



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CEDAR COTTAGE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD OLC DRI FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant applied for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; an order regarding a disputed additional rent increase pursuant to section 43; authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage or loss against the tenant?
Is the tenant entitled to a monetary order for damage or loss against the landlord?
Are the tenants entitled to retain the security deposit or is the landlord entitled to retain the security deposit to offset any monetary order?
Is either party entitled to recover the filing fee for their application?

Background and Evidence

This tenancy began in November 2005 as a one year fixed term and continued on successive one year fixed terms until December 31, 2015. The rental amount of \$1265.00 was payable on the first of each month. The landlord returned the tenants' \$632.50 security deposit at the end of the tenancy.

The landlord testified that, after the end of the tenancy and the move out inspection that she realized there was damage to the walls in the rental unit. The landlord originally applied to recover \$5000.00 from the tenants for repair of damage to the unit. At the outset of the hearing, the landlord was allowed to amend her claim to \$500.00. She submitted a copy of an invoice indicating an amount of \$500.00 with no breakdown of costs, labour or supplies. The landlord testified that there were holes in the walls at the end of the tenancy. She testified that the tenants put a cabinet on the wall and, when they took the cabinet down, they left holes. The landlord was asked when the unit was last painted but she was unable to provide that information. She testified that the unit was "new-ish".

The parties agreed that the landlord issued a 2 Month Notice to End Tenancy for Landlord's use to the tenant on September 21, 2015. The parties agreed that the tenant disputed the notice and that, at a previously scheduled hearing, the dispute between the parties was resolved when the tenant withdrew her application to cancel the 2 Month Notice. At that time, the landlord was issued an Order of Possession.

The landlord's 2 Month Notice indicated as the grounds to end the tenancy both that,

- 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
- 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

The landlord provided sworn testimony that none of her immediate family reside in the unit. She testified that she hopes to renovate the unit soon but that there is no scheduled start date for renovations. The landlord did not claim that the residential premises had been sold.

The tenant testified that the rental unit had been her home for 10 years. She testified that moving was both emotionally and financially challenging. She submitted that she had excessive moving costs because of the short time line to end her long term tenancy and the difficulty in relocating based on the vacancy rate and other financial factors. The tenants applied to recover \$4117.38 from the landlords for 2 months' rent as compensation for the landlord's failure to use the premises as described in the 2 Month Notice as well as moving expenses. She submitted some documentary evidence to show her costs for moving.

The tenant submitted that the landlord provided no evidence to support her claim for damage to the unit. She testified, as did one of her witnesses that the rental unit was left clean tidy and in good repair. She submitted that, if there were nail holes or other small items to be repaired, they were within the scope of the normal wear and tear expected during a tenancy. She also submitted that the landlord did not use the rental unit as described in the 2 Month Notice.

The tenant relied on the witness testimony of her friend regarding the state of her rental unit as well as the testimony of the previous building owner and landlord. He testified to the tenant's long term tenancy and the fact that she was compensated for assisting with building caretaker responsibilities in the past.

Analysis

The landlord issued a 2 Month Notice to End this tenancy pursuant to section 49(3), a landlord may end a tenancy relying mainly on the claim that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The tenant ultimately complied with the end to tenancy and vacated the rental unit on December 31, 2015.

Section 51 of the *Act* provides the requirements of a landlord to comply with the terms of a 2 Month Notice to End Tenancy:

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 tenant relies on section 51(2) submitting that the landlords neither took steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the (corrected) effective date of the notice (December 31, 2015) nor used the rental unit for the purpose stated for at least 6 months beginning within a reasonable period after the effective date of the notice.

The landlord was candid in her testimony that the rental unit was not used in accordance with any of the grounds provided on the 2 Month Notice. I accept the tenants' submissions (and the landlord's confirmation) that the landlords did not use the rental unit for the stated purpose for at least 6 months after the effective date of the notice. I note that the landlords did not provide any explanation as to why the rental unit was not being used as indicated nor did the landlord provide an indication if the rental unit would be used for the purpose stated. Therefore, pursuant to section 51(2) and the landlord's failure to meet the terms of the 2 Month Notice, I find the tenants are entitled to the equivalent of double the monthly rent payable under the tenancy agreement, \$2530.00.

The tenant also sought an additional \$1537.38 to reflect moving costs and related expenses. She supplied some receipts reflecting her costs. The tenant argued that she would not have incurred this cost but for the landlord's erroneous issuance of the 2 Month Notice. Section 51(2) provides the tenant's recourse if the landlord fails to comply with the Act and act in accordance with their 2 Month Notice to End Tenancy. I have determined that the tenant is entitled to the compensation allowed under section 51(2). I do not believe that it would be consistent with the Act to compensate the tenant further for the landlord's actions. For that reason, I do not find that the landlord is entitled to receive \$1537.38 in additional costs.

The tenants' security deposit was returned by the landlord. Residential Policy Guideline No. 1 that indicates that a tenant is responsible for all deliberate or negligent damage to the walls and excessive nail holes. I find there is insufficient evidence presented by the landlord that the nail holes or wall damage was excessive. Therefore, I find that the landlord is not entitled to recover a cost for damage or loss. I dismiss the landlord's claim for a monetary order for damage to the unit.

As the landlord has been unsuccessful in her application, I find that the landlord is not entitled to recover the filing fee for this application.

The tenant withdrew her application regarding dispute of a rent increase. The tenant's security deposit was returned by the landlord. The tenant is entitled to retain the security deposit. As the tenant was successful in part in her application, I find that she is entitled to recover the filing fee for her application.

Conclusion

I grant a monetary order totalling \$2630.00 to the tenant. 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: October 03, 2016

Residential Tenancy Branch