



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenant for compensation for loss of damage under the Act, regulations and the tenancy agreement, for the return of a security deposit and to recover the filing fee.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on April 8, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation for loss or damage and if so how much?
2. Is the Tenant entitled to the return of the security deposit?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

This tenancy started first as a month to month tenancy on October 30, 2014 and then was renewed as a fixed term tenancy for one year on October 1, 2016 with an expiry date of October 1, 2017. The tenancy ended October 1, 2017. Rent was \$1,800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$900.00 at the start of the tenancy.

At the start of the hearing the Tenant said she is withdrawing her request for the return of the security deposit and bank charges as she was mistaken and the Landlord returned the security deposit on October 16, 2017.

The Tenant continued to say the only issue is that the Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of the Property with the reason that a close family member was moving into the rental unit. The Tenant said the Landlord move a new renter into the rental unit on January 15, 2018 and from the Landlord's evidence of a new tenancy agreement it shows the Landlord increased the rent from \$1,800.00 to \$2,000.00. The Tenant said the new tenants are not part of the Landlord's family. The Tenant continued to say the Landlord did not act in good faith and a close family member did not live in the unit for 6 months after her tenancy ended. The Tenant requested the equivalent of 6 months rent in the amount of \$10,800.00 as compensation. The Tenant said she thought this was what the Act provides as compensation if a Landlord does not carry through with the reason given for the eviction on a 2 Month Notice to End Tenancy for Landlord's Use of the Property.

The Landlord said his brother moved into the rental unit right after the Tenant moved out, but he moved to a different city for work shortly after. The Landlord said he rented the unit on January 15, 2018 to a new tenant who is not a family member. The Landlord submitted a copy of the tenancy agreement with the new tenants and it has a start date of January 15, 2018 and a rent amount of \$2,000.00 per month. The Landlord said they rented to an immigrant family who needed a home. The Landlord could not remember how long his brother was in the unit and the Landlord did not submit any evidence to corroborate the brother was living in the unit.

The Landlord said he did not have any closing remarks.

The Tenant said in closing the Landlord's own evidence shows he did not complete the reasons on the Notice to End Tenancy as required by the Act. The Tenant said the Landlord owes her compensation for not complying with the Act.

Analysis

Section 51 of the act says: (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

- (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
- (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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.**

I accept the Tenant's testimony and the Landlord's evidence of a new tenancy agreement with a non family member starting 3.5 month after the Tenant's tenancy ended. The Tenant has established grounds to show the Landlord did not complete the reason given on the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated July 15, 2017. On that Notice it says a close family member was moving into the rental unit. Under section 51 that family member must move in to the unit for at least 6 months. The Landlord said his brother did not live in the unit for 6 months. Consequently the Landlord has not completed the reason on the Notice to End Tenancy as required by the Act. As a result the Tenant is entitled to the equivalent of 2 months rent pursuant to section 51 of the Act. I award the Tenant double the monthly rent of \$1,800.00 in the amount of \$3,600.00.

As the Tenant was successful in this matter I order the Tenant to recover the filing fee of \$100.00 from the Landlord. Pursuant to sections 51 and 67 of the act a monetary order for \$3,700.00 has been issued to the Tenant. This Monetary order represents compensation of double one months rent pursuant to section 51 and the filing fee.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 51 and 67 of the Act, I grant a Monetary Order for \$3,700.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) as an order of that court.

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: June 04, 2018

Residential Tenancy Branch