



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$3016.86 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$2800 for the return of double the security deposit.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was served on the tenant by mailing, by registered mail to where the tenant resides on March 18, 2017. I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was served on the landlord by mailing, by registered mail to where the landlord resides. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the tenant is entitled to a monetary order and if so how much?
- e. Whether the tenant is entitled to recover the cost of the filing fee.

Background and Evidence:

The tenancy began on November 1, 2014 when the parties entered into a one year fixed term tenancy agreement. It was renewed for a further year commencing November 1, 2015.

On September 11, 2016 the parties entered into a further one year fixed term that provided that the tenancy would commence on November 1, 2016 and end on October 31, 2017. The rent was \$2976 per month payable in advance on the first day of each month. The tenancy agreement referred to a security deposit in the sum of \$1400 that had been paid on October 15, 2014. The tenancy agreement included an Addendum that provided as follows: "the one year rental agreement may be cancelled with a minimum of three months' notice on the condition that the landlord is able to have a signed agreement from alternative renters for a continuation of rental income."

The tenant and his wife are elderly and their health was deteriorating. This precipitated the need that they be placed in assisted living. On November 27, 2017 the agent for the tenant gave the landlord notice they would be ending the tenancy and vacating the rental unit on February 28, 2017.

On December 9, 2017 the landlord hired the services of a property management firm to re-rent the rental unit.

At the end of January 2017 the tenant provided the landlord with an Ending Fixed-Term Tenancy Confirmation Statement in the approved government form signed by a medical practitioner confirming the tenant was eligible to end the fixed term tenancy under section 45.1 of the Residential Tenancy Act. On February 26, 2017 the landlord wrote to the tenant objecting to this Confirmation Statement on the basis the doctor was a family member. The landlord filed a complaint with the College of Physicians and Surgeons of British Columbia.

On February 26, 2017 the tenant provided the landlord with a second Confirmation Statement from another medical practitioner confirming the patient was eligible to end the fixed term tenancy under section 45.1 of the Residential Tenancy Act.

The tenant vacated the rental unit at the end of February. The landlord attempted to arrange with the tenants or person acting on their behalf to conduct a outgoing Condition Inspection was tenant did not participate in such an inspection even though the son who had been acting on behalf of the tenants lived in the same apartment building.

Landlord's Claim – Analysis:

With regard to each of the landlord's claims I find as follows:

- a. The landlord claimed \$2976 for loss of rent for March as they were not able to find another tenant to rent the rental unit.

Section 45.1(2) to (4) and section 45.2 of the Residential Tenancy Act provides as follow:

Tenant's notice: family violence or long-term care

45.1 ((2) A tenant is eligible to end a fixed term tenancy under this section if a statement is made in accordance with section 45.2 [*confirmation of eligibility*] confirming one of the following:

...

(b) the tenant has been assessed as requiring long-term care;

(c) the tenant has been admitted to a long-term care facility.

(3) A tenant under this section may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is 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.

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

Confirmation of eligibility

45.2 (1) A person may make a statement confirming a tenant's eligibility to end a fixed term tenancy under section 45.1 [*tenant's notice: family violence or long-term care*] only if the person

(a) is authorized to do so under the regulations, and

(b) has assessed, in accordance with the regulations, the tenant and the tenant's circumstances.

(2) A person who makes a statement under this section must

(a) make the statement in the approved form, and

(b) keep records as required by the regulations.

(3) In a proceeding under this Act, a person who makes a statement under this section is compellable to disclose or provide evidence respecting the following types of information only:

(a) evidence respecting the person's authority, for the purposes of subsection (1) (a), to make the statement;

(b) evidence respecting the veracity of the signature appearing on the statement.

- I do not accept the submission of the landlord that the Ending Fixed-Term Tenancy Confirmation Statement provided by tenant at the end of January 2017

was not effective because it was signed by a family member. There is no requirement in the Act or Regulations prohibiting a family member from signing such a statement in the Act and Regulations provided it was signed by a medical practitioner. Section 40 of the Residential Tenancy Act Regulations provide as follows:

“Eligibility to confirm need for long-term care

40 The following persons may make a long-term care confirmation statement:

- (a) a medical practitioner;
- (b) the manager of a long-term care facility, being a person responsible for the operation of, or admissions to, the facility;
- (c) a person who is
 - (i) referred to in section 39 (g) to (j) or (l) or is an occupational therapist who is authorized by the College of Occupational Therapists of British Columbia to practise occupational therapy, and
 - (ii) designated for this purpose by a board within the meaning of the [Health Authorities Act](#).”

- Another medical practitioner has signed a second Confirmation Statement in the approved form. The landlord failed to present sufficient evidence to prove the contents of the Confirmation form was not accurate.
- The tenant gave the landlord three months notice they were ending the tenancy on February 28, 2017. The landlord hired a property management company on December 9, 2016. The rental unit was subsequently rented for \$3500 per month commencing April 1, 2017. The Invoice produced by the landlord from the property management company suggests the rent was \$3600 per month. The landlord failed to present sufficient evidence to prove they mitigated their loss as they failed to present evidence of the property management company's efforts to re-rent it. It appears the rental unit was listed for a rent significantly higher than the rent paid by the tenant. I determined the landlord cannot be acting reasonably to lessen the loss when they have listed the rental unit for a rent over \$500 per month higher than the rent paid by the tenant.
- The landlords will be receiving \$500 or \$600 per month more than the previous tenancy agreement signed by the Tenant for 7 months. It appears the landlord will be earning more in rent with the new tenant than the loss of one month rent. The landlord testified as to additional cost to pay the property management cost but they are receiving a benefit from the

company. The landlord failed to provide sufficient evidence to prove this loss.

- b. I dismissed the claim of the landlord in the sum of \$336 for the cost of cleaning. The landlord previously did extensive cleaning themselves. The landlord failed to prove this additional cleaning was necessary to bring the rental unit to the standard required by the Act.
- c. I dismissed the claim of \$86.74 for paint supplies and \$140 for paint as the landlord failed to prove the painting was more than reasonable wear and tear.
- d. I dismissed the landlord's claim for the cost of disposing of chairs as the landlord previously instructed the tenant to leave the chairs in the rental unit.
- e. The landlord claimed the sum of \$320 for the cost of cleaning based on 16 hours of work @ \$20 an hour. The landlord failed to provide specifics as to work they did and failed to produce a daily diary of the time they spent. However, I am satisfied based on the evidence presented the tenant failed to sufficient clean and I determined the landlord is entitled to \$200 being a reasonable sum for the work done.
- f. The landlord claimed the sum of \$442 for the replacement of blinds. After considering depreciation and reasonable wear and tear I determined the landlord is entitled to \$225 of this claim.

Monetary Order and Cost of Filing fee

In summary I determined the landlord has established a claim against the tenant in the sum of \$425 plus \$100 for the cost of the filing fee for a total of \$525.

Security Deposit

Section 72(2) of the Residential Tenancy Act provides as follows:

Director's orders: fees and monetary orders

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I determined the security deposit totals the sum of \$1400. I determined the landlord is entitled to retain the sum of \$525 from the security deposit. I further determined the tenants are entitled

to an order that that the landlord pay to the tenant the balance of the security deposit in the sum of \$875.

Tenant's Application:

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenant seeks an order for the doubling of the security deposit.

The tenants paid a security deposit of \$1400 on October 15, 2014. I determined the tenancy ended on February 28, 2017. I further determined the tenants provided the landlord with their forwarding address in writing on that day. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants. However I determined the landlord filed a claim to retain the security deposit within 15 days of the end of the tenancy. The landlord produced a receipt dated March 13, 2017 which is the date the landlord paid the cost of the filing fee.

I dismissed the tenant's claim for the doubling of the security deposit as the landlord filed an Application for Dispute Resolution within 15 days of the end of the tenancy. I do not accept the submission of the tenant that the landlord's claim for the loss of rent amounted to improperly withholding the security deposit. I dismissed the tenant's claim to recover the cost of the filing fee as the return of the security deposit could have been dealt with in the landlord's claim. However, the tenant is entitled to the return of the balance of the security deposit.

Conclusion

In summary ordered that the landlord shall retain the sum of \$525 from the security deposit. I ordered that the landlord pay to the Tenant the balance of the security deposit in the sum of \$875.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent 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 final and binding on the parties.

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 22, 2017

Residential Tenancy Branch