



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; for an Order for the Landlord to comply the Act, Regulation, or tenancy agreement; recovery of the filing fee; and other remedies.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord, and the agents for the Landlord (the “Agents”), all of whom attended on time, ready to proceed. All parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

At the request of the Tenant, a copy of the decision and any resulting Monetary Order, should one be issued, will be mailed to the Tenant at the address on their Application. At the request of the Landlord, a copy of the decision will be e-mailed to them at the address provided in the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

On September 25, 2017, an Amendment to an Application for Dispute Resolution form (the “Amendment”) was received by the Residential Tenancy Branch (the “Branch”), increasing the Tenant’s monetary claim from \$2,600.00 to \$2,860.00. Rule 4.1 of the Rules of Procedure states that an Applicant may amend a claim to add to, alter or remove claims made in the original application by completing an Amendment and filing the completed Amendment and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office. Rule 4.6 of the Rules of Procedure states that a copy of the Amendment and supporting evidence should be served on the

Respondent as soon as possible and must be received by the Respondent not less than 14 days before the hearing.

The Tenant testified that they sent the Amendment to the Landlord by mail; however, they could not recall whether it was sent by registered mail or regular mail. The Agent testified that the Amendment was received by the Landlord via regular mail on September 25, 2017. Although regular mail is not a recognized method of service for an Amendment under the *Act*, the Landlord confirmed receipt of the Amendment on September 25, 2017. As a result, I find that the Landlord was served with the Amendment on September 25, 2017, the date they confirm they received it.

As the Amendment was served on the Respondent and received by the Branch at least 14 days before the hearing, the Application was amended.

On the Amendment the Tenant also filled in and initialed beside check-boxes indicating that a new Two Month Notice to End Tenancy had been received. However, in the hearing the Tenant stated that she had initialed beside those boxes to indicate that she did not wish to amend her Application to dispute the Two Month Notice. As a result, the Application was not amended to include cancelation of the Two Month Notice.

Issue(s) to be Decided

Is the Tenant entitled to an Order for the Landlord to comply with the *Act*, regulation, or tenancy agreement?

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement?

Is the Tenant entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Tenant is seeking \$2,860.00 for rent owed to her, moving costs, and moral damage and harassment. For ease of reference, I have separated out the evidence and testimony in relation to each of these claims below.

Rent

The Tenant testified that the Landlord owes her \$680.00 in rent for September 2017, as she moved out early after receiving a Two Month Notice to End Tenancy for Landlord's

Use of Property (the "Two Month Notice") on August 14, 2017. The Two Month Notice in the documentary evidence before me, dated August 14, 2017, has an effective vacancy date of October 31, 2017. On page 2 of the Two Month Notice it states a tenant who receives this Notice can give 10 days' written notice and move out early and that the landlord must still pay the tenant one month's rent as compensation. The Tenant stated that she did not dispute the Two Month Notice and that after she paid September's rent in full, she moved out early on September 6, 2017.

The Agents stated that no money is owed to the Tenant as her damage deposit was returned in full, she was given a cheque in the amount of one month's rent pursuant to section 51 of the Act, and she was refunded the balance of rent owed to her for September. The Landlord provided copies of these cheques for my consideration. The Agents testified that the Tenant did not give written notice that she was ending the tenancy early until September 12, 2017, and although this letter stated that the Tenant had already moved out on September 6, 2017, they did not receive it until September 12, 2017. The Agents submitted a copy of the written notice for my consideration and the Tenant agreed that they did not provide it to the Landlord until September 12, 2017.

The Agents testified that as per the Two Month Notice, the Tenant is allowed to end the tenancy early upon 10 days' written notice, and that after receiving the written notice on September 12, 2017, they calculated forward 10 days and refunded the Tenant \$255.00 in rent paid by for September 23, 2017 -September 30, 2017.

Moving Costs

The Tenant testified that the Landlord owes her monetary compensation for moving cost because she was forced to move without justification. The Tenant submitted an invoice from a moving company in the amount of \$987.53 for a move completed September 6, 2017. In addition to these costs the Tenant stated that the Landlord owes her gas money and monetary compensation for the time she spent driving around and looking for housing. The Tenant did not provide any testimony or documentary evidence to establish what amounts she was owed for gas and time.

The Landlord and Agents testified that the Tenant is not owed any moving costs as she did not dispute the Two Month Notice served on her and in fact, moved out early of her own accord. Further to this, the Agents stated that the Tenant would have been required to move out of the rental unit at some point as she is a Tenant, not the owner of the unit, and therefore the Landlord should not be responsible for these costs.

Moral Damage and Harassment

Further to this the Tenant testified that she is owed monetary compensation for moral damage and harassment. The Tenant testified that the Landlord has been constantly disturbing her, accusing her of running water all night, phoning her at 1:00 AM, harassing and abusing her, and calling her names. The Tenant provided a police file number on her Application but no documentary evidence was submitted in support of her testimony. The Tenant did not provide any testimony or documentary evidence to establish which portion of the \$2,860.00 monetary claim related to moral damages and harassment or how she established the monetary value of this portion of her claim.

The Landlord and the Agents denied the allegations made by the Tenant and testified that it was the Tenant who was actually harassing the Landlord.

Analysis

Section 7 the *Act* states that a landlord or tenant who does not comply with the *Act*, the *regulations* or their tenancy agreement must compensate the affected party for the resulting damage or loss. Policy Guideline 16 states that a party seeking compensation should present compelling evidence of the value of the damage or loss in question and that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

While claims for damage or loss are not limited to physical property only, and may include aggravated damages for less tangible impacts such as physical and mental damage to a person, policy Guideline 16 states that aggravated damages can only be awarded in situations where significant damage or loss has been caused either deliberately or through negligence and must specifically be asked for in the application.

Although the Tenant alleged that the Landlord was torturing and harassing her, the Tenant did not call any witnesses or submit any documentary evidence to support this testimony and the Landlord and the Agents denied that the Landlord had in any way disturbed or harassed the Tenant. The Tenant also did not provide any documentary evidence or testimony regarding how she reached the monetary amounts being claimed for the alleged harassment and moral damage. As a result, I find that the Tenant has failed to establish that she suffered damage or loss, that any such damage or loss was the result of a breach of the *Act*, regulation or tenancy agreement on the part of the Landlord, or to present compelling evidence of the value of the damage or loss. Further to this, the Tenant has not specifically requested aggravated damages in her

Application. As a result, the Tenant's monetary claim for moral damage and harassment is dismissed without leave to reapply.

The Tenant sought reimbursement for moving costs associated with what she claimed was an invalid Two Month Notice; however, the Tenant did not dispute the Two Month Notice and in her own testimony she admitted that that she voluntarily moved out of the rental unit prior to the effective date of the Two Month Notice. The Two Month Notice was also not served on the Tenant until *after* she filed her Application seeking moving costs. Further to this, I find that moving costs are an inevitable cost of tenancy. Based on the above, the Tenant's Application for moving costs is dismissed without leave to reapply.

For the following reasons, the Tenants claim for September rent is also dismissed without leave to reapply. Although the Tenant testified that the Landlord knew she was moving out on September 6, 2017, all parties agreed that written notice that the Tenant was ending the tenancy early was not received by the Landlord until September 12, 2017. Section 50 of the Act states the following with regards to ending a tenancy early under these circumstances:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

On page 2 of the Two Month Notice it also states that a tenant who receives this Notice can give 10 days' written notice and move out early. Although the Tenant stated that the Landlord knew she was moving out early, I find that the Landlord was still entitled under the *Act* to receive 10 days written notice that the Tenant wished to end the tenancy early. As a result, I find that the Landlord was entitled to rent for the period up to and including September 22, 2017, which is 10 days after the written notice was received. As the Landlord has already reimbursed the Tenant \$255.00 in rent paid for September 23, 2017 – September 30, 2017, I find that the tenant is not entitled to any further rent reimbursement.

The Tenant's claim for "other" remedies is also dismissed without leave to reapply as there is insufficient evidence to support that any other remedies or claims have been sought by the Tenant.

As the Tenant's Application is dismissed, I decline to grant the Tenant recovery of the \$100.00 filing fee.

Conclusion

The Tenants Application is dismissed in its entirety without leave to reapply.

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 23, 2017

Residential Tenancy Branch