



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, MNSD, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62;
- authorization to obtain a return of the security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords (male and female) and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 47 minutes in order to allow both parties to present their full submissions.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application and the tenant was duly served with the landlords' written evidence package.

Preliminary Issues – Dismissal of Portions of Tenant's Application

At the outset of the hearing, the tenant indicated that she would be vacating the rental unit on June 30, 2018, pursuant to the landlords' 2 Month Notice. She stated that she did not want to continue her tenancy in the rental unit. She explained that she had already moved a number of her items but was not yet finished. She maintained that she was disputing the 2 Month Notice because the landlords issued it in bad faith, as per their written evidence for this hearing.

Pursuant to both parties' verbal agreement during the hearing, I issue an order of possession effective at 1:00 p.m. on June 30, 2018, to the landlords against the tenant. Both parties agreed that the tenant was moving pursuant to the 2 Month Notice issued by the landlords.

Pursuant to section 59(5)(a) of the *Act*, I can refuse to accept an application if it does not disclose a dispute that may be determined. As noted to both parties during the hearing, I find that making a decision regarding the tenant's application to cancel the 2 Month Notice is not appropriate because it is a purely academic exercise when the tenant is moving out pursuant to the 2 Month Notice and does not intend to continue her tenancy. Therefore, the tenant's application to cancel the 2 Month Notice, is dismissed without leave to reapply. I notified both parties about the above decision during the hearing.

At the outset of the hearing, the tenant confirmed that she applied for registered mail costs of \$22.68 each, to mail two application packages to the landlords, for a total of \$45.36. As noted to both parties during the hearing, the tenant is not entitled to any postage fees relating to this hearing; only hearing-related filing fees are recoverable under section 72 of the *Act*. Therefore, this portion of the tenant's application is dismissed without leave to reapply.

I notified both parties at the hearing that the tenant's application for \$275.00 to recover her security deposit is premature since the tenancy has not yet ended and the landlords are not required to return the deposit until the tenancy has ended, as per section 38 of the *Act*. Therefore, this application is dismissed with leave to reapply.

Issues to be Decided

Is the tenant entitled to a monetary award of \$500.00 for moving expenses?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2011 for a one year fixed term after which it became a month-to-month tenancy. Monthly rent in the amount of \$550.00 was payable on the first day of each month. A security deposit of \$275.00 was paid by the tenant and the landlords continue to retain this deposit. Both parties signed a written tenancy agreement. The tenant continues to reside in the rental unit.

The tenant seeks moving expenses of \$500.00 and to recover the \$100.00 filing fee paid for this application. The tenant claimed that she received the landlords' 2 Month Notice and received one month free rent compensation for June 2018 pursuant to the 2 Month Notice. Both parties agreed that the reason indicated on the notice was that *"the landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant."*

The tenant stated that she did not want to take a chance and wait for this hearing on June 18, 2018, because the effective date of the notice was June 30, 2018, and it was not enough time for her to move. She said that she found a new place and would be moving from the rental unit on June 30, 2018. The tenant claimed that she did not know what the landlords' evidence about the renovations would be until they responded to her application for this hearing. She explained that she would not have found a place to move to on June 30, 2018, if she had known the landlords' weak evidence about minor renovations which would not have required her to vacate the unit. She claimed that the landlords issued the 2 Month Notice in bad faith. She stated that she had invoices and receipts for moving expenses already incurred prior to the hearing but she did not submit them in evidence. She explained that she incurred approximately \$200.00 in gas expenses moving back and forth, as well as additional expenses for a trailer, supplies and boxes.

The landlords dispute the tenant's moving expenses of \$500.00. They stated that it is the tenant's responsibility to move and pay for herself. They explained that they intend to renovate the unit in good faith. They maintained that the tenant did most of the moving herself already, so her expenses would be limited.

Analysis

I find that the tenant is intending to voluntarily vacate the rental unit after receiving a 2 Month Notice from the landlords. The tenant filed an application to dispute the notice but decided not to wait for this hearing in order to determine the outcome of her tenancy. She stated that she would be moving on her own accord on the effective date of the 2 Month Notice, June 30, 2018. She agreed to an order of possession being issued to the landlords on this basis.

Therefore, if the tenant incurs moving costs, which she likely would in any event when moving to a new place, she must bear these costs. The tenant also failed to provide a specific breakdown of the costs charged, indicating only that it was for gas, moving, trailer, supplies and boxes. She confirmed that she had receipts and invoices in front of her during the hearing and others that she could have obtained prior to the hearing, but she failed to provide these for the hearing. I find that the tenant had ample time to submit her evidence prior to the hearing. I dismiss the tenant's application for moving costs in the amount of \$500.00, without leave to reapply.

As the tenant was mainly unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

To give effect to the agreement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlords **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on June 30, 2018. The tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on June 30, 2018. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's application for a monetary order for the return of her security deposit is dismissed with leave to reapply.

The remainder of the tenant's application is dismissed 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: June 18, 2018

Residential Tenancy Branch