



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought monetary compensation from the Landlord pursuant to section 51 of the *Residential Tenancy Act*, as well as return of double the security deposit paid and recovery of the filing fee.

The teleconference hearing was originally scheduled for May 24, 2017 and was adjourned to August 15, 2017 as the Tenant failed to serve the Landlord C.A. When the hearing reconvened on August 15, 2017 both parties called into 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.

Preliminary Matter—Naming of the Landlord

The Landlord noted on the Tenancy agreement was C.A. The Tenant named C.A.'s former spouse, J.T. as Landlord on her Application for Dispute Resolution. At the hearing on August 15, 2017 the Landlord C.A. confirmed that J.T. was his former spouse and co-owner of the subject rental property but he was at all material times the Landlord. Pursuant to section 64(3)(c) and by Interim Decision, I amended the Tenant's Application for Dispute Resolution to remove J.T. as Landlord.

Issues to be Decided

1. Is the Tenant entitled to compensation pursuant to section 51 of the *Residential Tenancy Act*?
2. Is the Tenant entitled to return of double the security deposit paid?
3. Should the Tenant recover the filing fee paid?

Background Evidence

The Tenant testified that the tenancy began October 1, 2014. Monthly rent was payable in the amount of \$2,300.00 and was not increased during the tenancy. The Tenant stated that she paid a security deposit in the amount of \$2,300.00.

The tenancy ended December 1, 2016.

The Tenant testified that she gave the Landlord her forwarding address in writing by email on December 16, 2016. The Tenant stated that the Landlord confirmed receipt of the email by answering the email and informing the Tenant that he was bankrupt and would not be paying.

The Tenant then sent a further letter to the Landlord requesting return of the security deposit. A copy of this letter dated January 10, 2017 was provided in evidence.

The Tenant initially stated that she received a 2 Month Notice to End Tenancy for Landlord's Use. When I asked her to confirm the document she received (as the Notice was not in the file) she stated that she received a letter from the Landlord's realtor confirming that the new owners wanted vacant possession. The Tenant stated that she moved from the rental unit on this basis, as well as based on the information provided by the Landlord via text messages but that she did not receive a formal 2 Month Notice to End Tenancy.

The Tenant stated that she moved out before the new owners moved in.

The Tenant testified that the Landlord failed to do a move in and move out condition inspection. She also stated that he did not return her security deposit, nor did he make an application for dispute resolution.

The Landlord testified as follows.

He confirmed that he holds \$2,300.00 as a security deposit. He further confirmed that he did not make an application to retain those funds. He stated that after the fact he became aware that he was to return double the security deposit as a consequence.

He further confirmed he did not do a move in and move out condition inspection report.

The Landlord stated that he made a consumer proposal to his creditors on November 18, 2016 and that he is obligated to pay a certain amount to his creditors for sixty months. He did not inform his trustee of these proceedings and did not list the Tenant as a creditor when he made his consumer proposal as he believed the sale of the rental home would cover this amount; he claimed that there was a shortfall on the sale of the home such that he was not able to pay the Tenant.

Analysis

The Tenant seeks monetary compensation pursuant to sections 49 and 51 of the *Residential Tenancy Act* which read as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and

(b) for the purposes of subsection (4), a family corporation that

- (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
- (ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 *[tenant's compensation: section 49 notice]*, a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) 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;

(ii) 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.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the [Strata Property Act](#);
- (d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Tenant's compensation: section 49 notice

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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

As noted in section 49(7) above, a 2 Month Notice to End Tenancy for Landlord's use must comply with section 52 of the *Act* which mandates that a notice to end tenancy issued by a Landlord must be in the approved form; for greater clarity I reproduce that section as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and

(e) when given by a landlord, be in the approved form.

The approved form for a Notice given under section 49 is # RTB – 32 which can be found at:

<http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb32.pdf>

The Tenant confirmed she did not receive a 2 Month Notice to End Tenancy for Landlord's Use; rather she received a letter from the realtor indicating the new owner sought vacant possession. While this could have resulted in the Landlord issuing a 2 Month Notice to End Tenancy for Landlord's Use and indicating the reason for ending

the tenancy was because the purchaser wished to move a close family member into the rental unit as provided for in section 49(5) above, the simple fact is the Landlord did not issue such a Notice.

Having failed to receive a Notice in the approved form as required by section 49 and 52 of the *Act*, the Tenant is unable to seek compensation provided for in section 51. Section 51 clearly indicates a Tenant must receive notice pursuant to section 49 before the right to such compensation is established. Accordingly, I dismiss the Tenant's claim for two month's rent pursuant to section 51(2).

The Tenant seeks return of double her security deposit. The return of deposits is dealt with in section 38 which reads 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.

The Tenant did not agree to the Landlords retaining any portion of her security deposit.

Further, the Landlord failed to apply 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, as required under section 38(1) of the *Act*.

By failing to perform incoming or outgoing condition inspection reports in accordance with the *Act*, the Landlord also extinguished his right to claim against the security deposit for damages, 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.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **\$4,700.00**, comprised of double the security deposit (2 x \$2,300.00) and the \$100.00 fee for filing this Application.

While not at issue before me, I remind the parties that pursuant to section 19 of the *Act*, a security deposit or pet deposit must not exceed the equivalent of one half of a months' rent payable under the tenancy agreement.

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Conclusion

The Tenant's application for compensation pursuant to sections 49 and 51 is dismissed as the Tenant did not receive a 2 Month Notice to End Tenancy for Landlord's Use in the approved form.

The Tenant's application for return of double her security deposit and recovery of the filing fee is granted. She is given a formal Monetary Order in the amount of **\$4,700.0** and must serve the Landlord with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the 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: August 18, 2017

Residential Tenancy Branch