



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on May 4, 2018 (the "Application"). The Tenants applied for compensation for monetary loss or other money owed, the return of the security deposit and reimbursement for the filing fee.

This matter came before me for a hearing November 01, 2018 at which time the hearing was adjourned. An interim decision was issued November 02, 2018. This decision should be read in conjunction with the interim decision.

The Tenant appeared at the hearing with the Translator. The Landlord appeared at the hearing with Legal Counsel, the Co-landlord and a translator. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenants had submitted new evidence since the last hearing. The Landlord had not submitted new evidence. I addressed service of the new evidence. Legal Counsel advised that the Landlord did not receive two pages of a new tenancy agreement submitted by the Tenant. The Translator testified that the new evidence was posted on the Landlord's door. The Tenant had not submitted evidence about this service. I heard from the parties on whether the new tenancy agreement should be admitted or excluded.

I excluded the two pages of the new tenancy agreement as I was not satisfied that it was served on the Landlord in accordance with the Rules of Procedure and was of the view that it would be unfair to admit the evidence in the circumstances.

Legal Counsel raised a preliminary issue of the Translator being both a translator and witness in the proceedings. I advised Legal Counsel that I was alive to the issue and that this would go to the weight I gave to the Translator's testimony.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties and witnesses. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to return of double the security deposit?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought the following compensation:

1. \$537.00 for bus pass expense;
2. \$225.00 for moving expenses;
3. \$2,900.00 for the difference between their rent at the rental unit and current rent;
4. Compensation under section 51 of the *Residential Tenancy Act* (the "Act") based on the Landlord not following through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property;
5. Return of double the security deposit; and
6. Reimbursement for the filing fee.

The parties agreed on the following in relation to the tenancy agreement. There was a written tenancy agreement between the Landlord and Tenants in relation to the rental unit. The tenancy started September 15, 2014. Rent was \$1,410.00 due on the first of each month. The Tenants paid a \$650.00 security deposit.

The Translator testified that the tenancy agreement was a fixed term agreement that expired and became a month-to-month agreement. However, the Translator testified that the agreement was expected to go until December of 2018 because, at a prior arbitration, the arbitrator had ordered the Tenants to provide the Landlord with cheques in advance up to this month.

Legal Counsel advised that the tenancy agreement was a fixed term agreement that lapsed and became a month-to-month agreement. Legal Counsel submitted that the order by the arbitrator for the Tenants to provide post-dated cheques does not change the term of the tenancy agreement.

The parties agreed the Tenants vacated the rental unit February 28, 2018.

Legal Counsel advised that the Landlord received a letter from the Tenants asking for their security deposit and providing an address. He said the letter is dated February 13, 2018. Legal Counsel did not know when the Landlord received this letter. The Tenant could not say when the letter was sent.

The parties testified about whether the Landlord had returned the original amount of the security deposit to the Tenant. The testimony in relation to this issue was unclear and confusing. I understood the Translator to acknowledge that the Tenants received a cheque in October for the \$650.00 security deposit and to acknowledge that this cheque can be cashed. I understood Legal Counsel to say that the Landlord sent a cheque dated May 10, 2018 in relation to the security deposit and then cancelled this and re-issued the cheque in October.

The parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to keep the security deposit.

The parties agreed no move-in inspection was done. Legal Counsel advised that the Landlord did not provide a formal opportunity to the Tenants to do a move-in inspection.

The parties agreed no move-out inspection was done. Legal Counsel advised that the Landlord did not provide the Tenants with a second opportunity to do a move-out inspection on the approved form. Legal Counsel said the Landlord did an inspection without the Tenants but did not complete a formal report.

A Two Month Notice to End Tenancy for Landlord's Use of Property dated January 30, 2018 (the "Notice") was submitted as evidence and the parties agreed this was served on the Tenants. The parties agreed the Notice was posted on the door of the rental unit January 30, 2018. The effective date of the Notice is March 31, 2018. The grounds for the Notice are that "the rental unit will be occupied by the landlord or the landlord's close family member".

The Translator advised that the rental unit address has an upper and lower suite and that the Tenants rented the upper suite.

The Tenant testified as follows through the Translator. On April 15, 2018, he attended the rental unit and a male was present who told him that he was the tenant. He identified himself as the previous tenant and the new tenant invited him in. The new tenant was the only person living in the rental unit.

The Translator then testified as follows as a witness. On June 7, 2018, he went with the Tenant to the rental unit. They saw a female enter the rental unit. The female looked older. Him and the Tenant knocked on the door and a male answered. The male provided his name. The Tenant and the male had a conversation. The male said two more people moved into the other two bedrooms in the rental unit. The male said he moved in in April, someone moved in in May and a female moved in in June.

The Tenant testified as follows through the Translator. He has frequent contact with the tenants in the lower unit at the rental unit address and they tell him the upstairs is rented out. The Landlord says his daughter is living at the rental unit but he disputes this. The female observed does not match the description of the Landlord's daughter.

The Landlord called his daughter as a witness. She advised that she is 20 years old. She testified that she lives at the rental unit and moved there in March of 2018. She said she previously lived with her parents.

The witness referred to evidence submitted of documentation with her address on it showing she resides at the rental unit. Legal Counsel asked the witness about what appears to be a change of address with ICBC. The witness could not recall when she did this. Legal Counsel referred the witness to the documentation regarding this at which point the witness said she changed her address in July. Legal Counsel referred the witness to bank statements submitted showing the rental unit as the witness' address and asked when she changed her address with the bank. The witness testified that she did this around the same time she changed her address with ICBC in July. The witness testified that she changed her address at this time because she lost her wallet and so changed all addresses.

The witness testified that the rental unit address consists of one rental unit upstairs and two full rental units and one shared rental unit downstairs. The witness said she lives alone in the upper unit. She testified that, at one point, her boyfriend's friend lived in the upper suite with her for less than a week. She testified that this was in April. She provided the name of this individual and it is the same name as the male who the Tenant and Translator spoke to at the rental unit. The witness testified that the male then moved to the shared rental unit downstairs. The witness testified that she is unaware of a young man or woman living in the rental unit in March or July.

The Tenant asked the witness questions through the Translator. He asked the witness when she lost her wallet and she testified that it was in June. He asked why her driver's licence shows a change of address rather than that it was newly issued. The witness testified that this was because she applied for the change of address online right after she got a new driver's licence.

I asked the witness a clarifying question to which she testified that, after she lost her wallet, she applied for a driver's licence with her old address and then when she got the driver's licence, she sought a change of address. I asked the witness why she applied for a driver's licence with her old address. The witness testified that she was not thinking about it and that she was not sure that having personal items sent to the rental unit was the best scenario. She then referred to her employer sending her cheques. I asked what the connection between her driver's licence address and her employer sending her cheques was, she acknowledged there was no connection. I asked the witness why she did not change her address until July. She testified that she wasn't thinking too much about changing addresses.

I asked Legal Counsel if the Landlord was disputing that the Tenant and Translator met with the male who they say was the new tenant and the witness says was her boyfriend's friend. Legal Counsel advised that the Landlord does not have knowledge of whether this occurred because the witness does not know. He advised the Landlord is not saying it could not have happened. He said the Landlord does not know what the male did or did not say. He confirmed the Landlord is not saying it did not happen, the Landlord does not know.

Legal Counsel made submissions in relation to the request for compensation under section 51 of the *Act*. He pointed out that the Tenants have the onus to prove the claim on a balance of probabilities. Legal Counsel submitted that the evidence of the Tenant consists almost entirely of hearsay. He pointed out that the Tenant did not call the male he spoke to at the rental unit as a witness at the hearing. Legal Counsel pointed out that the Translator is acting both as translator and witness. Legal Counsel submitted that I should give the Tenants' evidence very little weight in the circumstances. Legal Counsel pointed out that the Landlord called the witness who was not present during the hearing and gave sworn testimony. Legal Counsel submitted that the witness' testimony should be viewed in context and pointed out her age and the reason she moved to the rental unit. He submitted that her testimony was not surprising in this context.

The Tenant through the Translator pointed out that the Landlord submitted no evidence showing the witness lived at the rental unit prior to June.

The basis for the Tenants' request for \$537.00 for bus pass expense, \$225.00 for moving expenses and \$2,900.00 for the difference between their rent at the rental unit and current rent is that these expenses would have been unnecessary if the Landlord had not served the Notice on the Tenants. The Translator submitted that the Tenants are entitled to compensation for these amounts because the Landlord did not follow through with the stated purpose of the Notice.

The Tenants submitted a signed witness statement from the Translator. It outlines the events on June 7^h as outlined by the Translator during the hearing.

The Landlord submitted documentation showing the witness' address. This included bank statements from June 11, 2018 to October 11, 2018 with the rental unit address on them. The identification included shows it was issued May 18, 2018 and has change of address stickers showing the rental unit address. The Landlord submitted no documentation showing the witness' address as the rental unit prior to June of 2018.

Analysis

Security Deposit

Section 38 of the *Act* sets out the obligations of landlords in relation to security deposits held at the end of a tenancy.

Section 38(1) requires landlords to return the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing.

In relation to the Tenants' forwarding address, neither party could tell me when this was sent by the Tenants or received by the Landlord. It is the Tenants who have the onus to prove they are entitled to return of double the security deposit. In the absence of evidence about the date the forwarding address was provided to the Landlord, I am not satisfied that the Landlord failed to comply with section 38(1) of the *Act* and am not satisfied the Tenant is entitled to double the security deposit.

The Translator, for the Tenant, acknowledged that the Tenants received a cheque for the security deposit from the Landlord and that this cheque can be cashed. In the circumstances, I decline to order the return of the security deposit as it has been returned.

Compensation under section 51 of the Act

The Notice was served on the Tenants in January of 2018 and therefore the legislation in force at that time applies to this matter.

Section 49 of the *Act* allowed a landlord to end a tenancy for landlord's use of property in the circumstances outlined in the section.

The Notice was issued under section 49(3) of the *Act* which stated:

(3) 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 51 of the *Act* set out compensation due to tenants served with a notice to end tenancy under section 49 of the *Act* and stated:

(2) In addition to the amount payable under subsection (1), if

(a) 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

(b) 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

It is the Tenants, as applicants, who have the onus to prove they are entitled to compensation under section 51 of the *Act*. The onus is on a balance of probabilities.

I accept that the Tenant attended the rental unit twice and spoke to a male who told the Tenant he was the new tenant in the rental unit. I also accept the observation of the Tenant that the new tenant was the only person living in the rental unit in April.

There was nothing about the Tenant's testimony during the hearing that called into question his credibility or reliability. Further, his testimony is supported both by the signed witness statement of the Translator and the testimony of the Translator.

I acknowledge that the Translator acted as translator and witness which is not ideal. I have considered this and do give the Translator's testimony less weight than I otherwise would. However, I do not give it no weight. I found the Translator to be a reliable and credible witness. He was clear and forthcoming with his testimony throughout the hearing. Further, he had provided a signed witness statement submitted prior to the hearing in relation to the relevant events which could not have been influenced by what the Tenant said at the hearing.

I note that the Landlord did not dispute the testimony of the Tenant and Translator in relation to attending the rental unit and speaking with the new tenant when specifically asked if he was doing so. Legal Counsel advised that the Landlord did not know if this occurred and was not saying it did not occur. Therefore, I have testimony from two individuals that it did occur and the Landlord not disputing that it occurred.

In the circumstances, I accept the testimony of the Tenant and Translator in relation to their experience and observations of the new tenant and rental unit.

I acknowledge that the Tenant did not call the new tenant as a witness and therefore the new tenant did not provide testimony and could not be questioned. However, the evidence of the Tenant also related to his observations of the rental unit and who was living there. Further, the standard of proof is on a balance of probabilities and I am satisfied on a balance of probabilities that the events occurred as the Tenant and Translator state and am satisfied on a balance of probabilities that the Landlord did not use the rental unit for the stated purpose in the Notice.

The Landlord provided evidence that his daughter lives at the rental unit and has done so since March. I do not find the evidence of the Landlord compelling.

I do not accept the testimony of the witness that she moved into the rental unit in March. There is no evidence to support this testimony. The only evidence submitted shows the witness used

the rental unit address as her address as of July. I note that this is four months after the Tenants vacated the rental unit. I also note that this is after the Application was filed. I do not find the documentation showing that the witness changed her address to the rental unit address after the Tenants filed the Application seeking compensation under section 51 of the *Act* to be compelling evidence that the witness moved into the rental unit in March.

I understood the witness to say she lost her wallet in June and therefore had to get new identification and changed her addresses. Yet the identification submitted shows it was issued in May which does not accord with the witness' testimony.

Further, the witness said she moved into the rental unit in March and changed her addresses in July. When asked why her identification shows a change of address rather than a newly issued card, the witness said she applied for the identification with her old address and then requested a change of address. I do not accept this. It does not accord with common sense or human experience that a person would move to a new address, apply for identification, use their old address and then go through the process of updating the identification to their new address. Legal Counsel submitted that I should consider the age and circumstances of the witness. I have done so. I continue to find her testimony is contradictory to both common sense and human experience, regardless of her age or the reason she moved.

I also note that when asked why she applied for identification with her old address, the witness referred to her employer sending her cheques which made no sense in the circumstances. The witness then acknowledged that there was no connection between this and the address on her driver's licence.

I did not find the witness to be a credible witness given her testimony did not accord with common sense or human experience and did not make sense in the context. I do not accept the testimony of the witness that she moved into the rental unit in March or that she lives at the rental unit.

At most, based on the evidence of the Landlord, I would accept that the witness moved into the rental unit in July, three months after the effective date of the Notice. This is not within "a reasonable period after the effective date of the notice" as that phrase is used in section 51 of the *Act*.

I am satisfied that the Landlord failed to follow through with the stated purpose of the Notice or failed to accomplish the stated purpose of the Notice within a reasonable period after the effective date of the notice. I find the Tenants are entitled to the equivalent of double the monthly rent payable under the tenancy agreement. The Tenants are entitled to compensation in the amount of \$2,820.00.

I do not accept that the Tenants are entitled to further compensation based on the Landlord failing to follow through with the stated purpose of the Notice. The *Act* sets out what tenants are

entitled to when landlords do not follow through with the stated purpose of the Notice. I am not satisfied that the Tenants are entitled to more than what the *Act* stipulates they are entitled to. I dismiss the Tenants' request for further compensation without leave to re-apply.

As the Tenants were partially successful in this application, I grant them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$2,920.00 compensation and I grant the Tenants a Monetary Order in this amount.

Conclusion

The Tenants' application for the following is dismissed without leave to re-apply:

1. \$537.00 for bus pass expense;
2. \$225.00 for moving expenses;
3. \$2,900.00 for the difference between their rent at the rental unit and current rent; and
4. Return of double the security deposit.

The Tenants are entitled to compensation under section 51 of the *Act* in the amount of \$2,820.00 and are entitled to reimbursement for the \$100.00 filing fee. I issue the Tenants a Monetary Order in the amount of \$2,920.00. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: January 08, 2019

Residential Tenancy Branch