Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

On June 22, 2108, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") requesting a Monetary Order for the return of the balance of their security deposit, a Monetary Order for compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The parties attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Representative DD, although receiving and signing for the Tenants' evidence package on June 28, 2018, stated he did not open the package until a week ago as the package was addressed to the Landlord. As a result, Representative DD did not think that the Tenants' evidence should be admitted during the hearing. Representative DD admitted that he was the manager for the rental unit and acted as a representative for the Landlord and, furthermore, that he did review the evidence prior to the hearing. As a result of Representative DD being a representative for the Landlord and a manager for the rental unit, I find that the Tenants served their evidence in accordance with Section 89 of the Act and that they may refer to and enter their evidence during the hearing. Representative DD acknowledged that he did not submit any evidence for the hearing.

The Landlord's witness, Witness DJ, was introduced at the beginning of the hearing and was in the presence of the Landlord. I asked him to leave the proceedings and advised him that he would be called back if required. Representative DD asked for the Witness

DJ to provide testimony mid-way through the hearing and at that time, the Representative DD brought Witness DJ back into the room and Witness DJ affirmed that he understood that he was legally required to speak the truth.

Issues to be Decided

Should the Tenants receive the balance of their security deposit, in accordance with Sections 38 and 67 of the Act?

Should the Tenants receive compensation for two month's rent, in accordance with Section 51 of the Act (pre-amendment of May 17, 2018)?

Should the Tenants be reimbursed for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Tenants and Representative DD agreed on the following terms of the tenancy:

The one-year, fixed term tenancy began on September 1, 2015 and continued on as a month-to-month tenancy until the Tenants moved out on July 31, 2017. The monthly rent was $1,650.00 and the Landlord collected an $800.00 security deposit and an $800.00 pet damage deposit.

The parties also agreed that Representative DD withheld $278.25 of the security deposit without the consent of the Tenants and claimed the amount as the cost for changing the locks on the rental unit. Representative DD received the Tenants' forwarding address on August 15, 2017 and returned the balance of the security deposit and the pet damage deposit to the Tenants soon after that in August of 2017.

Tenants' Evidence:

The Tenants testified that they left the keys inside their rental unit on the last day of their tenancy. The Tenants stated that the Landlord's claim against their security deposit should not be granted and have requested the return of the full amount of their security deposit in addition to any penalties levied against the Landlord for failing to apply for Dispute Resolution to retain an amount of the security deposit.

The Tenants stated that they received a Two-Month Notice to End Tenancy for Landlord's Use of Property on June 22, 2017 (the "Notice"). Although the move-out

date was for August 31, 2018, they moved out of the rental unit on July 31, 2018. The Notice stated that the reasons for the end of tenancy were that the Landlord or a close family member was going to move in and that the Landlord had all the necessary permits to conduct a renovation in a manner that required the rental unit to be vacant. The Tenants said that during the end of their tenancy, that Representative DD specifically stated that it was going to be the Landlord that was moving into the rental unit.

The Tenants stated that the Landlord rented out the rental unit to another family on September 1, 2017. The Tenants attended the rental unit on January 7, 2018, knocked on the door and met one of the new tenants. The Tenants recorded the conversation and introduced themselves as the previous tenants and asked when the new tenants moved in and if any repairs had been completed. The new tenant invited the Tenants into the house and the Tenants stated that, although they could see that some painting had been completed, that there was still a damaged floor. The new tenant admitted that they moved into the rental unit in September 2017. A second new tenant, (Witness DJ) joined the group and after the Tenants asked if they could take a picture of the damaged floor, the Tenants were quickly asked to leave. The second new tenant (Witness DJ) said that he would have to call the Landlord before the Tenants could take any pictures. The Tenants left the rental unit.

The Tenants are claiming that neither the Landlord nor Representative DD moved into the rental unit. The Tenants stated that renovations that required a vacant rental unit were not completed. The Tenants are claiming compensation in the amount of two month's rent as the Landlord did not follow through with the reasons stated in the Notice for ending the tenancy.

Landlord's Evidence:

Representative DD acknowledged that he did not obtain consent from the Tenants to retain a portion of the security deposit, nor did he apply for Dispute Resolution to retain a portion of the security deposit.

Representative DD testified that after the Tenants moved out, he glued the damaged floor and hired someone to paint the interior of the rental unit. Representative DD stated that he moved into the rental unit sometime after that, in mid-August 2018. Representative DD did not submit any invoices or provide any witnesses in regard to the renovations that were completed.

Representative DD stated that he was married to the Landlord's daughter and as such, that he was the son-in-law of the Landlord. He said that the Landlord and his (Representative DD's) wife travelled to China from September to March 2018.

Representative DD testified that after he moved into the rental unit, he looked for some roommates and found a family to move in with him for September 2018. Representative DD stated that he moved out of the rental unit at the end of January 2018 and went to China until March 2018. He and his family are now back living in their old house.

Representative DD did not submit or refer to any evidence to support his testimony in regard to moving into the rental unit or the tenancy that he had established with the new tenants.

Witness DJ's Evidence:

Witness DJ testified that he moved into the rental unit on September 1, 2017, with the Representative DD. Witness DJ stated that he and his wife rented 2 rooms from Representative DD and paid $1,600.00 as monthly rent. After Representative DD moved out of the rental unit in January 2018, they began to pay $2,100.00 in rent and are continuing to rent the entire house. Witness DJ stated that he remembered a couple that came by sometime in February 2018 and who identified themselves as the previous tenants and that they wanted to take pictures of the damaged floor. Witness DJ stated that he told the couple that they would have to phone the Landlord and obtain permission.

Analysis

Section 38 of the Act states that the Landlord has fifteen days, from the later of the day the tenancy ends or the date the Landlord received the Tenant's forwarding address in writing to return the security deposit to the Tenant, reach written agreement with the Tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the Landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days and does not have the Tenant's agreement to keep the deposit, or other authority under the Act, the Landlord must pay the Tenant double the amount of the deposit.

I accept the Tenants' undisputed testimony and evidence that they did not provide consent to the Landlord to retain any portion of their security deposit and that they notified the Landlord of their forwarding address on August 15, 2017, in accordance with the Act.

I have no evidence before me that the Landlord reached written agreement with the Tenants to keep some of the security deposit or made an Application for Dispute Resolution claiming against the deposit. For these reasons, I find the Landlord must reimburse the Tenants double the amount of the outstanding security deposit for a total of $556.50, pursuant to Section 38 of the Act.

Section 49(3) of the Act states that a Landlord may end a tenancy in respect of a rental unit if a close family member of the Landlord intends in good faith to occupy the rental unit. Section 49(1) of the Act defines "close family member" as the Landlord's parent, spouse or child.

I accept the testimony of Representative DD that he is the son-in-law of the Landlord. As a result of insufficient evidence provided by Representative DD, I am unsure if he actually moved into the rental unit. Regardless, Representative DD has testified that he moved into the rental unit and by doing so, that the Landlord has met the requirement under Section 49(3) of the Act. However, I find that a "son-in-law" does not meet the definition of a "close family member" and therefore, find that the Landlord failed to accomplish the stated purpose for ending the tenancy under Section 49(3) of the Act.

Section 49(6) of the Act states that a Landlord may end a tenancy if the Landlord has all the necessary permits and approvals required by law and intends, in good faith, to renovate or repair the unit in a manner that requires the rental unit to be vacant.

I accept that the Landlord may have painted the interior of the rental unit upon the Tenants moving out; however, find that the Landlord failed to provide substantial evidence to prove that the renovations required the rental unit to be vacant and that the tenancy had to end.

Section 51 of the Act, (as it was written on June 22, 2017 - the date the Notice was served) states that if 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 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 must pay the Tenants an amount that is the equivalent of double the monthly rent payable under the Tenancy Agreement.

After considering the testimony and evidence provided and the findings that a son-in-law does not meet the definition of a close family member and that Representative DD failed to provided sufficient evidence to prove that renovations that required a vacant rental unit were accomplished; I find that the Landlord has not taken the steps to accomplish the stated purpose for the ending of the tenancy, as stated on the Notice. Therefore, I find that the Landlord must pay the Tenants an amount that is equivalent of

double the monthly rent. In this case, the Landlord must pay the Tenants $3,300.00 as compensation pursuant to Section 51 of the Act.

As the Tenants' Application has merit, I find that they should be compensated for the cost of the filing fee in the amount of $100.00, in accordance with Section 72 of the Act.

The Tenants have established a monetary claim in the amount of $3,956.50, which includes $556.50 for double the outstanding security deposit, $3,300.00 in compensation and the $100.00 cost of the filing fee. Based on these determinations, I grant the Tenants a Monetary Order for $3,956.00, in accordance with Section 67 of the Act.

Conclusion

I grant the Tenants a Monetary Order for the amount of $3,956.50, in accordance with Section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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 24, 2018

Residential Tenancy Branch