Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: MNDC, RR, RP, LAT, FF
Landlord: OPL

Introduction

This hearing was convened in response to cross-applications by the parties. Both parties filed applications on February 26, 2018 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows. The landlord filed an Order as follows;

1. An Order of Possession pursuant to a 2 Month Notice to End - Section 55

The tenant filed for Orders as follows;

1. A monetary Order for loss – Section 67
2. An Order to recover the filing fee for this application - Section 72
3. Authorization to change the locks of the unit – Section 70
4. Order to make repairs to the unit – Section 62
5. Rent reduction for services or facilities not provided – Section 65

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, to no avail. The parties respectively acknowledged receiving the evidence of the other as provided to me. The parties were apprised that despite their abundance of evidence only *relevant* evidence would be considered in the Decision. The parties were given opportunity to present *relevant* testimony, make *relevant* submissions of evidence, present witnesses, and respond to the claims of the other. Prior to concluding the hearing both parties were asked and confirmed presenting all of the evidence that they wished to present.

Preliminary matters

The tenancy has ended. The landlord no longer seeks the basis of their application and as a result their application was preliminarily **dismissed**, without leave to reapply. As the tenancy has ended the sole relevant surviving component of the tenant's application is their monetary claims, with the effect that *the balance of their application are preliminarily **dismissed**,* without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Applicants bear the burden of proving their respective claims.

Background and Evidence

The tenancy has ended. The undisputed *relevant* evidence in this matter is as follows. The tenancy began November 15, 2017 as a written tenancy agreement for an entire house. The hearing had benefit of the written fixed term Tenancy Agreement ending May 15, 2018 (6 months). At the outset of the tenancy the landlord collected deposits which have already been administered by the parties. The payable monthly rent was the amount of $2200.00 due in advance on the first day of each month.

The tenancy ended March 25, 2018 spurred by and pursuant to the landlord's 2 Month Notice to End for landlord's use dated February 08, 2018 with effective date of April 30, 2018. The parties argued over their contrasting versions of events surrounding the time before and after issuance of the Notice to End, however, effectively the tenant determined not to dispute the Notice and, "let it stand", consequently vacating pursuant to their 10 day written notice to end tenancy early dated February 26, 2018, pursuant to Section 50(1)(a) of the Act. The parties confirmed the tenant received the requisite prescribed compensation under the Act equivalent to 1 month's rent for receiving the 2 Month Notice to End. The tenant provided that despite their choices in this matter the landlord was inappropriate in their quest for them to vacate sooner than legally required because, according to the landlord's testimony they, "wanted their house back" irrespective of their contractual agreement with the tenant. The tenant claims the landlord harassed them to vacate sooner than later even though they were trying to orderly move as soon as possible in winter conditions. In the absence of oral witness

testimony the tenant provided 4 signed statements in support of the tenant's claims the landlord's conduct was unwelcome and intrusive. The landlord denied the tenant's claims of harassment.

The tenant argued that the Act prohibits the landlord from issuing a 2 Month Notice to End effective before the end of the fixed term and the parties were apprised this to be an accurate interpretation. None the less, the tenant testified they chose to vacate as they determined that moving was ultimately inevitable, however they now hold the landlord accountable for their moving and storage costs, loss of their wages to move on their chosen days and their change of address cost, in the sum of $3700.28. The landlord claims they were advised to issue a 2 Month Notice to End by the Branch as the tenancy agreement could potentially continue following the fixed term period of the agreement and that the Notice was their notification to the tenant that they sought to personally re-occupy the unit after the fixed term.

Additionally, the tenant seeks compensation/abatement of rent, for loss of use of an unfinished and therefore unusable portion of the rental unit which they claim was independently calculated as1020 square feet. The landlord and tenant agreed on the overall square footage of the rental house as 3060 square feet however the landlord disputed the tenant's claim, asserting that the unfinished and unusable area was no more than 650 square feet. The tenant provided a calculation tied to the payable rent, claiming $1.39 per square foot of unusable area but did not otherwise provide the claimed independent evidence supporting the veracity of the square footage calculation. Regardless of which, the parties' document evidence is that at the start of the tenancy they agreed that an unfinished portion of the rental house (unfinished basement) would be finished and made suitable as living accommodation and as part of the tenancy agreement however to no avail.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at **www.gov.bc.ca/landlordtenant.**

The onus is on the respective applicant to prove their claims on balance of probabilities. On preponderance of all evidence submitted and on balance of probabilities I find as follows.

I find the tenancy effectively ended March 31, 2018 pursuant to the Tenant's Notice.

Under the *Act*, a party claiming a loss bears the burden of proof. Moreover, an applicant must satisfy each component of the following test established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by **Section 7** is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I find the tenant and landlord agree that the payable rent was for the entire house which contained an area which was unfinished but would be made suitable for occupation and all-inclusive within the tenancy agreement. In the absence of sufficient evidence from the tenant as to the actual square footage that remained unusable I accept the evidence of both parties that in the least it was 650 square feet. As a result I find the tenant is entitled to an abatement of the rent reflecting the reduced value of the tenancy agreement by the ratio equivalent to a reduction of the rental unit by 650 square feet, as follows (rounded down)

1) ($2200.00 ÷ 3060 sq/ft = $.71 sq/ft) X 650 = $461.50 monthly rent ratio
2) $468.00 X 4.5 months tenancy = **$2076.75** reduction of rent

I find it was available to the tenant to dispute the landlord's claimed persistent advances to vacate and consequently their Notice to End through Dispute Resolution. The tenant chose not to do so and vacated on their terms. As a result it was not solely the landlord's conduct which caused any loss to the tenant. The landlord is not obligated to compensate the tenant for their choices or arbitrary moving considerations. It must further be known that the intent of the tenant's compensation for receiving a 2 Month Notice is to compensate or soften the potential financial burden of vacating to new accommodations. Therefore, I find that the tenant has not proven they are entitled to recover any losses associated with moving, which **I dismiss** without leave to reapply.

I find that while **Section 49(2)(c)** of the Act requires a landlord to only give a 2 Month Notice to End for Landlord's Use effective no sooner than the end date of a fixed term, the Act does not attach a penalty for failing to do so or automatically entitle the tenant to compensation. There is no provision in the Act whereby if a landlord fails in this respect they will be automatically held liable for losses incurred by a tenant complying with the landlord's illegal Notice. However, in this matter I find that the evidence is sufficient to establish, on a balance of probabilities that the landlord's illegal conduct caused the tenant a degree of strife and inconvenience which was completely unnecessary and unreasonable given the tenant's right to occupy the rental unit to the end of the fixed term unencumbered and undisturbed as per Section 49(2)(c) of the Act. As a result, I grant the tenant set compensation for the abridgement of this right and the resulting loss of quiet enjoyment established by **Section 28** of the Act. In this regard I grant the tenant one half month's rent of **$1100.00**, without leave to reapply. The tenant is further entitled to recover their filing fee.

Calculation for Monetary Order is as follows:

Rent abatement – loss of use 4.5 months	$2076.75
Loss of quiet enjoyment – Section 28	$1100.00
filing fee	$100.00
Monetary Order to tenant	**$3276.75**

Conclusion

The landlord's application was rendered dismissed.

The tenant's application, in its compensable portions, has been granted.

I grant the tenant a **Monetary Order** under Section 67 of the Act in the amount of **$3276.75.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: May 11, 2018

Residential Tenancy Branch