



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for authorization to obtain a return of her security deposit and an amount equivalent to the deposit as a result of the landlord's failure to comply with section 38; an amount equivalent to 2 months' rent as a result of the landlord's failure to act in accordance with his 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 51; and authorization to recover her filing fee 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. The landlord confirmed receipt of the tenant's Application for Dispute Resolution including the Notice of Hearing. The tenant confirmed receipt of the landlord's evidentiary package.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit?

Is the tenant entitled to an amount equivalent to her deposit for the landlord's contravention of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began in 2014. The parties present at this hearing, the tenant and the current landlord were not able to provide an exact date on which the tenancy began. The original tenancy agreement between the tenant and the former landlord was in writing, according to the tenant but the new agreement with the current landlord was a verbal agreement only. The rental amount of \$1550.00 was payable on the first day of each month. Over the course of the hearing, the tenant and landlord agreed that a security deposit of \$775.00 continues to be held by the landlord. The tenant vacated the

rental unit on August 30, 2016 after the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use.

With respect to the amount of the security deposit, the landlord initially testified that the security deposit held was \$750.00. The tenant testified that the amount was \$775.00. The landlord acknowledged, during the course of the hearing, that the rental amount of \$1550.00 was correct and the security deposit amount of \$775.00 was corrected: he had failed to account for his \$50.00 discount in the rent for lawn work.

The parties agreed that the landlord issued a 2 Month Notice to End Tenancy on June 14, 2016 indicating that a close family member would be moving into the residence. The landlord's 2 Month Notice, entered into written evidence, identified the following reasons for seeking an end to this 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...

The landlord testified that he intended to move his sister into the rental unit when she moved to Canada. Therefore, the landlord issued a 2 Month Notice to the tenant. He testified that when he told his sister what the rental amount, she stated that she would not move into the rental unit: she would find a less expensive unit. The landlord testified that, when he became aware that his sister would not move into the rental unit, the landlord advised the tenant that she could remain in the rental unit if she wished. He testified that this occurred in the middle of August 2016.

The tenant testified that, when the landlord approached to advise her that she could remain in the rental unit, the tenant had already accepted and placed a security deposit on a new rental unit. She told the landlord that she was unable to stay. The tenant questioned whether the landlord intended to have his sister move into the rental unit at all. The tenant submitted that the landlord's sister is not a "close family member" according to the Residential Tenancy Act. The tenant also submitted that she believes the landlord intended to re-rent the unit for a higher rental amount.

The landlord testified that he placed an advertisement online to re-rent the unit prior to the tenant's move out date. He testified that the unit was re-rented as of September 1, 2016. He testified that the unit was re-rented with a monthly rental amount of \$1700.00. He confirmed the testimony of the tenant that he had originally advertised the rental unit for \$1800.00 monthly.

The landlord testified that he retained the tenant's security deposit because the tenant did not pay rent in August 2016. The landlord explained that, while he had agreed to let the tenant live rent free in August as compensation for the end of tenancy on the basis of a 2 Month Notice, he felt that he could retract that offer after he advised her that she could remain in the rental unit in mid-August 2016. Both parties agreed that a condition inspection was conducted at the end of this tenancy. The landlord testified that there was no damage or cleaning issues with the rental unit at the end of the tenancy.

The tenant sent a letter to the landlord on October 12, 2016 requesting her security deposit and providing her forwarding address. The tenant testified that this letter was the second time that she supplied the landlord with her forwarding address. She was uncertain as to the previous date. A copy of her letter was submitted as evidence at this hearing.

The landlord did not dispute that he owes the tenant \$88.00 as a portion of the utilities that the tenant paid for the rental unit. The tenant testified that she paid utilities but that the landlord compensated a 40% portion of the utilities. The residential tenancy agreement confirms this arrangement. The tenant provided undisputed testimony that she has not received payment from the landlord for the final utility bill as of the date of this hearing.

Analysis

With respect to the tenant's claim to recover her security deposit, section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must also pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, I find the landlord was informed of the forwarding address in writing on October 12, 2016. The landlord had 15 days after October 12, 2016 to take one of the actions outlined above.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if “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.” The tenant testified that she did not agree to allow the landlord to retain any portion of her security deposit. As there is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of her deposit, section 38(4)(a) of the *Act* does not apply to the tenant’s security deposit.

The tenant seeks return of her security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenant’s deposit as required by section 38 of the *Act*. The landlord testified that he was unaware of his obligations with respect to the tenant’s security deposit. In all of the circumstances, including the landlord’s candid testimony that the tenant’s rental unit was clean and without damage, I find the tenant is entitled to recover her security deposit in the amount of \$775.00.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch’s Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant’s forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant’s written agreement to deduct from the security deposit for damage to the rental unit after the landlord’s right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed evidence of the tenant before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant’s security deposit in full within the required 15 days. I accept the tenant’s testimony that she has not waived her right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord’s failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, **I find that the tenant is therefore entitled to a total monetary order amounting to double the value of her**

security deposit (2 x 775.00 = \$1550.00) with any interest calculated on the original amount only. No interest is payable for this period.

The tenant claimed that the landlord owed her \$88.00 for his portion of her monthly utility bill. She provided undisputed testimony at this hearing that the utility amount was reconciled between parties with the landlord paying 40%. The landlord did not dispute the arrangement as described or that he owed the tenant \$88.00 towards a utility bill paid by the tenant. Therefore, **I find that the tenant is entitled to \$88.00 from the landlord for the utility bill paid.**

With respect to the tenant's claim that the landlord did not use the rental unit in accordance with the details of his 2 Month Notice, pursuant to section 49(3), a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The tenant complied with the end to tenancy, vacating the rental unit prior to the effective date of the Notice (September 1, 2016). The landlord complied with the tenant compensation provision.

Section 51 of the *Act* provides further requirements of a landlord with respect to the issuance 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 landlord neither took steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice (September 1, 2016) 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 tenant provided undisputed testimony that the landlord advertised the rental unit prior to her move out seeking a renter to pay \$1800.00 monthly rent. The tenant provided undisputed testimony that the landlord re-rented the rental unit the day after she vacated the rental unit. The landlord provided candid testimony that he re-rented

the unit, providing an explanation of the circumstances which led to his sister not moving into the rental unit. The landlord submitted that, as he gave the tenant an opportunity to stay in the rental unit, he should not be required to provide further compensation.

The tenant testified that she believes the landlords issued a 2 Month Notice to End Tenancy to increase the rental amount for the unit. I find that both parties testified candidly with respect to the discussions at the end of the tenancy and the tenant's decision to vacate the rental unit despite the landlord telling her she could remain in the unit in mid-August 2016.

The landlord submitted that the 2 Month Notice to End Tenancy was issued in good faith. However, this is not the standard that the landlord is required to meet in these circumstances. Furthermore, I note that the landlord perhaps did not take the requisite steps to confirm that a family member was moving in before he provided the tenant with a Notice to End Tenancy. Finally, I accept the tenant's submission that the landlord did not carefully consider the grounds upon which he gave a Notice to End Tenancy to ensure his circumstances fit the allowances provided within the legislation.

I find that the landlord's last minute change of heart in mid-August 2016 does not prevent his decision to end this tenancy from scrutiny pursuant to the Act. Regardless of whether the landlord has sufficiently educated himself with the terms and conditions of the Act, the landlord is required to comply with the Act and all applicable legislation. Both section 49 and section 51 of the Act provide further requirements of a landlord with respect to the issuance of a 2 Month Notice to End Tenancy: a landlord is required to use or take steps to use the property as intended in the 2 Month Notice within a reasonable period of time.

I find that the landlord did not use or take steps to use the property as intended in the 2 Month Notice within a reasonable period of time. The landlord issued the 2 Month Notice to the tenant when he had not confirmed that his sister would in fact move in. The landlord testified that he had no choice but to re-rent the unit but it is the start of the issuance of the Notice to End Tenancy that dictates the obligations of the landlord to the tenant at the end of the tenancy.

I accept the tenant's evidence that the landlord re-rented the unit. That evidence was undisputed by the landlord. I accept the tenant's argument that the landlords neither took steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice (September 1, 2016) 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.

I find the landlord was unable to provide sufficient evidence to counter the tenant's proposition that he did not move in close family in accordance with his notice to end tenancy. Therefore, **I find the tenant has provided sufficient evidence to prove that she is entitled to the equivalent of double the monthly rent payable under the tenancy agreement (2 x 1550.00 = \$3100.00).**

Having been successful in this application, I find further that the tenant is entitled to recover the **\$100.00 filing fee** paid for this application.

Conclusion

I issue a monetary Order in favour of the tenant as follows:

Item	Amount
Return of Security Deposit	\$775.00
Monetary Amt for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	775.00
Monetary Amt for Landlords' Failure to Comply with s. 51(2) of the <i>Act</i>	3100.00
Agreed On Utilities Amt	88.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$4838.00

The tenant is provided with a formal Order in the above terms. Should the landlord(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

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 11, 2017

Residential Tenancy Branch