Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on November 08, 2018 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch on November 07, 2018 and February 01, 2019 were sent to the Landlords. The Landlords acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On February 22, 2019 the Landlords submitted evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was personally served to the Tenant on February 24, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On March 07, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlords. As the evidence was not served to the Landlords it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

The parties were advised that alleged damages to the rental unit would not be discussed at these proceedings, as the Landlords have not yet applied for compensation for such damages.

The Landlords retain the right to file an Application for Dispute Resolution for damages.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?
Is the Tenant entitled to compensation because the Landlords re-rented the rental unit after serving the Tenant with a Two Month Notice to End Tenancy for Landlord's Use?

Background and Evidence:

The Landlords and the Tenant agree that:

- the tenancy began on June 01, 2014;
- at the end of the tenancy rent was $2,250.00 per month;
- a security deposit of $1,125.00 was paid;
- on March 10, 2017 the Landlords served the Tenant with a two Month Notice to End Tenancy for Landlord's Use, which declared that the Tenant must vacate the rental unit by May 31, 2017;
- the Notice to End Tenancy declared that the rental unit would be occupied by the Landlord or a close family member of the Landlord;
- the Landlords informed the Tenant that the rental unit would be occupied by the Landlords' family;
- this tenancy ended on April 17, 2017 or April 18, 2017;
- the Tenant provided a forwarding address, in writing, on April 18, 2018 by writing it on the final condition inspection report;
- the Tenant did not authorize the Landlords to retain any portion of the security deposit;
- the Landlords did not return any portion of the security deposit;
- the Landlords did not file an Application for Dispute Resolution claiming against the security deposit;
- the Landlords renovated the rental unit after it was vacated by the Tenant;
- the Landlords moved into the rental unit on July 01, 2017;
- the Landlords sold the rental unit prior to vacating the unit; and
- the Landlords moved out of the rental unit on November 28, 2018.

The female Landlord stated that they made extensive renovations to the rental unit prior to moving into it, which included removing walls and completely renovating the kitchen.

The Tenant stated that when she lived in the rental unit there was a self-contained suite in the lower portion of the unit and that she rented both suites. The Landlords submit that when the Tenant lived in the rental unit the lower portion was not a separate suite, as it was not divided from the upper portion of the unit by a door, although it had a separate kitchen.

The Tenant and the Landlords agreed that the lower portion of the rental unit was rented to a third party on July 01, 2017. He stated that during the renovations a door was installed to separate the lower portion of the unit from the upper portion. The male Landlord stated that the lower portion was rented to his good friend, a female, and a child.

The Landlords and the Tenant agree that prior to this tenancy ending the Landlords were advertising the lower portion of the rental unit for rent. The Tenant stated that the lower portion of the unit was shown to prospective tenants while she was living in the rental unit, which the Landlords deny.

Analysis:

Section 38(1) of the *Residential Tenancy Act (Act*) stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed testimony I find that the Landlords failed to comply with section 38(1) of the *Act*, as the Landlords have not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlords did not comply with section 38(1) of the *Act,* I find that the Landlords must pay the Tenant double the security deposit.

Section 51(2) of the *Ac*t stipulates that subject to section 51(3) of the *Act*, 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 section 51(1) of the *Act*, 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.

Section 51(3) of the *Act* stipulates that 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 section 51(2) of the *Act* if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or 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.

On the basis of the undisputed testimony I find that the Tenant was served with a Two Month Notice to End Tenancy, which was served pursuant to section 49 of the *Act*. I therefore find that section 51(2) of the *Act* must be considered in regards to this tenancy.

On the basis of the undisputed testimony I find that the after this tenancy ended the Landlords:

- spent approximately 2.5 months renovating the rental unit;
- they then moved into the upper portion of the rental unit;
- they lived in the upper portion of the rental unit for approximately 16 months; and
- on July 01, 2017 they rented a suite in the lower portion of the rental unit to a third party.

I find that the Landlords wished to live in the upper portion of the rental unit and that they therefore had grounds to end this tenancy pursuant to section 49(3) of the *Act.*

As the Landlords began renovating the rental unit shortly after the tenancy ended, I find that they began taking steps to move into the rental unit within a reasonable time after the tenancy ended. It is my conclusion that renovating the rental unit was a reasonable step taken by the Landlords in preparation for moving into the rental unit. As the Landlords lived in the upper portion of the rental unit for approximately 16 months, I find that they lived in the rental unit for significantly longer than the six months required by the legislation.

I accept that the Landlords rented out the lower portion of the rental unit after the

renovations were complete. I find that due to extenuating circumstances, however, the Landlords should not be subject to the penalties imposed by section 51(2) of the *Act*. Pursuant to section 51(3) of the *Act,* I therefore dismiss the Tenant's application for compensation on the basis of section 51(2) of the *Act*.

In adjudicating this matter I was heavily influenced by the undisputed fact that the Tenant was renting the entire residential complex as one unit. It would have therefore been impossible for the Landlords to move into the upper portion of the rental unit without ending the tenancy. In these circumstances the Landlords changed the nature of the rental unit and should not, in my view, be subject to the penalty imposed by section 51(2) of the *Act.*

In adjudicating this matter I was further influenced by the fact the legislation does not demand that a landlord use the entire rental unit. In the absence of such direction I find it reasonable that a landlord should be able to use a portion of the rental unit without being subject to the penalties imposed by section 51(2) of the *Act*, particularly when the landlord is using a significant portion of the rental unit.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $2,350.00, which includes double the security deposit of $1,125.00 and $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, 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 *Act*.

Dated: March 08, 2019

Residential Tenancy Branch