



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated August 17, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlords return all or part of the security deposit or pet damage deposit;
- an order that the Landlords comply with the *Act*, regulations, and/or the tenancy agreement;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant attended the hearing on her own behalf. The Landlords were represented at the hearing by R.S. Both parties in attendance provided a solemn affirmation at the beginning of the hearing.

No issues were raised with respect to service or receipt of the Tenant's Application package or the documentary evidence submitted by the parties. Pursuant to section 71 of the *Act*, I find the parties were sufficiently served with these documents for the purposes of the *Act*. The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order that the Landlords return all or part of the security deposit or pet damage deposit?
3. Is the Tenant entitled to an order that the Landlords comply with the *Act*, regulations, and/or the tenancy agreement?
4. Is the Tenant entitled to an order granting recovery of filing fee?

Background and Evidence

The parties agreed the tenancy began on June 1, 2016, and ended when the Tenant vacated the rental unit on June 27, 2017. During the tenancy, rent in the amount of \$1,400.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$700.00. Although \$382.87 was returned to the Tenant, the Landlords retained \$317.13.

According to the Tenant, the tenancy ended after she received a Two Month Notice to End Tenancy for Landlord's Use of Property, dated June 16, 2017, which had an effective date of September 1, 2017 (the "Two Month Notice"). The Two Month Notice was issued on the following basis:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

[Reproduced as written.]

However, the Tenant provided the Landlords with a 10 day written notice to end the tenancy, dated June 19, 2017, in accordance with the *Act*. As confirmed by the parties, the Tenant vacated the rental property on June 27, 2017.

The Tenant's monetary claim was set out on a Monetary Order Worksheet, dated August 8, 2017. First, the Tenant claimed moving and storage charges, as summarized on the Monetary Order Worksheet. The Tenant acknowledged that she chose to move out of the rental property but suggested she had to move to Quebec because of the limited availability of rental housing.

Second, although not included on the Monetary Order Worksheet, the Tenant claimed compensation under the *Act* due to her belief the Landlords did not move into the rental unit after the Tenant vacated based on the Two Month Notice. This was articulated in the Tenant's Application.

In reply, R.S. testified he has done what he indicated on the Two Month Notice, and referred to the Landlords' written submissions, which stated:

However, as we got into June, I felt that I needed to have the house for my own space and that privacy on the property would be of benefit to my wife.

[Reproduced as written.]

Third, although not included on the Monetary Order Worksheet, the Tenant also sought recovery of the security deposit. The parties agreed the Landlords were provided with the Tenant's forwarding address in writing on June 27, 2017, but returned only \$382.87 to the Tenant.

Finally, the Tenant claimed to be entitled to recover the cost of ink, paper, and registered mail costs associated with making the preparing for the hearing. These were summarized on the Monetary Order Worksheet provided.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenant's claim for moving and storage costs, I find there is insufficient evidence before me to conclude the Tenant is entitled to the amount claimed. The Tenant acknowledged receipt of the Two Month Notice, and that she moved out voluntarily on June 27, 2017, after giving the Landlords a written notice to end tenancy in accordance with section 50 of the *Act*. This aspect of the Tenant's Application is dismissed.

With respect to the Tenant's claim for compensation under section 51 of the *Act*, I find there is insufficient evidence before me to conclude the Landlords did not do what was indicated on the Two Month Notice. Indeed, the Tenant referred me to the Landlords' written submissions, which clarify that the Landlords wished to occupy the rental property for their own use, and for privacy. There is insufficient evidence before me they have done otherwise.

In addition, the Tenant's claim for compensation was based on her belief the Landlords were required to move into the rental property. However, I find there is no requirement for a landlord to live on the premises as the notice to end tenancy states "occupy". I refer to the *Black's Law Dictionary*, sixth edition, for the legal meaning of "occupy", which states:

Occupy. To take or enter upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession. Actual use, possession, and cultivation.

[Reproduced as written.]

Since the tenants provided insufficient evidence that the Landlords are not occupying the rental property, I dismiss the Tenants' application for compensation pursuant to section 51 of the *Act*.

With respect to the Tenant's claim for return of the security deposit, section 38 of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit. In this case, the parties agreed the Tenant's forwarding address was provided to the Landlords in writing on June 27, 2017. Although part of the security deposit was returned to the Tenant, the Landlords retained \$317.13.

Policy Guideline #17(C)(5) provides assistance when determining a tenant's right to the return of the security deposit when part of it has already been returned to the tenant. It states:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for an order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $\$525.00$ ($\$800 - \$275 = \$525$).

[Reproduced as written.]

Following this example, I find the Tenant is entitled to a monetary award of \$1,017.13, which has been calculated as follows:

$$(700 \times 2) - \$382.87 = \$1,017.13$$

With respect to the Tenant's claim to recover ink, paper, and postage charges, I find these are not recoverable expenses. Further, as the tenancy ended in June 2017, it is not necessary for me to consider the Tenant's request for an order that the Landlords comply with the *Act*, regulations, and/or the tenancy agreement.

As the Tenant has been partially successful, I find she is entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, the Tenant is granted a monetary order in the amount of \$1,117.13, which is comprised of the return of the security deposit described above, plus recovery of the \$100.00 filing fee.

Conclusion

I grant the Tenant a monetary order in the amount of \$1,117.13. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 8, 2017

Residential Tenancy Branch