



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenants for the return of double the security and pet deposits, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on July 11, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

The Landlord and her agent joined the hearing approximately 15 minutes late. The Arbitrator summarized and reviewed all the information and testimony presented by the Tenant prior to the Landlord joining the hearing. The Landlord and the Agent said they understood the process and the hearing continued.

Issues(s) to be Decided

1. Are the Tenants entitled to the return of double the security and pet deposits?
2. Are there damages or losses to the Tenants and if so how much?
3. Are the Tenants entitled to compensation for loss or damage and if so how much?

Background and Evidence

This tenancy started on February 20, 2016 as a fixed term tenancy with an expiry date of August 20, 2016. The tenancy then continued on a month to month basis. Rent was \$2,358.00 per month payable on the 1st day of each month. The tenancy agreement says the Tenant paid a security deposit of \$1,000.00 and a pet deposit of \$1,000.00 both on February 20, 2016. The Tenant continued to say an additional tenant replaced

one of the original tenants and this tenant paid an additional \$550.00 as a security deposit.

The Landlord confirmed the amounts of the security and pets deposits in the total amount of \$2,550.00.

The Tenant said a move in condition inspection report was completed at the start of the tenancy but no report was completed at the end of the tenancy even though the Tenant requested a walk through on two occasions.

The Landlord confirmed an inspection report was completed at the start of the tenancy but the Landlord said the Tenant was not available to do the report at the end of the tenancy so the Landlord completed an inspection report that she sent to the Tenant in September, 2018.

The Tenant said the Landlord issue a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated February 9, 2018 with an effective vacancy date of April 30, 2018. The Tenant said the reason on page two of the Notice to End Tenancy was that the Landlord or a close family member was moving into the rental unit. The Tenant continued to say they moved out of the rental unit on April 7, 2018 and gave the Landlord their forwarding address in writing on March 23, 2018 by registered mail. The Tenant said the Landlord has not returned any of the security or pet deposits and the Landlord did not provide any compensation as required by section 51 of the Act. The Tenant said the Act says that any tenant evicted with a 2 Month Notice to End Tenancy is compensated the equivalent of one months rent. In this situation the Tenant said they stayed in the unit until April 7, 2018 so the compensation should be prorated to 23 days of 30 days in April, in the amount of \$1,807.80. The Tenant requested this amount of compensation for the 2 Month Notice to End Tenancy. Further the Tenant said the Landlord did not make an application to retain any or all of the Tenants deposits, therefore the Act says that the Landlord must pay the Tenants double the amount of the deposits. The Tenant requested $\$2,550.00 \times 2 = \$5,100.00$ be awarded to him. .

The Landlord confirmed that she has not made an application to retain the deposits and she has not returned any of the security or pet deposits as there was damage to the unit and the unit had to be treated for bed bugs. The Landlord's Agent said he believes the Landlord spent approximately \$5,100.00 to bring the unit back to a liveable condition. The Agent said the Landlord was with in her rights to keep the Tenants' deposits.

The Tenant continued to say the Landlord has acted in bad faith because the reason on the 2 Month Notice to End Tenancy for Landlord's Use of the Property was for the Landlord or close family member to move in. The Tenant provided a considerable number of advertisements for the rental unit to be sold or to be rented from the time of April 26, 2018 to todays date. The Tenant said the Landlord has now taken the rental unit off of real estate market for sale 17 days before the hearing. Further the Tenant said he summited a photograph showing the Landlord's mail had not been picked up at

the rental unit so he believes the Landlord does not live there. Consequently the Tenant said he believes the Landlord has not moved into the unit and has not used the unit for the reason that he was evicted for. The Tenant said according to the Act under section 51 the Landlord should have to compensate him 12 times the monthly rent for acting in bad faith. The Tenant is requesting \$28,296.00 in compensation from the Landlord for acting in bad faith and not completing the reason on page two of the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated February 9, 2018.

The Landlord said that she moved into the rental unit on May 1, 2018 after she did considerable repairs to the unit. The Landlord continued to say that she has lived there from May 1, 2018 and is still living in the rental unit at the present time. Further the Landlord's Agent said the Landlord has had it up for sale but she did not sell it as she is living in it. The Landlord continued to say that she has had it up for rent as she was looking for a roommate which she has now. The Landlord said she is telling the truth that she has lived in the rental unit starting May 1, 2018 to the present time. The Agent said the Tenants' claim for bad faith is wrong and the Landlord did not act in bad faith. The Agent requested this claim to be dismissed.

In closing the Landlord's agent said the Landlord may have to make a claim of her own to cover damages and losses the Landlord has suffered.

The Tenant said in closing that his first two claims are prescribed by law and he understands that if the Landlord has lived in the unit since May 1, 2018 then the Landlord has completed the reason on the 2 Month Notice to End Tenancy. The Tenant said that he still believes the Landlord acted in bad faith in this tenancy.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

I find from that the Tenants did give the Landlord a forwarding address in writing on March 23, 2018. The Landlord did not repay security and pet deposits to the Tenants within 15 days of the end of the tenancy or 15 days after receiving the Tenants' forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenants and I award the Tenants double the security and pet deposits in the amount of $\$2,550.00 \times 2 = \$5,100.00$.

In addition Section 51: Tenant's Compensation for a section 49 Notice:

51 (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) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), **an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if:**

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

16 of the Act says the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into whether or not the tenant ever occupies the rental unit.

I accept the Tenant's evidence and testimony as well as the Landlord's testimony that she has not paid the Tenants compensation as a result of issuing the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated February 9, 2018. Consequently I award the Tenants the prorated amount of one month compensation in the amount of \$1,807.80.

With regard to the Tenants third claim for compensation because the Landlord did not complete the reason on page two of the 2 Month Notice to End Tenancy. I accept the Landlord's affirmed testimony that she is living in the rental unit now and she has lived there since May 1, 2018. Further the Tenant has not provided sufficient corroborative evidence that the Landlord does not live in the rental unit. Consequently I dismiss the Tenants' claim for compensations under section 51 for \$28, 296.00 due to lack of evidence.

As the Tenants have been partially successful in this matter I further order the Tenants to recover the filing fee of \$100.00 from the Landlord. Pursuant to section 38, 51, 67 and 72 a monetary order for be issued to the Tenants for the following amount:

Double the security deposit	\$5,100.00	
Prorated I month compensation	\$1,807.80	
Filing fee	\$ 100.00	
Sub total		\$7,007.80
Balance owing to the Tenant		\$7,007.80

Conclusion

Pursuant to sections 38, 51, 67 and 72 of the Act, I grant a Monetary Order for \$7,007.80 to the Tenants. 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 October 2, 2018

Residential Tenancy Branch