Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNSD, MNDC, FF
Tenant: MNDC, FF

Introduction

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

The hearing was conducted via teleconference and was originally convened in response to the landlords' Application for Dispute Resolution scheduled for November 3, 2016. At that time the tenant requested an adjournment due to the unavailability of the tenant's witness. The tenant also requested that the hearing be reconvened to also address his Application for Dispute Resolution that had been scheduled for November 22, 2016.

As per my interim decision of November 4, 2016 I granted the adjournment and crossed these Applications to be heard at the same time and by the same arbitrator, myself.

While the tenant's Application for Dispute Resolution did not include a check mark on the box stating the tenant was seeking return of his security deposit I note that his summary of claim clearly indicates the tenant wants return of the double the deposit and interest.

As the landlords had noted on their Application for Dispute Resolution that they were seeking the deposit, I would have already been considering whether or not the landlord were entitled to retain the deposit and in the alternative required to return the deposit and whether there should be any interest or doubling of the original amount.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for overholding; for bailiff charges and fees; for landscaping; for cleaning; 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 37, 38, 57, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be determined if the tenant is entitled to a monetary order for double the amount of the security deposit plus interest; for the equivalent of 8 days rent; for moving costs; for hotel costs; lost wages for all members of his family; for a replacement electrical panel and to recover

the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 38, 57, 67, and 72 of the *Act.*

Background and Evidence

The landlord submitted the tenancy began in November 1997 for a current monthly rent of $775.00 due on the 1st of each month with a security deposit of $400.00 paid. The tenant stated that the tenancy actually began on May 11, 1997 and that rent was due on the 2nd of each month.

The only evidence relevant to this issue was a copy of a receipt provided as evidence by the tenant for the payment of a security deposit dated November 1, 1997. The landlord referred to previous hearings between these two parties that determined the tenancy began in November 1997.

The landlord submitted that on March 24, 2016 he was granted a Decision and an Order of Possession effective for April 30, 2016. I note the tenant submitted an Application for Review Consideration on that Decision and that a Decision dated April 7, 2016 the Application for Review Consideration was dismissed and the Decision and Order of March 24, 2016 were confirmed.

I also note the Order of Possession was issued based on the landlord's issuance of a 2 Month Notice to End Tenancy for Landlord's Use; specifically that the landlord had all the 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 be vacant.

The landlord determined that the tenant did not intend to move out of the rental unit on April 30, 2016 in accordance with the Order of Possession and so he successfully sought, through the Supreme Court of British Columbia, a Writ of Possession. Once he obtained the Writ the landlord engaged a bailiff to have the tenant's belongings physically removed. On May 4, 2016 the bailiff executed the Writ.

The landlord seeks compensation for the costs of the bailiff in the amount of $2,507.11; the administrative costs to obtain the Writ of Possession in the amount of $126.50; and 4 days of overholding in the amount of $100.00.

The tenant submitted that despite the Order of Possession granted by the Residential Tenancy Branch Arbitrator and the Writ of Possession granted by the Supreme Court of British Columbia he was told by an Information Officer at the Residential Tenancy Branch that he could stay in the rental unit until the day in the month that the tenancy began in 1997. The tenant states that

the tenancy began on May 11, 1997 and as such he had until May 11, 2016 to vacate the rental unit.

As such, the tenant believes that he should not be responsible for the costs incurred by the landlord for hiring a bailiff as he was planning on moving out by the 11th of May 2016. The tenant also believes he should be charged for overholding.

Based on the belief that he did not have to vacate until May 11, 2016, the tenant also submits that the landlord owes him for the cost of moving his belongings in the amount of $397.16; the cost of staying in a hotel until he could move to his new accommodation in the amount of $533.76; and the lost wages for himself and all family members because of the time taken off to deal with the forced move in the amount of $875.00.

The tenant also seeks an additional 8 days rent in the amount of $206.66 as part of the compensation he was entitled to because the landlord had issued him a 2 Month Notice to End Tenancy for Landlord's Use of Property. The parties confirmed the tenant paid no rent for the month of April 2016.

The landlord also submitted that the tenant caused damage to the residential property by creating a basketball court. The landlord sought $1,254.40 for the removal of the basketball court. In support of this claim the landlord has provided photographs of the yard at the end of the tenancy and an estimate.

The landlord did not provide any evidence of the yard at the start of the tenancy. Both the tenant and his witness testified that the basketball court had been installed prior to the start of the tenancy.

The landlord seeks $400.00 for cleaning of the rental unit. In support of this claim the landlord has submitted additional photographs of the condition of the rental unit at the end of the tenancy. The landlord also submitted a number of generic estimates for cleaning rates. He also stated that it was hard to determine because the clean-up was completed by his contractor who was had been hired to complete renovations to the rental unit.

The tenant also seeks compensation in the amount of $2,700.00 for the purchase and installation of a new main electrical panel into the rental unit. The tenant submitted that the landlord authourized him, in 2010, to install a new electrical panel. He stated that he had a friend do the work and he had been paying off the work on a monthly basis.

The landlord disputed the tenant's claim that he had any authourity to change the electrical panel and this was the first the landlord was made aware of any such problem. The tenant provided no documentary evidence to support his claim that he was authourized by the landlord

to replace the panel or that it was actually replaced or that he paid anyone for it and its installation.

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 57 of the *Act* stipulates that an "overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to explain that the landlord must not take actual possession of a rental unit that is occupied by an overholding

tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules. Subsection (3) allows a landlord to claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Despite the tenant's testimony that he was told by staff at the Residential Tenancy Branch that his tenancy would only end on the day in the month that his tenancy began clearly Section 44 of the *Act* does not allow any such interpretation. As such, I find it highly unlikely that any staff member from the Branch would provide that type of information to the tenant.

In this case, I find the tenancy ended as a result of the landlord issuing a 2 Month Notice to End Tenancy under Section 49 and subsequent to the order made by the Arbitrator, on behalf of the director, that the tenancy would end on April 30, 2016.

As such, I find the tenant had no right to remain on the property after April 30, 2016. As a result, I also find that the tenant was overholding and the landlord is entitled to compensation in the amount of $100.00 for the 4 days in May 2016 that the tenant remained on the property.

In addition, I find that because the tenant failed to remove his belongings by the effective date of the Order of Possession the landlord was allowed to apply for an obtain a Writ of Possession. I also find the landlord has established that cost to execute the Order of Possession included the costs to obtain the Writ of Possession and the cost of all of the bailiff charges. I am satisfied that this amount totals $2,633.61.

As to the tenant's claims for moving costs; hotel stays; and lost wages for all of his family members, I find that these claims were based on the tenant's erroneous belief that he did not have to comply with either the Order of Possession or Writ of Possession. In fact, I find that tenant incurred these costs because he did not comply with either Order or the Writ.

As such, and in conjunction with my finding above that the landlord had every right to enforce the Order of Possession and Writ of Possession on the dates specified in both documents, I find the tenant has failed to provide any evidence that the landlord has violated the *Act,* regulation or tenancy agreement. Therefore I dismiss this portion of the tenant's claim.

In regard to the landlord's claim for landscaping I note that while the landlord submitted that the basketball court was installed during the tenancy both the tenant and his witness testified that it was there when the tenant moved into the residential property.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In this case the burden rests with the landlord to provide additional evidence to support his claim. However, the landlord has provided no evidence of the condition of the yard at the start of the tenancy. As such, I find the landlord has failed to establish that the basketball court was installed after the start of the tenancy. I therefore, dismiss this portion of the landlord's claim.

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.

I find that this Section is intended to ensure that when a tenant vacates the property the unit is reasonable clean to provide to any new and incoming tenant. However, in this case the landlord did not have any intent to re-rent the unit. In fact, the landlord intended to complete renovations in a manner that required vacant possession of the unit. As such, I find there would be no need for the tenant to clean the rental unit to state required under Section 37. I dismiss this portion of the landlord's claim.

As to the tenant's claim for additional compensation in the amount of $206.66 for 8 days' worth of rent in accordance with the requirement of the landlord to pay the tenant the equivalent of 1 month's rent as compensation for ending the tenancy under Section 49 I find, the landlord has fulfilled this obligation.

Section 51 of the *Act* states that a tenant who receives a notice to end 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.

Since both parties agreed that the tenant made no payment of rent for the full 30 days of the month of May I find the landlord has provided the tenant with compensation in the correct amount pursuant to Section 51 and this portion of the tenant's claim is dismissed.

In regard to the tenant's claim for $2,700.00 for a new electrical panel, I find the tenant has provide absolutely no evidence to confirm that he even had a new panel installed, let alone how much it might have cost or that he had authourity to install it from the landlord. As such, I dismiss this portion of the tenant'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.

In the case before me, I find the landlords submitted their Application for Dispute Resolution seeking to retain the deposit on May 3, 2016 or 3 days after the end of the tenancy. As such, I find the landlords complied with their obligations under Section 38(1) and the tenant is not entitled double the amount of the deposit as per Section 38(6).

I also note that the tenant calculated the interest owed on his security deposit based on bank interest rates and not as per the deposit calculator found on the Residential Tenancy Branch website. The website lists the interest rates for the subject period to be as follows:

Period	Interest Rate
2009 - 2016	0.00%
2008	1.50%
2007	1.50%
2006	0.50%
2002 - 2005	0.00%
2001	3.00%
2000	2.00%
1999	2.25%
1998	1.50%
1997	0.25%

Based on the above table, I find the interest on the $400.00 deposit paid on November 1, 1997 totals $49.25.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **$2,783.61** comprised of $100.00 overholding rent owed; $2,633.61 bailiff and Writ costs; and $50.00 of the $100.00 fee paid by the landlord for this application as they were only partially successful in their claim.

I order the landlords may deduct the security deposit and interest held in the amount of $449.25 in partial satisfaction of this claim. I grant a monetary order in the amount of **$2,334.36**. 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: November 25, 2016

Residential Tenancy Branch