Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- the return of the security deposit pursuant to section 38 of the *Act*;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to sections 51 and 67 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord and the landlord's wife attended with an advocate and an assistant.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenants' Notice of Dispute Resolution Proceeding package and evidence, and the tenants confirmed receipt of the landlords' evidence. As such, based on the testimony of both parties, I find that the documents for this hearing were served in accordance with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as compensation on the basis of receiving a Two Month Notice to End Tenancy for Landlord's Use of Property?

Are the tenants entitled to the return of the security deposit?

Are the tenants entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A copy of the written tenancy agreement was submitted into evidence, with both parties confirming the terms of the tenancy as follows:

- The tenancy began November 16, 2017 as a fixed term tenancy scheduled to end on November 15, 2018.
- Monthly rent, payable on the 15th day of the month, was $1,580.00.
- The tenants paid a security deposit of $790.00 at the beginning of the tenancy.
- Both parties participated in a move-in condition inspection at the beginning of the tenancy.

Between October 17 to 19, 2018, the parties exchanged text message communication in which the tenants advised the landlords that they wished to continue the tenancy on a month-to-month basis after the end of the fixed term on November 15, 2018, as provided by changes to the residential tenancy legislation; the landlord stated in the text messages that they were declining the lease renewal as the tenants had not attempted to renegotiate the lease three months prior to the end of the tenancy as provided in the tenancy agreement.

The tenant stated that on or about October 25, 2018 he received a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") by Canada Post registered mail. The Two Month Notice, dated October 23, 2018, provided an effective vacancy date of January 15, 2019. A copy of the Two Month Notice submitted into documentary evidence stated the reason for ending the tenancy as:

> *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).*

Both parties confirmed that on November 4, 2018, the tenants served the landlord with written notice to end their tenancy and provided a move-out date of November 15, 2018. The tenants also provided their forwarding address with the notice to end tenancy.

The tenants vacated the rental property and returned the keys to the landlords on November 15, 2018.

A condition inspection of the rental unit was not conducted at the end of the tenancy. The tenants testified that the landlord failed to arrange it. The landlord explained they had tried to arrange it before the tenants served them with the notice to end tenancy. The landlord did not submit any evidence to demonstrate that they attempted to arrange a move-out condition inspection with the tenants, or that they served the tenants with a Notice of Final Opportunity to Schedule a Condition Inspection, form #RTB-22, after the tenants provided a move-out date.

The landlord sent the tenants a cheque for $529.30 dated November 18, 2018 as a return of a portion of the security deposit.

The tenants confirmed that they did not agree in writing for the landlord to keep any portion of their security deposit; the landlord confirmed that there was no prior arbitration order allowing them to retain any portion of the security deposit, nor did the landlord file an application for dispute resolution to retain any portion of the security deposit.

The landlord confirmed that they did not provide the tenants with one month's rent payable as compensation in accordance with the requirements of serving a Two Month Notice as they believed that the tenants were not permitted to end the tenancy by providing 10 days' written notice.

The landlord testified that the mother of the landlord's wife, currently in her late 80s, had planned to move into the rental unit and was therefore the reason the Two Month Notice was issued to the tenants. The landlord's wife testified that her mother has been living with her brother and his family in a nearby city and that her mother wished to move into the rental unit, as it is a duplex attached next to the landlord's home, which would allow the mother to be close to the landlord's wife for care, but provide her with her own space.

The landlord confirmed that his mother-in-law never moved into the rental unit and therefore they did not contest the tenants' allegations that the landlord never used the rental unit for the purpose stated on the Two Month Notice.

The landlord also did not contest that renovations were made to the rental unit to remove the carpeting and put in hardwood flooring and to add handle bars to the bathroom. The landlord's wife testified that her mother required hardwood floors for her mobility, and that's why they decided to install the hardwood floors. However, I note that this was not done until April 2019.

The landlord also did not contest that the rental unit was listed for rent in early May 2019 for a higher amount of monthly rent of $1,950.00.

The landlord contended that the health of his mother-in-law deteriorated in January 2019 and as such, she continues to reside with his wife's brother. The landlord testified that his mother-in-law has not yet been moved into assisted care living but submitted documentary evidence to show that they had began contacting senior care homes in July 2019.

The landlord submitted approximately 30 pages of documentary evidence related to the health of his wife's mother. In particular, the landlord referenced a statement provided by the mother's physician in which the physician stated, in part, as follows:

> *On the 10th October 2018; the patients medical condition slowly deteriorated and she developed significant peripheral neuropathy with difficulties walking and balance. She may need more care from her daughter and son-in-law.*
>
> *On the 11th of January 2019, the patient had chest pain and was presented to the Royal Columbian Hospital Emergency department. The investigation demonstrated chest wall pain, etiology unknown. Since then, the patient's medical condition has further deteriorated. She was advised not to drive a motor vehicle on March 15, 2019 because of the severe peripheral neuropathy and difficulties walking up and down stairs.*
>
> *In summary, [the patient's] chronic medical condition has slowly deteriorated since October 2018 and she has difficulties going up and down stairs by herself. She needs constant care and help with daily living since her emergency room visit of January 11th 2019.*

The parties were provided with an opportunity to try and settle their dispute however they were unable to resolve their dispute. As such, an arbitrated decision was made on the matters under dispute.

Analysis

The tenants' dispute consists of three heads of claim, which are addressed separately below.

1) Return of Security of Deposit

The *Act* contains comprehensive provisions on dealing with security and pet damage deposits. Under section 38 of the *Act*, the landlord is required to handle the security and pet damage deposits 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
>
> (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.
>
> **…**
>
> (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.
>
> …
>
> (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.

At no time does the landlord have the ability to simply keep all or a portion of the security deposit because they feel they are entitled to it due to damages caused by the tenant. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

In this matter, the tenancy ended on November 15, 2018, and the landlord received the tenants' forwarding address on November 4, 2018. Therefore, the landlord had 15 days from November 15, 2018, which is the later date, to address the security deposit in accordance with the *Act*.

The landlord confirmed that he had not applied for arbitration within 15 days of the end of the tenancy or receipt of the forwarding address of the tenants, to retain a portion of the security deposit, as required under section 38 of the *Act*.

It was confirmed by both parties that the tenants did not provide the landlord with any authorization, in writing, for the landlord to retain any portion of the security deposit.

I further note that the landlord extinguished the right to claim against the security deposit by failing to provide the tenants with two opportunities to schedule a condition inspection at the end of the tenancy, once the tenants provided the landlord with their notice to end tenancy on November 4, 2018. This extinguishment is explained in section 36(2) of the *Act*, as follows:

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlord may only keep all or a portion of the security and pet damage deposit through the authority of the *Act*, such as an order from an Arbitrator, or with the written agreement of the tenant. In this matter, I find that the landlord did not have any authority under the *Act* to keep any portion of the security deposit.

I note the landlord has submitted documentary evidence pertaining to claims for damages against the tenants, however, the landlord is unable to make a monetary claim through the tenants' Application. The landlord may still file their own Application, within the time limits provided in the *Act*, for compensation for the alleged damages caused by the tenants; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Based on the above legislative provisions and the testimony and evidence of both parties, on a balance of probabilities, I find that the landlord failed to address the security deposit in compliance with the *Act*.

As such, in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a monetary award of $1,050.70, which is equivalent to double the value of the security deposit of $790.00 paid by the tenants at the beginning of the tenancy, less the amount of the deposit already returned by the landlord of $529.30, with any interest calculated on the original amount only. No interest is payable for this period.

2) Compensation of One Month's Rent Payable Per Section 51(1) of the *Act*

The tenant is seeking compensation under section 51(1) of the *Act*, which states as follows, in part:

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.

In this case, there is no dispute that the landlord did not provide the tenants with one month's rent payable in accordance with the statutory compensation provisions of section 51(1) of the *Act*. The landlord explained that he believed the tenants had failed to provide proper notice to end tenancy and therefore felt entitled to retain the one month's rent as compensation.

If the landlord felt that the tenants had failed to comply with the *Act*, the landlord's recourse was to file an Application for Dispute Resolution to address the disputed issue. A landlord is not entitled to unilaterally decide to keep the statutory compensation owed to the tenants.

As the Application before me pertained only to the tenants' claims, I have not made any determinations regarding the landlord's claim that the tenants failed to provide proper notice to end tenancy as the landlord is unable to make a monetary claim through the tenants' Application. The landlord may still file their own Application for compensation, within the time limits provided by the *Act*.

Based on the above legislative provisions and the testimony and evidence of both parties, on a balance of probabilities, I find that the landlord failed to provide the tenants with one month's rent payable in compliance with the *Act*.

As such, in accordance with section 51(1) of the *Act*, I find that the tenants are entitled to a monetary award of $1,580.00, which is equivalent to one month's rent payable under the terms of the tenancy agreement.

3) Compensation of 12 Months of Rent Payable Per Section 51(2) of the *Act*

The tenant is seeking compensation under section 51(2) of the *Act*, which states as follows, in part:

51(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.

The landlord has submitted prior arbitration decisions in support of their claim, however, I note that in determining a matter, I am bound by section 64(2) of the *Act*, which requires that each decision or order must be made “on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.”

Although the landlord testified to their good faith intention to use the rental unit as a residence for the landlord’s mother-in-law at the time the Two Month Notice was issued, the landlord’s intention at the time the notice was issued is not relevant to a determination in this matter. Under section 51(2) of the *Act*, the only considerations are whether the rental unit was actually used for the stated purpose provided on the Two Month Notice, and if not, were there extenuating circumstances for not doing so.

Based on the testimony and evidence of both parties, I find that there is no dispute that the landlord did not use the rental unit for the stated purpose within a reasonable period after the effective vacancy date of the Two Month Notice, which was January 15, 2019,

and the rental unit was not used for the stated purpose for at least 6 months' duration after the effective date of the notice.

The landlord claimed that there were extenuating circumstances that prevented them from using the rental unit for the stated purpose, namely that the health of the landlord's mother-in-law deteriorated, and it was no longer feasible for her to move into the rental unit.

Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy explains the criteria for determining extenuating circumstances on page 3, as follows:

> *E. EXTENUATING CIRCUMSTANCES*
> *An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:*
> - ***A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.***
> - *A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
> - *A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*
>
> *The following are probably not extenuating circumstances:*
> - *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
> - *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.*
>
> [**My emphasis added**]

Extenuating circumstances as interpreted by Policy Guideline 50 *stop* a landlord from carrying out the stated purpose provided on the Two Month Notice. I note the high threshold to be met in a claim for extenuating circumstances based on the examples provided in the Policy Guideline. In this matter, the landlord confirmed that his mother-in-law resided with her son prior to the issuance of the Two Month Notice, and that the mother-in-law continued to reside with her son as of the date of the hearing. Therefore, I find no evidence submitted by the landlord to demonstrate that the mother-in-law died, or that she required to be housed in a hospital or in an assisted living residence, thus

preventing or stopping, the landlord from carrying out the stated purpose on the Two Month Notice.

If the landlord was already aware on October 10, 2018 from the doctor's evaluation of the mother-in-law, that her health and mobility were deteriorating, it would be reasonable to expect that the landlord would have undertaken to find the mother-in-law a residence without the stairs that are located in the rental unit, especially since the landlord testified that the reason for removing the carpeting in the rental unit and replacing it with hardwood flooring was due to the mother-in-law's mobility issues. Alternatively, if mobility was the only issue preventing the mother-in-law from moving into the rental unit, it would be reasonable to expect that the landlord would have undertaken efforts to install ramps or a chair lift to allow the mother-in-law to still move into the rental unit.

Therefore, I find that, based on the testimony and evidence presented, on a balance of probabilities, the landlord has failed to prove that the circumstances preventing them from using the rental unit for the stated purpose were "extenuating" as interpreted by Policy Guideline 50 noted above.

As such, I find that the tenants are entitled to monetary compensation in accordance with the provisions of section 51(2) of the *Act*. The tenants' monthly rent payable under the tenancy agreement was $1,580.00. Therefore, the monetary compensation is equivalent to 12 times the monthly rent payable under the terms of the tenancy agreement, for a monetary award of $18,960.00.

The tenants have also requested to recover the costs of the filing fee for their Application for Dispute Resolution. As the tenants were successful in their application, in accordance with section 72 of the *Act*, I find that the tenants are entitled to recover the cost of the filing fee in the amount of $100.00.

In summary, I grant a Monetary Order in the tenants' favour in the amount of $21,690.70 in full satisfaction of the monetary awards for statutory compensation pursuant to sections 38, 51(1) and 51(2) of the *Act* and the recovery of the filing fee paid for this application pursuant to section 72 of the *Act*.

Conclusion

I grant a Monetary Order in favour of the tenants in the amount of $21,690.70.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: September 12, 2019

Residential Tenancy Branch