landlord's use of property);
 - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
 - vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

Section 49 of the *Act* allows a landlord to end a tenancy if:

- a. The landlord or a close family member of the landlord intends in good faith to occupy the rental unit;
- b. The landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy if the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit;
- c. The landlord has all the necessary permits and approvals required by law, and intends in good faith, to:
 - i. Demolish the rental unit;
 - ii. Renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - iii. Convert the residential property to strata lots under the Strata Property Act;

- iv. Convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
- v. Convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or
- vi. Convert the rental unit to a non-residential use.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

Section 51 states a tenant who receives a notice to end a tenancy under Section 49 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. The Section goes on to say that in addition to the amount payable noted above, if 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 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, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Section 50 of the *Act* allows that if a landlord gives a tenant notice to end a tenancy under section 49, the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

Compensation allowed for under Section 51 and the right for the tenant to end the tenancy with 10 days' notice under Section 50 are predicated on the tenant's receipt of an enforceable 2 Month Notice to End Tenancy for Landlord's Use of Property under Section 49. As noted above Section 52 requires a notice to end tenancy issued by the landlord to include certain specific information and be "in the approved form". Approved forms are found on the Residential Tenancy Branch website.

As per the tenant's email response dated July 16, 2015 the tenant stated he had contacted the Residential Tenancy Branch and found out that the landlord could not end the tenancy in this manner. Specifically, he noted that there was a "specific form" required to end the tenancy in such a manner.

Based on the testimony and evidence before me, I find the tenant was never issued a 2 Month Notice to End Tenancy for Landlord's Use of Property; that he was aware the letter of June 29, 2015 was not a 2 Month Notice and as such, the tenant was not

required to vacate the rental unit as a result of the landlord's letter. I therefore find the tenant is not entitled to any compensation under allowed under Sections 51 or 50 of the *Act*.

Furthermore, I find the tenant was not allowed to end the tenancy with 10 days' notice as allowed under Section 50 and was required to provide the landlord with a notice to end tenancy pursuant to Section 45.

Section 45 of the *Act* states a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As such, by giving the landlord his notice to end tenancy on July 31, 2015 I find the earliest the tenant could end the tenancy was August 31, 2015, pursuant to Section 53(1), which states if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with the applicable section of the *Act*, the notice is deemed to be changed the earliest date that complies with that section. As a result, I find the tenant is responsible for the payment of rent for the month of August 2015 in the amount of \$3,300.00.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

I also note that despite the landlord's issuance of a 1 Month Notice to End Tenancy for Cause it too was not a valid Notice. Section 47 does allow the landlord to end a tenancy to comply with an order from a federal, BC, regional or municipal government authority. However it does not allow the landlord to end the tenancy to comply with a strata bylaw.

In regard to the tenant's claim for moving costs, as I have found that the landlord did not issue a 2 Month Notice to End Tenancy for Landlord's Use of Property and the 1 Month Notice to End Tenancy for Cause was not a valid notice to end the tenancy, I find that the tenancy actually ended as a result of the tenant's notice, which as noted above was effective August 31, 2015.

Based on the testimony and evidence of both parties, while I accept the landlord issued a letter attempting to end the tenancy and an invalid 1 Month Notice to End Tenancy for Cause, the tenant's remedy was that he was not required to move. If he was unsure of the validity of the letter and the Notice he did have the right to dispute them both.

In the case of the landlord's letter dated June 29, 2015, I am satisfied that the tenant was aware that it was not a valid notice by virtue of his statements in his email response dated July 16, 2015. And in the case of the 1 Month Notice the tenant could have filed

an Application for Dispute Resolution to seek to cancel the Notice as was outlined on the 1 Month Notice.

As such, I find the tenant vacated the rental unit based on his own decisions not to pursue cancelling either the letter or the 1 Month Notice. As a result, I find the tenant is not entitled to compensation from the landlord for any moving costs.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the tenant's acknowledgement I accept the tenant is responsible for the repair costs of the door handle in the amount of \$240.00 as claimed by the landlord. In regard to the landlord's claim for repairs to a window screen, I find the tenant has provided no reason to question the recordings in the Condition Inspection Report, as acknowledged by both residents of the rental unit when they signed the report. As a result, I find, on a balance of probabilities the tear occurred during the tenancy and the tenant is responsible for the repair in the amount of \$15.03 as claimed by the landlord.

As to the key replacement, I find that since I have determined the earliest the tenancy should have ended was August 31, 2015 I find the tenants had until that date to return all the keys to the landlord. As the tenants returned the final key on August 17, 2015 I find they have fulfilled their obligation to return them. I find the landlord's changing of the locks was premature. As a result, I dismiss this portion of the landlord's claim.

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 per the testimony of both parties I find the landlord received the tenant's forwarding address by August 10, 2015. As such, I find the landlord had until August 25, 2015 to either return the deposits or file an Application for Dispute Resolution to claim against the deposit. As the landlord filed his Application on August 20, 2015 I find the landlord has complied with Section 38(1) and the tenant is not entitled to double the amount of the deposit.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety without leave to reapply.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3605.03** comprised of \$3,300.00 rent owed; \$240.00 door handle replacement; \$15.03 screen replacement and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$3,300.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$305.03**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord 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: March 9, 2016

Residential Tenancy Branch