Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of double the security deposit, less the partial refund received to date; and, compensation payable to tenants where the landlord does not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*.

The tenant and only one landlord appeared at the hearing. The tenant named two landlord's in filing this Application for Dispute Resolution. The landlord in attendance confirmed that the other named landlord is his wife and that he is representing both of them. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I confirmed service of hearing documents and evidence upon each other and the Residential Tenancy Branch. I confirmed that the tenant sent a hearing package to each landlord via registered mail on June 19, 2017 at the landlords' address of residence. The package to the female landlord was delivered and the package sent to the male landlord was returned as unclaimed. The landlord confirmed that his wife gave him the package that she received and that he had a copy of the tenant's Application for Dispute Resolution before him. I was satisfied that the tenant met her obligation to serve each landlord in accordance with the requirements of section 89(1) of the Act.

The tenant also sent an evidence package to each landlord via registered mail on November 9, 2017. The landlord stated he had not received the tenant's evidence package. The tenant had provided a copy of the envelopes sent to the landlords on November 9, 2017 and a search of the tracking numbers showed that Canada Post had left two notice cards for the registered mail but that the packages had not yet been picked up. The landlord stated he and his wife had been out of town for the two weeks in November 2017, returning only a few days before the hearing, and he had not had an opportunity to pick up the registered mail since returning. I was satisfied the tenant had met her obligation to send her evidence to the landlords more than 14 days before the hearing date; however, in consideration that the landlords had not yet picked up the evidence, I offered to describe the relevant evidence to the landlord during the hearing and if during the hearing the landlord was of the view that it was imperative to see the evidence I would consider that as appropriate. During the hearing, I described the content of a relevant document, the landlord provided his responses, and the landlord did not indicate he needed more time to see the tenant's evidence. Accordingly, this decision is made based on the oral testimony of both parties and the documentary evidence provided by the tenant.

Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit as provided under section 38 of the Act?
2. Is the tenant entitled to additional compensation because the landlords did not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*, as provided under section 51(2) of the Act?

Background and Evidence

The tenancy started on May 1, 2011 and ended on July 31, 2016 pursuant to a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice"). The tenants originally overpaid the security deposit but recovered the overpaid portion by making deductions from rent. At the end of the tenancy the landlords were holding a security deposit of $1,150.00 and the tenant's monthly rent obligation was $2,409.35. The landlords did not prepare a move-in or move-out inspection report.

Below, I have summarized the tenant's claims against the landlords and the landlords' responses.

1. Double security deposit

It was undisputed that the landlord returned $800.00 of the security deposit to the tenant by way of a cheque he personally delivered to the tenant at her new home on August 24, 2017. The landlord did not have the tenant's written authorization to make any deductions from the security deposit.

The tenant testified that the landlord had been provided her forwarding address by her husband a few days before the tenancy ended. The tenant said it was given to the landlord via email, text message and verbally. The tenant had not provided a copy of the email or text message as evidence but argued the landlord did have her new address since he came to deliver the refund cheque at her new residence.

The landlord acknowledged that he likely received the forwarding address in a text message or verbally.

The tenant confirmed that the service address she provided on her Application for Dispute Resolution is the same as her forwarding address and current address of residence. The landlord confirmed that he could see the tenant's address on the tenant's Application for Dispute Resolution.

The landlord attempted to introduce testimony that he deducted $350.00 from the security deposit because the house required a "deep cleaning" after the tenancy ended and the landlord had to reinstall a door. The tenant was not agreeable to authorizing the landlord to make deductions from the security deposit during the hearing.

During the hearing, I informed the parties that I found the tenant's application was pre-mature, for reasons provided in the analysis; however, I expressly informed the landlord that as of the date of the hearing he is considered to be in receipt of the tenant's forwarding address in writing and he must take action with respect to the balance of the security deposit within 15 days of the hearing as required under section 38 of the Act. I also cautioned the landlord that a tenant is not required to "deep clean" a rental unit and that a tenant's obligation is to leave the rental unit "reasonably clean". I also cautioned the landlord that a

landlord extinguishes the right to make a claim against the security deposit for damage if the landlord fails to prepare condition inspection reports.

2. Compensation payable under section 51(2) of the Act

The 2 Month Notice served upon the tenant indicates the reason for ending the tenancy is that: *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).*

The tenant submitted that prior to receiving the 2 Month Notice the landlord had communicated that he had an intention to sell the property. Upon receiving the 2 Month Notice the tenant chose not to dispute the 2 Month Notice and accepted the end of the tenancy due to personal circumstances. After the tenancy ended the rental unit appeared to remain vacant. The tenant observed this personally as she frequently drove by the rental unit to visit family and friends. The tenant determined the house was listed for sale on January 9, 2017 and sold effective February 12, 2017 based upon an internet search. The tenant provided a print-out from a real estate website as evidence of the dates the property was listed and sold.

The tenant was of the position that the landlords or the landlords' close family member did not move in to the rental unit so the tenant is entitled to additional compensation as provided to tenants in such circumstances pursuant to section 51(2) of the Act.

The landlord acknowledged that he and his wife did not move into the rental unit after the tenancy ended. Rather, the landlord submitted that the rental unit was used for storage and occasionally his son and daughter would stay at the rental unit. The landlord explained that he was demolishing and rebuilding a house on a nearby lot and the residential property was used to store materials during this process.

The landlord testified that the rental unit was sold on April 28, 2017 according to his lawyer. When I pointed out that the website print-out provided by the tenant shows that the house was "sold" on February 12, 2017 the landlord responded by stating that the sales contact was likely entered into in February 2017 but that the sale of the property and the transfer of title did not occur until April 2017.

I noted that the website print-out provided as evidence by the tenant did not indicate the criteria for considering a property sold such as having an unconditional accepted offer or completion of the transaction and transfer of title.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the tenant's claims against the landlord.

1. Double security deposit

Under section 38(1) of the Act, a landlord is required to return the security deposit to the tenant, file an Application for Dispute Resolution to claim against the security deposit, or obtain the tenant's written consent to made deductions from the security deposit within 15 days of the tenancy ending or receiving the tenant's forwarding address in writing, whichever date is later. Until a landlord receives a forwarding

address in writing the landlord is not obligated to do anything with the security deposit and it is premature for a tenant to make a claim for return of the security deposit, or double security deposit, if the tenant has not yet provided the landlord with a forwarding address in writing.

I find the tenant did not satisfy me that a forwarding address was provided to the landlord in writing prior to filing this Application for Dispute Resolution. The tenant stated that her husband did it by way of text message and/or email; however, the tenant's husband did not appear at the hearing to testify as to how and when he gave the forwarding address and the tenant did not provide a copy of either of those communications. Furthermore, section 88 of the Act provides that where a party is going to give the other party a document, including a written forwarding address, it must be given in one of the ways permitted under section 88. Section 88 does not recognize email or text message as a permissible way to give a document.

Since the landlord has received the tenant's Application for Dispute Resolution which contains a service address for the tenant, and the tenant confirmed during the hearing that the service address is the same as her forwarding address, I put the landlord on notice during the hearing that the landlords are considered to have received a written forwarding address for the tenant as of the date of the hearing (November 29, 2017). Accordingly, the landlords must take action with respect to the balance of the security deposit in a manner that complies with section 38(1) of the Act within 15 days of November 29, 2017.

Should the landlords fail to take action in accordance with section 38 of the Act within 15 days, I grant the tenant leave to reapply for double the security deposit.

2. Compensation payable under section 51(2) of the Act

Where a tenant receives a *2 Month Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act, the tenant is entitled to compensation as provided under section 51 of the Act.

Under section 51(1) of the Act, a tenant entitled to receive the equivalent of one month of rent as compensation for receiving a 2 Month Notice. Should the landlord fail to fulfill the purpose stated on the 2 Month Notice the landlord must pay the tenant additional compensation in an amount equivalent to two months of rent under section 51(2) of the Act. Section 51(2) is the provision under the Act that the tenant relies upon in making her claim against the landlord.

Section 51(2) provides:

> (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 ...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[My emphasis underlined]

Under section 49 of the Act, there are multiple reasons for a landlord to end a tenancy for landlord's use of property. Accordingly, the applicability of paragraph (a) or (b) described above will depend upon the stated purpose for ending the tenancy. Where a landlord has ended a tenancy so that the landlord or close family member may "occupy" the rental unit, as in this case, I find it reasonable to apply paragraph (b), meaning the landlord or close family member of the landlord must "occupy" the rental unit for at least six months after the tenancy ended to avoid paying the tenant additional compensation under section 51(2) of the Act.

The tenant implied that the landlords had an intention to end the tenancy in order to sell the property; however, the landlords' intentions at the time of serving a 2 Month Notice are not relevant to this claim. Rather, a landlord's intentions are only relevant where the tenant has filed to dispute the 2 Month Notice.

It is important to point out that the Act does not use the word "reside" or "live in"; yet, the tenant took the position that additional compensation is payable because the landlords did not reside or live in the rental unit. In statutory law, meaning must be given to the words actually used in the legislation. Since the Act does not require the landlord to "reside" or "live in" in the rental unit, whether the landlord actually resided or lived in the rental unit is not relevant. What is relevant is whether the landlord or landlord's close family member occupied the rental unit. As for the meaning of "occupy", the Act does not define the word "occupy" or "occupied" and I have turned to the meaning provided by Black's Law Dictionary. In Black's Law Dictionary, "occupy" is defined as:

> "to take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession."

For several months after the tenancy ended the rental unit remained vacant (according to the tenant) or was used for storage and occasionally for use by the landlord's son or daughter (according to the landlord). Until someone other than the landlord or landlord's close family member takes possession of the rental unit, the landlord has retained possession, or occupied, the rental unit. Accordingly, it is unnecessary for me to determine whether I prefer the tenant's version of events or the landlord's version of events as the uses described by both parties meet the definition of "occupy".

The tenant's own evidence was that the house was sold in February 2017. While that may be the date a sales contract was entered into or the date the title transferred to new owners, in either circumstance there was at least six months between the end of the tenancy and the sale of the house where the house remained in the landlords' possession. Therefore, I find I am satisfied the landlords held possession of the rental unit for at least six months after the tenancy ended and I find the tenant is not entitled to additional compensation under section 51(2) of the Act.

3. Filing fee

The tenant was largely unsuccessful in this Application and I make no award for recovery of the filing fee from the landlords.

Conclusion

The tenant's request for return of double the security deposit was pre-mature and is dismissed with leave to reapply. The landlords have been put on notice that they are considered to be in receipt of the tenant's written forwarding address as of November 29, 2017 and the landlords have 15 days from that date to take action with respect of the balance of the security deposit in a manner that complies with section 38 of the Act.

The tenant's request for additional compensation payable under section 51(2) is dismissed.

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: December 01, 2017

Residential Tenancy Branch