Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, wherein the Tenant requested return of her security and pet damage deposit and to recover the filing fee. By amendment dated November 23, 2018 the Tenant requested monetary compensation in the amount of $13,050.00 including 12 months' rent pursuant to section 51(2) of the *Residential Tenancy Act.* By further amendment filed on February 15, 2019, the Tenant sought to further increase her claim to $19,629.69 to include moving costs, increased rent and deposits at her new rental as well as mail forwarding costs.

The hearing was conducted by teleconference at 1:30 p.m. on March 8, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me to which the parties referred and which met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord pursuant to sections 67 and 51(2) of the *Residential Tenancy Act*?

2. Is the Tenant entitled to return of her security deposit and pet damage deposit?

3. Should the Tenant recover the filing fee paid for her application?

Background and Evidence

The Tenant testified as follows. She stated that she moved into the rental property in September 1, 2013. Rent was initially $1,000.00 and was not raised during the tenancy. The Tenant paid a security deposit of $500.00 and a pet damage deposit in the amount of $450.00. The Tenant confirmed those security funds were not returned to her. Further, she confirmed that she did not agree to the Landlord retaining those funds.

The Tenant stated that when she moved into the rental property, the original Landlord did not perform a move in condition inspection.

The Tenant testified that the property was foreclosed upon and the current Landlord, P.B., purchased the property in March of 2018.

The Tenant testified that she received the 2 Month Notice to End Tenancy for Landlord's Use on April 10, 2018 with an effective date of June 30, 2018. The reasons cited on the Notice were 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 Tenant testified that she moved out on June 20, 2018. She stated that she gave her forwarding address to the Landlord on a piece of paper on June 20, 2018 when she handed over the rental unit keys.

The Tenant further testified that the Landlord did not perform a move out condition inspection report.

The Tenant confirmed that the Landlord also did not make an application to retain her security deposit or pet damage deposit.

The basis of the Tenant's claim for 12 months' rent is that to her knowledge the Landlord did not occupy the rental unit; rather, he spent a few weeks doing minor renovations and repairs and then listed it for rent and or sale through a real estate agent.

The Tenant stated that the property is still listed for rent or sale as of the date of the hearing and that she has seen the for sale sign out front of the property. She confirmed that she knows this as she is frequently in the neighbourhood visiting friends.

The Tenant stated that she now pays $2,500.00 per month in rent. She further stated that the increase in rent has been financially devastating for her family and they could have stayed living in the rental unit as it remains vacant.

In response to the Tenant's submissions the Landlord testified as follows. He stated that he purchased the rental property on March 19, 2018.

The Landlord stated that he did not return the $950.00 to the Tenant for the security deposit and pet damage deposit as he claimed that he did not receive these funds from the previous owner. The Landlord filed an affidavit in these proceedings in which he deposed that the Tenant can ask for her deposit from the previous owners as the property was "sold as is where is". The Landlord reiterated this position during his testimony.

The Landlord's counsel confirmed that the current Landlord did not receive the security deposit and pet damage from the prior owner. In support the Landlord's counsel drew my attention to the Court Order approving the sale of the property. Paragraph 4 of the Court Order dealt with the amounts to be paid from the net purchase price "after the usual adjustments"; these amounts included taxes, strata fees, real estate commission and the outstanding mortgage. The Court Order made no mention of the Tenant's security deposit and pet damage deposit.

The Landlord also confirmed that he did not complete a move out condition inspection form with the Tenant, although they did an informal walk through when her tenancy ended.

The Landlord confirmed the Tenant moved out on June 20, 2018 and provided him with the keys to the rental unit at that time. The Landlord claimed that the Tenant did not give him any forwarding address at the time, but rather he received her address when he received her application.

In terms of the reasons for issuing the Notice, the Landlord stated that the house was "very old" and as such they needed to renovate to make it "livable"; he testified that they spent $35,000.00 renovating the home over the course of approximately three months.

The Landlord stated that his son wanted to move into the property but then shortly after he served the Notice his son's wife got pregnant and she changed her mind about moving. The Landlord confirmed that the baby is almost two months old.

The Landlord confirmed that he listed the rental property for sale approximately five to six months after the Tenant moved out. (Notably, the Tenant provided in evidence a copy of the listing agreement dated November 8, 2018.) The Landlord further confirmed that the property is still for sale, and was not listed for rent.

The Landlord's spouse stated that the Landlord's son, K. and wife changed their mind because they wanted to be closer to the Landlord and his wife to help with child care. The Landlord stated that he found out that his son and daughter in law were expecting at the time they were doing all the renovations and preparing the property for his family.

The Tenant disputed that the Landlord spent $35,000.00 on the renovations. She noted that she provided in evidence photos of the rental unit which confirmed that the rental unit was not "unlivable" as the Landlord testified; rather, the property was in good condition when the tenancy ended.

The Tenant also stated that on Friday November 9, 2018 her friend met with the Landlord's agent to discuss *renting* the rental unit, who informed the Tenant's friend that the Landlord sought $2,500.00 in rent. The Tenant's friend did not testify at the hearing before me.

In reply, the Landlord stated that he put the house up for sale, not for rent. He stated that he has tried to sell the property, not rent it.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, *Regulation*, and *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at: **www.gov.bc.ca/landlordtenant**.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove her claim.

Section 7(1) of the *Act* provides that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

After consideration of the testimony and evidence before me, the submissions made and on a balance of probabilities I find as follows.

On the Application for Dispute the Tenant indicated she sought the sum of $10,200.00 in monetary compensation representing compensation equivalent to 12 month's rent. Such compensation is available pursuant to the current version of section 51(2) of the *Residential Tenancy Act.*

Bill 12 introduced changes to section 51(2) of the *Residential Tenancy Act* and was given Royal Assent on May 17, 2018. The current version of section 51(2) provides that a tenant is entitled to *12 months* compensation, as opposed to 2 months. However as the Notice was issued on April 10, 2018, *prior to* May 17, 2018, the Tenant in the case before me is only potentially entitled to compensation based on the former version; that is, a maximum of 2 month's rent.

At the time the Notice was issued sections 49 and 51(2) read as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

(a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

(a) one individual, or

(b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

(a) for the purposes of subsection (3), an individual who

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest, and

(b) for the purposes of subsection (4), a family corporation that

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 *[tenant's compensation: section 49 notice]*, a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(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.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

(c) convert the residential property to strata lots under the *Strata Property Act*;

(d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Tenant's compensation: section 49 notice

51 (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.

> (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
>
> (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
>
> (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.

The Landlord issued the Notice pursuant to section 49(3) namely that the Landlord, or a close family member of the Landlord intends in good faith to occupy the rental unit.

Notably, section 49(3) uses the word “occupy” not “reside” or “live in”. Meaning must be given to the words actually used in the legislation. “Occupy” and “reside” have different meanings. Since the *Act* does not require the Landlord to “reside” in the rental unit, whether the Landlord, or the Landlord’s close family, actually *resided* or *lived in* the rental unit is not relevant.

The *Act* does not define the word “occupy” or “occupied”. Black’s Law Dictionary defines “occupy” as “to take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession.”

The Landlord testified that his son and daughter intended to move into the rental unit but changed their minds when they discovered they were expecting a child. He further testified that in anticipation of his son and family residing in the rental unit he undertook renovations to the rental unit. When his son changed his mind about living in the rental unit, the Landlord listed the property for sale. I accept the Landlord’s evidence in this regard.

The Tenant submitted documentation which supports a finding that the rental unit was listed for sale in November of 2018. The Landlord testified that despite being listed at this time the property had not sold as of the date of the hearing on March 8, 2019.

The Tenant also submitted that the Landlord attempted to rent the unit to others. This was disputed by the Landlord. In any event, there was no evidence before me to support a finding that the rental unit was in fact rented to another person following the end of this tenancy.

Based upon the undisputed evidence before me, I find that no other person took possession of the rental unit from the Landlord following the issuance of the Notice. Since no other person took possession of the rental unit for nearly a year after the tenancy ended, I am satisfied that the Landlord *occupied* the rental unit for at least six months starting June 30, 2018 (the effective date of the Notice).

I am satisfied that the Landlord fulfilled the stated purpose on the 2 Month Notice such that I find the Tenant is not entitled to compensation under section 51(2). Therefore, I dismiss her claim for monetary compensation pursuant to section 51(2).

The Tenant also sought compensation for additional rent paid for the rental unit she moved to after the tenancy ended; she also sought the cost of her security deposit, mail forwarding and moving costs.

Section 51(2) allows for monetary compensation for tenants who move from a rental unit in circumstances when the landlord does not use the property for the stated purpose; this compensation is intended to *include,* not be *in addition to,* such expenses as their moving costs, mail forwarding costs, and increased rent. I therefore dismiss this portion of the Tenant's claim.

I will now turn to the Tenant's claim for return of her security deposit and pet damage deposit.

While the Landlord was not the owner at the time the tenancy began and therefore did not collect the Tenant's $500.00 security deposit and $450.00 pet damage deposit, he assumed the tenancy when he purchased the property. It was therefore incumbent on him to ensure all liabilities associated with the property were accounted for, including funds relating to the tenancy.

I accept the Tenant's evidence that she gave her forwarding address to the Landlord at the end of the tenancy when she returned her keys. While the Landlord disputed her testimony in this regard I prefer her testimony. The documentary evidence before me confirms the Landlord had no intention of providing the Tenant with her security and pet damage deposit as he believed it was the responsibility of the prior owner. I find it likely

that he received her forwarding address, yet did not take any steps in that regard as he believed it was not his responsibility.

The return of the security deposit and pet damage deposit is provided for in section 38 of the *Residential Tenancy Act* which reads as follows:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
>
> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
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> (a) the director has previously ordered the tenant to pay to the landlord, and
>
> (b) at the end of the tenancy remains unpaid.
>
> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
>
> (a) 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, or
>
> (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
>
> (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
>
> (6) If a landlord does not comply with subsection (1), the landlord

> (a) may not make a claim against the security deposit or any pet damage deposit, and
>
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The evidence confirms that the Landlord failed to return the deposits to the Tenant or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

Further, by failing to perform an outgoing condition inspection reports in accordance with the *Act* and the *Regulations,* the Landlord also extinguished his right to claim against the security and pet damage deposits for damages, pursuant to section 36(2) of the *Act*.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenant the sum of **$1,900.00**, comprised of double the security deposit (security deposit: $500.00 + pet damage deposit: $450.00 = $950.00 total deposits paid).

As the Tenant has only been partially successful in her claim, I dismiss her claim for recovery of the filing fee.

Conclusion

The Tenant's application for 12 months' rent pursuant to section 51(2) is dismissed.

The Tenant's claim for moving costs, additional rent paid, the security deposit paid at her subsequent rental, and mail forwarding costs is dismissed.

The Tenant's claim for recovery of the filing fee is dismissed.

The Tenants claim for return of double her security and pet damage deposit is granted.

The Tenant is granted a Monetary Order in the amount of **$1,900.00** representing double the security deposit ($500.00) and the pet damage deposit ($450.00) paid. The Tenant must serve a copy of the Order on the Landlord as soon as possible, and should the Landlord fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: April 4, 2019

Residential Tenancy Branch