Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, OLC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that sometime in November of 2016 the Application for Dispute Resolution, the Notice of Hearing, and 55 pages of evidence the Tenant submitted with the Application were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On April 20, 2017 the Landlord submitted 26 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on April 20, 2017. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 25, 2017 the Tenant 5-page digital evidence detail sheet and a USB device to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord with the Application for Dispute Resolution. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions and they were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit and/or compensation for costs associated to the end of this tenancy?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began on March 01, 2012;
- a condition inspection report was completed at the start of the tenancy;
- a security deposit of $800.00 was paid in February of 2012;
- the Landlord did not schedule a time with the Tenant to jointly inspect the rental unit at the end of the tenancy;
- the rental unit was not jointly inspected at the end of the tenancy;
- the Landlord completed a final condition inspection report in the absence of the Tenant;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that on May 05, 2016 she placed a letter in the Landlord's mail box at the service address noted on the Application for Dispute Resolution. She stated that she provided the Landlord with her forwarding address in this letter. The Tenant submitted a copy of this letter, dated May 05, 2016.

The Tenant stated that on May 25, 2016 her lawyer sent a letter, via registered mail, to the Landlord at the service address noted on the Application for Dispute Resolution. She stated that she provided the Landlord with her forwarding address in this letter. The Tenant submitted a copy of this letter, dated May 25, 2016, although I note that it is not signed and it is not on letter head paper.

The Tenant stated that she lives at the service address noted on the Application for Dispute Resolution, but she did not receive the letter that was allegedly delivered to her home on May 05, 2016 or that was allegedly mailed to her on May 25, 2016.

The Tenant stated that she did not submit any evidence to corroborate her testimony that the aforementioned letters were mailed to the Landlord or left at the Landlord's residence.

The Tenant stated that the on March 30, 2016 the Landlord informed her that she was intending to sell the rental unit and she would prefer that the unit was vacant to facilitate the sale. The Landlord stated that she told the Tenant she was considering selling the rental unit but she did not tell her that she preferred to have the rental unit vacant to facilitate the sale.

The Landlord and the Tenant agree that the Landlord never served her with a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant is seeking compensation, in the amount of $1,600.00. This claim is based on the Tenant's belief that she should have been served with a Two Month Notice to

End Tenancy for Landlord's Use of Property since the Landlord wanted the rental unit to be vacant to facilitate the sale of the rental unit.

The Landlord and the Tenant agree that on April 09, 2016 they signed a Mutual Agreement to End a Tenancy, which served to end the tenancy on May 05, 2016. A copy of this document was submitted in evidence.

In regards to the Mutual Agreement to End a Tenancy the Tenant stated that:

- she very clearly informed the Landlord, verbally and through electronic communications, that she did not want to vacate the rental unit;
- when she signed the Mutual Agreement to End a Tenancy she believed that the tenancy was ending because the property was being sold and that she did not have the option of remaining in the rental unit because the unit was being sold;
- when she signed the Mutual Agreement to End a Tenancy she believed they were simply agreeing to the date she would be moving out of the rental unit;
- she feels she was "tricked" into signing the Mutual Agreement to End a Tenancy;
- she read the Mutual Agreement to End a Tenancy but she was tired, under a great deal of stress; and was undergoing chemotherapy treatment.

The Tenant is seeking a variety of moving costs, which she feels she is entitled to because the Landlord did not have the right to end this tenancy simply because she wanted it vacant while it was being marketed.

The Tenant stated that prior to signing the Mutual Agreement to End a Tenancy she believed she would be receiving one month's free rent in compensation for moving. She stated that the Landlord agreed to pay for a moving "pod". She stated that the Landlord also made references to additional compensation but they did not agree to a specific amount.

The Landlord stated that she agreed to pay to have a moving "pod" delivered to the rental unit and for the cost of renting the "pod", but she did not agree to pay to have the "pod" moved to the Tenant's new address and she did not agree to compensate the Tenant for moving in any other way.

The Tenant was unable to refer to any document that shows the Landlord agreed to pay any amount of her moving costs.

The Tenant submitted an invoice for the moving "pod", in the amount of $355.04, for delivery and rental. The Landlord stated that this invoice represents the moving costs she agreed to pay.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in

writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

There is a general legal principle that places the burden of proving a fact on the person that is claiming that money is owed to them. In these circumstances the burden of proving the Landlord did not comply with the *Act* rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord received the Tenant's forwarding address prior to the Tenant serving the Landlord with this Application for Dispute Resolution. In reaching this conclusion I was influenced by the absence of evidence that corroborates the Tenant's testimony that she left her forwarding address at the Landlord's residence on May 05, 2016 or to refute the Landlord's testimony that she did not receive this document. In reaching this conclusion I was further influenced by the absence of evidence, such as a Canada Post receipt, that corroborates the Tenant's testimony that a forwarding address was mailed to the Landlord on May 25, 2016 or to refute the Landlord's testimony that she did not receive this document.

On the basis of the undisputed evidence I find that the Landlord did receive the Tenant's forwarding address when she was served with the Tenant's Application for Dispute Resolution. I find that the legislation contemplates that the forwarding address be provided, in writing, prior to a tenant filing an Application for Dispute Resolution. I find it would be unfair to the Landlord to conclude differently, as the Landlord may be led to believe that it is too late for the Landlord to make a claim against the deposit because the matter is already scheduled to be adjudicated.

As there is insufficient evidence to establish that the Tenant provided the Landlord with a forwarding address prior to filing an Application for Dispute Resolution, I dismiss the application to recover the security deposit, with leave to reapply. The Tenant retains the right to provide the Landlord with a forwarding address, in writing, in a manner than complies with section 88 of the *Act.*

As the deadline for providing the Landlord with her forwarding address that is established by section 39 of the *Act* has expired, I find it would be unfair to the Tenant to conclude that she no longer had the right to provide the Landlord with a forwarding address, given that an address was provided with the Application for Dispute Resolution.

To provide both parties with a fair and reasonable opportunity to resolve the matter of the security deposit I will extend the time limit for providing the forward address, pursuant to section 66 of the *Act.* I hereby Order that the Tenant has until May 31, 2017 to serve the Landlord with her forwarding address.

The Tenant retains the right to file another application to recover the security deposit if the Landlord does not return the security deposit or claim against the deposits, in a manner that complies with section 38 of the *Act,* after being provided with the

forwarding address.

The Landlord retains the right to file an Application for Dispute Resolution making a claim against the security deposit once she is served with the Tenant's forwarding address.

Section 35(2) of the *Act* stipulates that a landlord must offer a tenant at least two opportunities to participate in an inspection of the rental unit at the end of the tenancy, as prescribed by section 7 of the *Residential Tenancy Regulation*. Section *7* of the *Residential Tenancy Regulation* stipulates that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times and that if the tenant is not available at the date(s)/time(s) offered the landlord must propose a second opportunity in the approved form.

On the basis of the undisputed evidence I find that the Landlord did not comply with section 35(2) of the *Act*, as she did not schedule a time to inspect the rental unit at the end of the tenancy.

Section 36(2)(a) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with section 35(2) of the *Act.* As I have concluded that the Landlord failed to comply with section 35(2) of the *Act*, I find that the Landlord's right to claim against the security deposit for damage to the rental unit is extinguished. The Landlord may be required to return double the security deposit if she does not return the security deposit within 15 days of receiving the forwarding address even if she files a claim against the security deposit for damage to the rental unit, given that her right to claim for damage is extinguished.

Regardless of my finding that the Landlord's right to file a claim against the security deposit for damage to the rental unit has been extinguished, the Landlord retains the right to file a claim against the security deposit for losses not related to damage to the rental unit, such as unpaid rent or lost revenue.

Section 49(5) of the *Act* authorizes a landlord to end a tenancy if 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 because the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit or the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

As there is no evidence that the landlord had entered into an agreement to sell the rental unit by the time this rental unit was vacated, I cannot conclude that the Landlord had the right to end this tenancy pursuant to section 49(5) of the *Act.* I note that there is nothing in the *Act* that authorizes a landlord to end a tenancy simply because the

landlord wishes to sell the rental unit.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* 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. As the undisputed evidence is that the Landlord did not serve the Landlord with a Two Month Notice to End Tenancy for Landlord's Use of Property, I find that the Tenant is not entitled to compensation pursuant to section 51(1) of the *Act.* I therefore dismiss the Tenant's application for $1,600.00.

On the basis of the undisputed evidence I find that the Landlord and the Tenant signed a Mutual Agreement to End a Tenancy which declared the tenancy was ending on May 05, 2016. I find that this document served to end this tenancy on May 05, 2016, pursuant to section 44(1)(c) of the *Act.*

I find that the Mutual Agreement to End a Tenancy is very simple and clear and that the Tenant knew, or should have known, that by signing this form she was mutually agreeing to end this tenancy on May 05, 2016.

Although I accept that the Tenant was physically and emotionally compromised when she signed the Mutual Agreement to End a Tenancy, I find that there is insufficient evidence to establish that the Landlord unduly coerced the Tenant into signing this document. I find that the Tenant should have made efforts to understand this document prior to signing it, either by contacting the Residential Tenancy Branch or by seeking legal advice.

In adjudicating this matter I have placed no weight on the Tenant's submission that she clearly informed the Landlord that she did not wish to vacate the rental unit. I find that this is largely irrelevant, as a landlord has the right to market and sell a rental property even if the timing of the anticipated sale does not suit the tenant.

In adjudicating this matter I have placed little weight on the Tenant's submission that she signed the Mutual Agreement to End a Tenancy because she believed that the tenancy was ending because the property was being sold and she believed she did not have the option of remaining in the rental unit because the unit was being sold. In the event the Tenant wished to remain in the rental unit until the Landlord had the right to end the tenancy pursuant to section 49(5) of the *Act*, the Tenant had every right to research her legal options and to delay her move by declining to sign the Mutual Agreement to End a Tenancy.

As the Tenant was under no obligation to mutually agree to end this tenancy, I find that she is not entitled to any compensation for costs associated to moving out of the rental unit. I therefore dismiss the Tenant's application for moving costs, with the exception of moving costs agreed to by the Landlord.

On the basis of the undisputed evidence I find that the Landlord agreed to pay to have a

moving “pod” delivered to the rental unit and for the cost of renting the “pod”. As this was an agreement the parties made during the tenancy, I find that the Landlord is obligated to pay these costs. I therefore award the Tenant $355.04 for the cost of delivering and renting a “pod”.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord agreed to have the “pod” moved to the Tenant’s new address. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant’s submission that the Landlord also agreed to pay for moving the pod to her new home or that refutes the Landlord’s testimony that she did not agree to pay for these costs. As there is insufficient evidence to establish that the Landlord agreed to have the “pod” moved to the Tenant’s new address, I dismiss her claim for this cost.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord agreed to compensate the Tenant for moving in any other manner. In reaching this conclusion I was heavily influenced by the Tenant’s testimony that no other specific amount of compensation was agreed to and by the Landlord’s testimony that she did not agree to pay compensate the Tenant in any other manner. As the Landlord did not promise any other compensation, I find that the Tenant is not entitled to additional compensation.

I find that the Tenant’s Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $455.04, which includes $355.04 for the moving “pod” and $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: May 09, 2017

Residential Tenancy Branch