



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants provided undisputed affirmed evidence that the notice of hearing package and the submitted documentary were served to the landlord via Canada Post Registered Mail on March 16, 2018. The landlord stated that this package was not received. The tenants provided copies of the Canada Post Customer Receipt, tracking label and the returned package by Canada Post as "Unclaimed". Both parties confirmed that the package was sent to the correct mailing address for the landlord. The landlord stated that his documentary evidence was not served upon the tenants. Neither party raised any other service issues.

I accept the undisputed affirmed evidence of both parties and find that although the landlord attended and was able to proceed with the hearing, the tenants have properly served the landlord with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The landlord is deemed served as per section 90. As for the landlord's submitted documentary evidence, I find that as the tenants were not served as per sections 88 and 89 of Act, the landlord's documentary evidence is excluded from consideration in this hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation, for return of double the security deposit and recovery of the filing fee?

Background and Evidence

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

Both parties agreed that there was a signed tenancy agreement, but that neither party provided any documentary evidence regarding the tenancy agreement.

The tenants seek a monetary claim of \$6,700.00 which consists of:

\$3,500.00	Compensation, Fail to Comply Sec. 51
\$3,200.00	Return of Double the Security and Pet Damage Deposits
\$100.00	Recovery of Filing Fee

The tenants seek compensation of \$3,500.00 as the landlord failed to take steps toward the stated purpose of the notice to end tenancy issued as it was given and not used for the stated purpose for at least 6 months within a reasonable time after the effective date of the notice. The tenants stated that the landlord re-rented the house on March 1, 2018 when the reason stated on the notice was for the landlord or a close family member to occupy the rental unit.

Both parties agreed that the landlord served the tenants with a 2 month notice to end tenancy issued for landlord's use of property dated November 26, 2018 which provides for an effective end of tenancy date of February 1, 2018 and sets out 2 reasons selected by the landlord as:

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 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 landlord disputes the tenants' claims arguing that he complied with both reasons selected by temporarily moving in to renovate the house himself by living there during the construction. The landlord confirmed that once renovation work was completed the landlord moved back to his permanent residence in Qualicum Beach and re-rented the house.

The tenants also seek compensation of \$3,200.00 for return of double the \$800.00 security and the \$800.00 pet damage deposits that were paid and not returned by the landlord. Both parties confirmed that the tenancy ended on January 31, 2018 and that the tenants provided their forwarding address in writing for return of the combined deposits on February 19, 2018 via Canada Post Registered Mail. The landlord argued that permission to retain both of the deposits was given by the tenants. This claim was disputed by the tenants. The landlord

stated only that he had received a text message stating “Keep the money lose my number” or something to that effect. The tenants disputed this claim.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, both parties agreed that the landlord served the tenants with a 2 month notice under section 49 of the *Act*. Neither party raised any issues with the service or the contents of the notice.

The tenants raised section 51(2) (b) of the *Act* in their submissions. Paragraph 51(2) (b) sets out that where a rental unit is not used for the stated purpose for a period of at least six months the landlord must pay the tenant double the rent payable under the tenancy.

The landlord confirmed that he selected 2 different reasons and complied with both for the stated purpose of the landlord’s use of property. The landlord argued that renovations were made that required vacant possession of the rental unit and that he had temporarily moved into the rental unit during the construction phase to facilitate the work. The landlord stated that once renovations were complete, the landlord moved back to his permanent residence.

Residential Tenancy Branch Policy Guideline #2, Ending a Tenancy: Landlord’s Use of Property states in part,

This policy guideline addresses the requirements for ending a tenancy for landlord’s use of property or end of employment with the landlord, including:

- **the good faith requirement,**
- **the requirement to have permits and approvals in place before giving a notice to end tenancy** for demolition, major renovations or repairs, or conversion, and
- **the vacancy requirement for major renovations or repairs. ..**

It also addresses tenant applications for compensation arising from a Notice to End Tenancy for landlord’s use of property...

Section 49 of the *Residential Tenancy Act* (RTA) and section 42 of the *Manufactured Home Park Tenancy Act* (MHPTA) (see Policy Guideline 33: Ending a Manufactured Home Tenancy Agreement – Landlord use of Property) allow a landlord to end a tenancy for “landlord’s use of property.”

The RTA allows a landlord to end a tenancy under section 49, if the landlord:

- **Intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit;**
- enters into an agreement to sell the rental unit, all conditions of the sale are satisfied and the purchaser asks the landlord, in writing, to end the tenancy because the purchaser or a close family member intends, in good faith, to move in;
- **has all necessary permits and approvals required by law in place and intends, in good faith to:**
- **perform major renovations or repairs that can only be completed if the rental unit is vacant, and the only way to achieve that vacancy is by ending the tenancy,**
- demolish the rental unit, or
- convert it to another use, including a caretaker's unit, strata unit, non-profit housing cooperative or non-residential use...

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement...

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honesty of intention with no ulterior motive. **The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith:** *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636...

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy...

If a tenant can show that a landlord who ended their tenancy under section 49 of the RTA or section 42 of the MHPTA has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only),

the tenant may seek an order that the landlord pay the tenant a set amount of additional compensation for not using the property for the purpose stated in the Notice to End Tenancy...

In this case, the landlord confirmed that he had intended all along to temporary move-in to facilitate the renovations and re-rent the premises. During the hearing the landlord was asked that prior to serving the notice and up until the end of tenancy at any time were any verbal or written details provided to the tenants detailing his complete intentions. The landlord answered "no".

A review of the notice to end tenancy regarding "the reasons for this two month notice to end tenancy (check the box that applies)", I find that the purpose or intent of the notice is not to allow the landlord to select multiple different reasons for the notice, but provide the true reason allowed under the act to end the tenancy. I note that the reason to end the tenancy to renovate and re-rent the unit at a higher rate was not available. In this case both parties confirmed that the tenancy ended on January 31, 2018 and that subsequently after the landlord moving to facilitate renovations, the landlord re-rented the unit on March 1, 2018. In this case, the landlord did not use the rental unit as claimed for either the renovations requiring vacant possession for atleast 6 months nor did the landlord occupy the rental space for a 6 month period. I note that the combined time for the landlord's temporary residence and renovations combined totaled 2 months. As such, I find that the landlord failed to use the rental unit for the stated purpose (either of which) for atleast the stated 6 month period. The tenants are successful in establishing a claim for compensation under section 51 of the Act for \$3,500.00/

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s). However, pursuant to paragraph 38(4)(a) of the Act, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

I accept the undisputed affirmed evidence of both parties and find that the landlord did not return the combined \$1,600.00 security and pet damage deposits as required under section 38(1) of the Act. As such, the tenants are entitled to return of the original combined \$1,600.00 amount. Although the landlord argued that permission was given by the tenant, M.R. to "Keep the money lose my number" via a text message received, this claim was disputed by the tenants. The landlord did not provide a copy of the text. I find in the circumstances that the landlord has failed to provide sufficient evidence to satisfy me that that written permission to retain the combined deposits was given. As such, I find that section 38(6) of the Act applies and the landlord is liable for an amount equal to the \$1,600.00 combined security and pet damage deposits. The tenants have been successful for this portion of the claim and has established a total claim of \$3,200.00.

The tenants have established a total monetary claim of \$6,700.00. The tenants having been successful in their application are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$6,800.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced 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 29, 2018

Residential Tenancy Branch