Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened pursuant to an Application for Dispute Resolution made by the Tenants on May 14, 2019 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act (the "Act")*:

- a monetary order for monetary loss or other money owed;
- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant J.S. attended the hearing and was accompanied by S.C., an advocate. The Landlord attended the hearing and was represented by K.A., legal counsel. Both J.S. and the Landlord provided affirmed testimony.

On behalf of the Tenants, J.S. testified the Landlord was served with the Application package by registered mail on May 14, 2019. A Canada Post receipt was submitted in support, and the Landlord acknowledged receipt. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. Therefore, I find the Application package is deemed to have been received by the Landlord on May 19, 2019.

The Landlord submitted evidence in response to the Application. The Landlord testified it was served on the Tenants in person through a process server on August 13, 2019. An Affidavit of Service, made on August 13, 2019, was submitted in support, and J.S. acknowledged receipt. I find the Landlord's evidence was served on and received by the Tenants on August 13, 2019.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for monetary loss or other money owed?
2. Are the Tenants entitled to an order that the Landlord return the security deposit and/or pet damage deposit?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirms the tenancy began on September 1, 2017, and was expected to continue to August 31, 2018. However, for the reasons described below, the Tenants vacated the rental unit on September 30, 2017. During the tenancy, rent in the amount of $1,300.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of $650.00 and a pet damage deposit in the amount of $650.00, which are held by the Landlord.

As noted above, the Tenants vacated the rental unit on September 30, 2019. The parties' evidence differed with respect to the reasons the tenancy ended. Counsel for the Tenants suggested the tenancy ended because of their belief that the rental unit was unsafe. On the other hand, counsel for the Landlord submitted that the bases for the Tenants' alleged concerns were addressed by October 2, 2017, 2 days after the Tenants vacated. Complicating matters somewhat, the parties agreed that the Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 26, 2017 (the "Two Month Notice"), which was served on and received by the Tenants on that date.

In any event, the Tenants seek a monetary order for monetary loss or other money owed. Their claims are summarized on a Monetary Order Worksheet, dated May 13, 2019 (the "Worksheet"). First, the Tenants claimed $1,364.47 for hotel costs incurred after they moved out of the renal unit. J.S. testified that the Tenants could not continue to occupy the rental unit due to safety concerns.

In reply, the Landlord testified that most of the items of concern were completed before the Tenants moved in, leaving only 2 items outstanding: downspouts and fire separation at the unit's fridge water box. The Landlord testified that these were completed on October 2, 2017, and provided documentary evidence in support, which was attached as Exhibit "D" to his Affidavit. The Landlord testified the work could have been completed earlier if the Tenants had permitted access, and suggested the Tenants did not need to end the tenancy "unilaterally".

Second, the Tenants claimed $2,600.00, or double the amount of the security and pet damage deposits. The Tenants testified they provided the Landlord with their forwarding address in writing in a letter dated September 29, 2017, which was attached to the door of the Landlord's residence with tape on that date. A copy of the hand-written letter, which had the time it was attached noted in the corner, was submitted into evidence. In addition, the Tenants each submitted a hand-written statement confirming the letter was provided to the Landlord in this manner.

In reply, the Landlord testified that he observed a flat-bed truck attended the property on September 29, 2017. The Landlord believed the truck was there to repossess the Tenants' vehicle. He submitted that the driver of the truck may have removed the documentation from the door. In any event, the Landlord denied receipt of the Tenants' forwarding address in writing. The Landlord acknowledges that the parties did not complete a move-in or move-out condition inspection.

Third, the Tenants claimed $1,300.00 for the Landlord's breach of the tenancy agreement. S.C. clarified the Tenants sought compensation under the *Act* for having been served with the Two Month Notice. The parties did not dispute service and receipt of the Two Month Notice on September 26, 2017.

Fourth, the Tenants claimed $15,600.00 in compensation under the *Act*. Specifically, the Tenants allege the Landlord did not do what was indicated as the basis for ending the tenancy on a Two Month Notice. The Two Month Notice was issued on the basis that the rental unit would be occupied by the Landlord or a close family member of the Landlord. The Tenants disputed that the Landlord's step-daughter moved into the rental unit as intended.

In reply, the Landlord deposed in an affidavit that his daughter intended to move into the rental unit due to issues with her own landlord. However, the issues were resolved and the Landlord's daughter did not move into the rental unit. In addition, counsel for the Landlord noted that the effective date indicated on the Two Month Notice – November 1, 2017 – was incorrect. As a result, he submitted that the effective date automatically corrected to August 31, 2018, by operation of the *Act*, and that the Two Month Notice was ineffective to end the tenancy until the end of the fixed term.

Fifth, the Tenants claimed $2,500.00 in aggravated damages. J.S. testified that his family had to move due to safety concerns. In a type-written statement, J.S. advised the tenancy became "like a nightmare." The Tenants became aware of issues with the rental unit that had not passed inspection. In addition, the Landlord made an unannounced visit late at night.

In addition, J.S. testified that his family was unable to find alternate accommodation for 3 months and had to live in the bush for a period. In his written statement, J.S. advised that the Tenants used hot rocks to stay warm and had to inflate their air mattress every night. J.S. also stated that his spouse lost her job as a result of missed work caused by depression and lack of sleep. According to J.S., the circumstances caused fighting and a brief period of separation.

In reply, the Landlord noted that the statement of J.S. confirmed the Tenants found alternate accommodation on November 12, 2017, roughly 6 weeks after vacating the rental unit, not 3 months later as J.S. testified.

Finally, the Tenants sought an order granting recovery of the filing fee paid to make the Application.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

With respect to the Tenants' claim for $1,364.47 for hotel costs, I find the Tenants are not entitled to the relief sought. The undisputed testimony confirmed the Two Month Notice was served on the Tenants by posting a copy to the door of the Tenants' rental unit on September 26, 2017. However, rather than take reasonable actions such as disputing the Two Month Notice, making an application for an order that the Landlord

complete the work requited by the City, or proposing a brief move-out period until the work was completed, the Tenants elected to vacate the rental unit on September 30, 2017. Pursuant to section 44(1)(d) of the *Act*, I find that the tenancy ended on that date. Therefore, I find the Tenants did not act reasonably in the circumstances. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for $2,600.00, or double the amount of the security and pet damage deposits, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits. The language in the *Act* is mandatory.

In this case, J.S. testified the Tenants provided the Landlord with a forwarding address in writing on September 29, 2017. The Landlord testified he did not receive the Tenants' forwarding addressed and suggested it may have been removed by a third party. On a balance of probabilities, I find the evidence provided by the Tenants is not sufficient to enable me to grant the relief sought, particularly in light of the Landlord's denial. This aspect of the Tenants' claim is dismissed. Further, section 39 of the *Act* confirms that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished. As I have found there is insufficient evidence before me that the Tenants provided the Landlord with their forwarding address in writing, and more than a year passed since the end of the tenancy on September 30, 2019, I find the Landlord is entitled to keep the security deposit and pet damage deposit.

With respect to the Tenants' claim for $1,300.00 for the Landlord's breach of the tenancy agreement, section 51(1) of the *Act*, in force at the time the Two Month Notice was issued, states:

> *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.*
>
> [Reproduced as written.]

In this case, I find the Landlord issued the Two Month Notice on September 26, 2017, and that the Tenants vacated the rental unit on September 30, 2017. Upon receipt of the Two Month Notice, the Tenants became entitled to receive compensation of one month's rent payable under the tenancy agreement, or $1,300.00. I grant the Tenants a monetary award in the amount of $1,300.00.

With respect to the Tenants' claim for $15,600.00 in compensation under the *Act*, section 51(2) of the *Act*, in force at the time the Two Month Notice was issued, states:

> *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.*
>
> [Reproduced as written.]

In this case, the Landlord states at paragraph 18 of his Affidavit that his step daughter, S.M., expressed a desire to move into the rental property on September 24, 2017. However, at paragraph 25 of his Affidavit, the Landlord confirms his step-daughter advised on September 28, 2017, that she decided not to move into the rental unit. I find that the Two Month Notice was issued based on the intention of the Landlord's step-daughter to move into the rental unit but that this never occurred. Therefore, I find the Landlord did not use the rental unit for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice. I reject the submission of K.A., who suggested the Two Month Notice was ineffective to end the tenancy until the end of the fixed term by operation of section 53 of the *Act*. That was clearly not the Landlord's intention when the Two Month Notice was issued. As a result, I find the Tenants have demonstrated an entitlement to a monetary award in an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. I grant the Tenants a monetary award in the amount of $2,600.00.

With respect to the Tenants' claim for $2,500.00 in aggravated damages, Policy Guideline #16 states:

> *"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.*
>
> [Reproduced as written.]

While I accept that the Tenants suffered some hardship for a period after the tenancy ended, I find the tenancy ended primarily due to the Tenants' actions. As noted above, the Tenants could have taken the reasonable steps of disputing the Two Month Notice (which the Landlord was not entitled to issue), making an application to request an order that the Landlord complete the required work (which he did by October 2, 2017), or by proposing a brief move-out until the work was completed. Instead, the Tenants vacated the rental unit within days after receiving the Two Month Notice. This aspect of the Tenants' claim is dismissed.

Having been successful, I find the Tenant is entitled to recover the filling fee paid to make the Application. Therefore, pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of $4,000.00, which has been calculated as follows:

Claim	**Amount allowed**
Section 51(1) compensation:	$1,300.00
Section 51(2) compensation:	$2,600.00
Filing fee:	$100.00
TOTAL:	**$4,000.00**

Conclusion

The Tenants are granted a monetary order in the amount of $4,000.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 3, 2019

Residential Tenancy Branch