



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards



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Page: 1

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DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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.

At the request of the landlord I adjourned this matter from the previous hearing date as the landlord had to attend to a family emergency. The landlord's solicitor translated the landlord's evidence from Punjabi to English.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on November 20, 2016. With respect to each of the applicants' claims I find as follows:

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 recover the cost of the filing fee?

Background and Evidence

The tenancy began in November 1994. The tenancy ended on May 30, 2015 after the landlord served a 2 month Notice to End Tenancy on the Tenants. The rent at the time the tenancy ended was \$900 per month payable on first day of each month. The tenant(s) paid a security deposit of \$422.50 on November 5, 2004.

The tenant(s) provided the landlord with his/her their forwarding address in writing on July 30, 2015.

The tenants testified as follows:

- In March 2015 the landlord demanded the tenants pay a rent increase of \$400 per month. The tenants refused to pay this sum. On March 7, 2015 the landlord served a 2 month Notice to End Tenancy that set out the following grounds:
- In May the landlord proposed to the tenants they could continue to live in the rental unit by paying a rent increase of \$200 per month. The tenants refused. They testified there were problems with the rental unit and they did not trust the landlord would make the necessary repairs. Further, they had found alternative accommodation.
- The tenants vacated the rental unit at the end of May. The landlord avoided conducting a condition inspection. Eventually, the tenants returned the keys the next day by delivering them to the landlord's residence.
- The landlord and his family did not move into the rental unit. The tenants produced advertisements from Craigslist advertising the rental property for \$1300 per month.
- The tenants sent a letter by registered mail on July 30, 2016 providing the landlord with their forwarding address in writing.
- The utilities was in the name of the applicants. They share the payment of those utilities with the downstairs tenants. The downstairs tenants failed to pay their share of the utilities and they owed the applicants \$118.40.
- The tenants have not agreed in writing with the landlord that the landlord can keep the security deposit. The landlord does not have a money order against the tenants and has not filed a claim to keep the security deposit.

The landlord testified as follows:

- He denied that he demanded that the tenants pay the increase in rent as testified by the Tenants.
- The tenants have caused significant damage to the rental unit. He testified he has paid out \$7555 repairing the damage. He produced a number of invoices for the repair of drywall, plumbing and the fixing of the floor.
- At the time he gave the 2 month Notice to End Tenancy he intended to move into the rental unit with his family and grandparents. However, the grandparents and his children refused to move in at the last minute.
- The tenants left a considerable amount of garbage including an old television.
- The tenants refused to be available to conduct an inspection.
- He sent the tenants a letter asking the tenants to attend the rental unit so that he could show them the damage and then return the security deposit.

- The tenants intentionally returned the keys at a time when they knew he was not home.

Analysis - Tenants Application

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

With regard to each of the tenants' claims I find as follows:

- a. The tenants paid a security deposit of \$422.50 on November 5, 2004. The security deposit plus interest totals \$14.96. I determined the tenancy ended on May 31, 2015. I further determined the tenants provided the landlord with their forwarding address in writing on July 30, 2015. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. I do not accept the testimony of the landlord that the tenants failed to be available to conduct an end of tenancy inspection. As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$850. They are also entitled to interest in the sum of \$14.96. However, they are not entitled to a doubling of the interest. In total the tenants are entitled to 864.96.

The landlord testified the tenants have caused significant damage. The tenants dispute this. They testified the tenancy lasted over 20 years and the landlord failed to properly maintain the rental unit. The landlord failed to file an Application for Dispute Resolution. An arbitrator has no jurisdiction to consider the landlord's claims in the absence of the landlord filing an Application for Dispute Resolution. .

- b. The landlord served a 2 month Notice to End Tenancy dated March 7, 2015. The Notice was served under section 49 and provided the following as the grounds for ending the tenancy:

- 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

Section 51 of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

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.

I find that the landlord failed to comply with the requirements of section 51(2). The landlord failed to move into the rental unit. The fact the landlord may have changed his mind about moving is not a defense. The landlord advertised the rental unit for rent at the end of June and subsequently rented it to another

person. As a result I determined the tenants have established a claim to the equivalent of double the rent or the sum of \$1800.

- c. I dismissed the claim of \$10.86 for the cost of a registered letter. This relates to the cost of litigation. The only jurisdiction an arbitrator has relating to costs is the cost of the filing fee.
- d. Policy Guideline #1 includes the following:

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.

2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

I determined the tenants are entitled to \$118.41 for the cost of the utilities that were not paid by the downstairs tenants. The landlord testified that the downstairs' tenants told him they paid this sum. However, the downstairs tenants did not attend the hearing. I accept the live testimony of the applicants that the downstairs tenants failed to pay this sum.

- e. I dismissed the tenants claim of \$468.30 for the cost of moving. Prior to 2004 the Residential Tenancy Act provided that a tenant could claim reasonable moving expenses if the landlord served a 2 month Notice. This provision was changed to give greater certainty by allowing the tenants the equivalent of one month notice under section 51(1). To award the tenants this sum would result in double recovery.
- f. I dismissed the claim of the tenants for two months difference in rent. The tenants failed to prove this is a foreseeable loss relating to the landlord's failure to move into the rental unit as set out in the Notice to End Tenancy.
- g. I dismissed the claim of \$90.50 for the cost of re connection charges for TV phone internet as the tenants failed to prove this is a foreseeable loss relating to the landlord's failure to move into the rental unit as set out in the 2 month Notice to End Tenancy.

Monetary Order and Cost of Filing fee

In summary I ordered the landlord(s) to pay to the tenants the sum of \$2783.37 plus the sum of \$50 in respect of the filing fee paid for a total of \$2833.77.

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: August 2, 2016

Residential Tenancy Branch

