



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD (Tenant's Application)
 MND, MNR, MNSD, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications wherein the parties each sought monetary compensation from the other. The Tenant sought return of double her security deposit in addition to two month's rent pursuant to section 51(2) of the *Residential Tenancy Act*. The Landlord sought to retain the security deposit as well as a Monetary Order for unpaid rent and utilities as well as recovery of the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 compensation equal to two month's rent pursuant to section 51(2)?
3. Is the Landlord entitled to monetary compensation for unpaid rent and utilities?

4. Should the Landlord be entitled to retain the Tenant's security deposit?
5. Should the Landlord recover the filing fee?

Background and Evidence

The Tenant testified as follows.

She stated that the tenancy began in July 2012 with the previous owner of the rental property, J.S. At the start of the tenancy the rent was \$1,400.00. The Tenant paid a security deposit in the amount of \$700.00. The Tenant stated that she was also to pay 70% of the utilities with the lower unit paying 30%.

The Tenant stated that to her knowledge the rental property was sold some time before January 2016. She further stated that the new Landlord, R.S., (the one named on her application) took over the property on February 1, 2016. R.S. issued a 2 Month Notice to End Tenancy for Landlord's Use on February 1, 2016 (the "Notice"). The reasons cited on the Notice were that, "[t]he Landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant."

The Tenant stated that at the time she received the Notice she was paying \$1,300.00 per month as a result of an agreement she had with the previous owner.

The Tenant stated that she moved from the rental property on March 31, 2016. She confirmed that the Landlord gave her a free month's rent.

The Tenant stated that the Landlord did not renovate the rental unit, but instead sold the property. She stated that her reason for believing this was because in the months from January through March 2016 the Landlord's realtor contacted her for regular weekend open house viewings of the rental property. The Tenant stated that to her knowledge the rental property was then sold.

The Tenant stated that she gave the Landlord her forwarding address in writing on April 22, 2016. She confirmed that the Landlord failed to return her security deposit at this time and failed to make an application for dispute resolution.

In response to the Landlord's monetary claim, the Tenant stated that the Landlord insisted that the Tenant to pay the full amount of the utilities. She stated that she also asked the Landlord to provide her with copies of the utility accounts and the only account he provided was the gas utility bill dated March 2, 2016 in the amount of \$310.52. She confirmed she was agreeable to paying 70% of this amount.

The Tenant further stated that the Landlord's claim for compensation for damage was false, as there simply was no damage; she further claimed that the rental unit was very clean and she asked the Landlord to come and inspect the rental unit. She also stated that the Landlord refused to do a move out condition inspection report. She stated that when she first moved in the house was very dirty and the previous Landlord had to come in and clean at the start of the tenancy.

The Landlord testified as follows.

He confirmed that he did not perform a move in condition inspection report when he purchased the rental property. He further confirmed that he did not perform a move out condition inspection report with the Tenant.

The Landlord testified that he fully renovated the rental unit, as well as the entire house after the tenancy ended. When I asked what renovations he completed, he stated that he put in new flooring, new paint, a new sun deck, a new kitchen and new appliances. When I brought it to the Landlord's attention that he failed to provide evidence of such an extensive renovation, he submitted that he provided receipts for paint. He then stated he did not have time to provide further evidence because he works full time.

Introduced in evidence by the Landlord were two receipts dated June 11, 2016 in the amount of \$5.28 respectively and \$7.83 for a paint roller and spackle.

The Landlord stated that he has not sold the rental unit although it remains listed for sale.

The Landlord failed to provide a copy of the residential tenancy agreement in evidence.

The Landlord submitted that he provided the utility bills to the Tenant when he received the bills from the gas utility company. He confirmed that the utility reminder that he received from the City in which the rental unit was located was not received until after the tenancy ended.

Notably, the utility bill from the City submitted by the Landlord refers to an outstanding utility bill. It is not clear the time period for which this bill relates. It is also not clear whether the full bill remains outstanding, or if the amount owing relates to the downstairs' tenants share.

In reply, the Tenant stated that she was never provided a copy of the electrical utility bill. She confirmed that the only bill she received was the gas utility bill in the amount of \$310.51. She reiterated that she was agreeable to paying the 70%, but was not willing to pay the full amount. She confirmed that she is willing to pay the 70% which is \$217.36.

Analysis

I will first deal with the Tenant's claim for return of double her security deposit.

Section 38 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit. Further, there was also no evidence to show that the Landlord had applied 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.

The Landlord conceded that he did not perform and incoming our outgoing condition inspection. By failing to perform incoming or outgoing condition inspection reports the Landlord has extinguished his right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes he is entitled to monetary compensation from the Tenant, he must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing him to retain a portion of the Tenant's security deposit. Here the Landlord did not have any such 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. Therefore, I

award the Tenant recovery of double her security deposit (\$700.00) in the amount of **\$1,400.00**.

The Tenant made an application 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.

...

(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 that “[t]he Landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.”

The Tenant testified that the Landlord did not substantially renovate or repair the rental unit, but rather put the property on the market for sale. The Landlord testified that he had performed a complete renovation. In support, the Landlord submitted receipts totalling less than \$20.00 for a paint roller and some spackle. The Landlord also stated that the property remains for sale, although he has not sold.

I am unable to find that the rental unit was demolished or substantially repaired/renovated to an extent that the Landlord required vacant possession. I accept the Tenant’s evidence that instead the Landlord listed the property for sale. It is possible that she could have remained in the rental unit during the listing, as well as in the event the property was purchased by a third party. The evidence does not establish that her tenancy needed to end, and therefore I find, based on the evidence before me that the rental unit was not used for the purpose stated on the Notice.

Accordingly, I find the Tenant has proven her claim for compensation pursuant to section 51(2) and I therefore award her the sum of **\$2,600.00** representing the equivalent to two month's rent (\$1,300.00 the amount payable at the end of the tenancy).

I will now address the Landlord's claim for outstanding utilities, unpaid rent and damage to the rental unit.

I am unable, based on the evidence before me, to determine the time period for which the municipal utility bill remains outstanding, nor am I able to determine whether the amount indicated on the May 4, 2016 utility reminder notice relates to the Tenant's portion. Accordingly, I decline the Landlord's request for compensation for this utility as I find he has failed to provide sufficient evidence to prove this claim.

I further accept the Tenant's evidence that the Landlord failed to provide her with a copy of the electrical utility bill. Notably, that bill was not provided in evidence. Accordingly, I decline the Landlord's request for compensation related to the electrical utility bill.

The Tenant agreed to paying 70% of the gas utility bill in the amount of \$310.52. Accordingly, I award the Landlord compensation for **\$217.36**.

On the Landlord's application for Dispute Resolution he indicated that he sought compensation for three days of occupation of the rental as well as damage to the drywall. He failed to make any submissions on either of these claims. Accordingly, I dismiss this portion of this claim. As the Tenant was substantially successful, I decline the Landlord's request for recovery of the filing fee.

The amounts awarded to each are to be set off as follows:

\$1,400.00 representing double the security deposit
+\$2,600.00 representing compensation pursuant to section 51(2)

= \$4,000.00 total awarded to the Tenant

-\$217.36 awarded to the Landlord for the Tenant's share of the gas utility

\$3,782.64 total Monetary Order in favour of the Tenant

Conclusion

The Tenant is entitled to return of double her security deposit in addition to compensation equivalent to two month's rent pursuant to section 51(2). The Landlord is entitled to compensation for the Tenant's share of the gas utility.

These amounts are set off against one another such that I Order, pursuant to sections 38, 51(2) and 67 of the Act, that the Landlord pay the Tenant the sum of **\$3,782.64**. The Tenant is granted a Monetary Order for this amount and must serve the Order on the Landlord as soon as possible. If necessary, she may file and enforce the Order in the B.C. Provincial Court (Small Claims Division) 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: November 25, 2016

Residential Tenancy Branch