



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This dispute resolution proceeding was initiated by the tenant, who filed an application for dispute resolution on September 24, 2018 against the landlord under the *Residential Tenancy Act* (the “Act”). The tenant argues that the landlord is in breach of section 38 of the Act by failing to return the security deposit in full, and, that the landlord is in breach of section 51 of the Act by failing to take steps within a reasonable period, after the effective date of a Two Month Notice to End Tenancy for Landlord’s Use of Property, to accomplish the stated purpose for ending the tenancy.

The tenant seeks compensation pursuant to section 67 in the amount of \$18,000.00 under section 51 of the Act, \$50.00 under section 38 of the Act, and, \$100.00 under section 72 of the Act for the filing fee.

A dispute resolution hearing was convened on January 22, 2019 and the landlord’s agent (hereafter the “agent”) and the tenant attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlord’s agent confirmed the correct legal name of the landlord which is reflected on the cover page of this Decision. The parties did not raise any issues in respect of the service of evidence.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the tenant entitled to compensation in the amount of \$18,000.00 pursuant to section 51 of the Act?
2. Is the tenant entitled to compensation in the amount of \$50.00 pursuant to section 38 of the Act?
3. Is the tenant entitled to compensation in the amount of \$100.00 pursuant to section 72(1) of the Act?

Background and Evidence

The tenant testified that the tenancy commenced in September 2017 (he could not recall the specific date, and no copy of a written tenancy agreement was submitted into evidence) and ended on September 15, 2018. Monthly rent was \$1,500.00. The tenant submitted copies of rent receipts that reflect the monthly rent. The agent did not dispute the amount of the rent or the tenant's testimony regarding the tenancy agreement.

The tenant testified that he paid a security deposit of \$750.00 of which \$700.00 was returned to him at, or within days of, the end of the tenancy. The agent conceded on several occasions throughout the hearing that the landlord owes the tenant the remaining \$50.00, but that "I don't owe him a penny more." I note that neither party provided any evidence as to when, or if, the tenant provided his forwarding address to the landlord or her agent.

The tenant testified that on July 23, 2018 at 7:52 A.M., the tenant received a text message from the agent, which read as follows:

Cousin called from India. Got his and his family's visa.
So giving you a 2 months notice. You have until end of
September. If you can leave earlier would be great need
to fix basement. And clean and paint. Good luck.

At some point later that day, on July 23, the landlord or her agent gave the tenant a handwritten notice on which was stated the following:

I am giving you a legal 2 months notice to vacate my basement at [address of rental unit]. Family from India are coming to stay. Need our home, basement vacated. Thanks.

After researching residential tenancy law, the tenant asked the agent to complete Residential Tenancy Form #RTB – 32, Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). The Notice was issued and served in-person on the tenant on July 27, 2018.

Page two of the Notice indicated that the reason for the Notice being issued was that "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 Notice indicated that the effective end of tenancy date would be October 1, 2018.

Five days later, on August 1 at 5:29 P.M., the agent sent the tenant the following text:

Someone called me for a reference. Regarding you. So
You are moving. Let me know. Cousins are going to be
here at the end of August. Or I need to put it on craigslist.

On August 21, 2018, the tenant gave the landlord 10 days' written notice that he would vacate the rental unit on September 1 or on September 15, 2018; the tenant vacated on September 15.

Before he vacated, however, the tenant discovered on September 13 a Craigslist advertisement which listed the rental unit as being available October 1, 2018. Monthly rent was advertised at \$1,800.00 (\$300.00 more than what the tenant was paying). Another advertisement was then posted on or about September 22, 2018, listing the rental unit at \$1,700.00 and available October 1. The phone number on both advertisements matched the agent's phone number from which he dialed in during the hearing.

The agent testified that the advertisements were "not supposed to go up," but that his son put up the advertisements after the landlord (that is, the agent's mother) asked the son to do so.

In respect of the state of the rental unit after the tenant left, the agent testified that the rental unit was vacant between September 15 and November 30, 2018 because he thought that his cousins would be moving from India. However, his cousins ultimately did not qualify for visas allowing them to move to Canada. On December 1, 2018, new tenants moved into the rental unit, and have resided in the rental unit ever since.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the tenant claims that the landlord breached the Act in respect of failing to return the security deposit and in failing to use the rental unit for the stated purpose.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

Tenant's Claim for Security Deposit

In respect of the security deposit, section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (1) repay any security deposit or pet damage deposit to the tenant, or (2) apply for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(4) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

In this case, however, there is no evidence before me establishing if, and when, the tenant provided his forwarding address in writing to the landlord. As such, I must refer to Residential Tenancy Branch Directive 2015-01, and dismiss this aspect of the tenant's application for compensation. The landlord is now considered served with the tenant's forwarding address and must return the \$50.00 to the tenant within 15 days of the date that the landlord receives this decision. The tenant may re-apply for this amount if the landlord does not claim against the remaining balance or return the deposit within 15 days of receiving this decision.

Tenant's Claim for Compensation under Section 51 of the Act

In respect of this aspect of the tenant's claim, section 51 of the Act reads as follows:

(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.

[. . .]

(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.

Section 49 of the Act, to which the above-noted section refers, outlines the different ways by which a landlord may end a tenancy for a landlord's use of property. In this case, the landlord issued a Notice under section 49(3) of the Act which states that "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or 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” to mean, in relation to an individual, the individual’s parent, spouse or child, or, the parent of child of that individual’s spouse. The definition does not include a cousin. I note that page two of the Notice also includes the definition of “close family member.”

In this case, the landlord was clear that they were giving the tenant two months to vacate the property because cousins from India were to move into the rental unit. Not only did the landlord fail to meet the requirement under section 49 of the Act that the intended family moving in were “close family members,” they breached section 51(2)(a) of the Act by taking no steps within a reasonable period after September 15, 2018 to accomplish the stated purpose (that is, that the rental unit would be occupied by the landlord or the landlord’s close family member) for ending the tenancy. Indeed, the landlord directed her grandson to place two advertisements, including one posted before the tenant even moved out, in what appears to be part of an orchestrated effort to find a new, higher-rent-paying tenant.

This is, I find, quite the opposite of taking steps to accomplish the stated purpose of having close family members occupy the rental unit, and I infer from the conduct of the landlord and her son that they anticipated that their cousins might not be arriving from India. The agent’s passing reference to Craigslist in his text to the tenant on August 1—“Or I need to put it on Craigslist”—strongly suggests that the landlord and her agent had a secondary, ulterior motive in mind when they set about to end the tenancy. This is further supported by the agent’s frequent testimony regarding the difficult financial situation that he and his family found themselves in after he was laid off from work.

Given that no steps were taken to have close family members occupy the rental unit, the issue of whether there were extenuating circumstances preventing the landlord from accomplishing the stated purpose for ending the tenancy is moot. There were no extenuating circumstances because there was no close family moving into the unit.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for compensation under section 51(2) of the Act.

As such, pursuant to sections 51(2) and 67 of the Act, I grant the tenant a monetary award equivalent to twelve times the monthly rent in the amount of \$18,000.00.

Tenant’s Claim for Recovery of the Filing Fee

As the tenant was successful in his application I grant a further monetary award in the amount of \$100.00 for recovery of the filing fee, pursuant to section 72(1) of the Act.

Conclusion

I hereby grant the tenant a monetary order in the amount of \$18,100.00, which must be served on the landlord. This order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 25, 2019

Residential Tenancy Branch