Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0916516 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, MNETC

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51.

The landlord, the tenant and the tenant's advocate (the "advocate") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant personally served the landlord with this application for dispute resolution on March 27, 2021. I find that the landlord was served in accordance with section 89 of the *Act*.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email and or physical addresses for service of this decision and order.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in 2010, prior to the landlord owning the subject rental property. The tenant moved out sometime in February 2019. Monthly rent in the amount of $650.00 was payable on the first day of each month.

The tenant testified that he paid the previous landlord a security deposit of $325.00. The landlord testified that he did not know if the tenant paid the previous landlord a security deposit, but that the tenant did not pay him a security deposit. Both parties agree that they signed a new tenancy agreement effective October 1, 2011 and that it states that no security deposit was paid, and that rent is $700.00 per month. Both parties agree that rent was always $650.00 per month. The landlord testified that he did not know why the tenancy agreement states that rent is $700.00 per month.

Both parties agree that they had a previous cross application arbitration on December 14, 2018 and that in that arbitration the parties came to a settlement agreement. The file numbers for the previous arbitration are located on the cover page of this decision. The following are the terms of the December 14, 2018 settlement agreement:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on February 1, 2019, by which time the tenant and any other occupants will have vacated the rental unit;
2. Both parties agreed that this tenancy is ending pursuant to the landlords' 2 Month Notice, dated October 31, 2018;

3. The landlords agreed that the tenant is entitled to one month's free rent compensation pursuant to section 51 of the *Act* and the landlords' 2 Month Notice on the following term:
    a. The tenant was not required to pay any rent to the landlords from December 1 to 31, 2018, which has already been enforced by the parties;
4. The landlords agreed that the tenant is not required to pay any rent to the landlords from September 1 to 30, 2018, which has already been enforced by the parties, for a loss of quiet enjoyment and the electricity issues during this tenancy;
5. The tenant agreed to pay rent of $650.00 to the landlords by January 1, 2019, for January 2019 rent;
6. The landlords agreed that their 10 Day Notice, dated November 2, 2018, was cancelled and of no force or effect;
7. The landlords agreed, at their own cost, to have a certified, licensed professional inspect and fix if recommended by the professional, the heat at the rental unit, so that it is in proper working order, by December 21, 2018;
8. The tenant agreed that this settlement agreement constitutes a final and binding resolution of both of his applications at this hearing.

Tenant's claim for breach of settlement agreement

The tenant testified that the landlord did not comply with term seven of the settlement agreement. The advocate submitted that the tenant is seeking $1,300.00, the equivalent of two months' rent for breach of term seven.

The landlord testified that he hired an electrician to attend at the subject rental property to inspect the heating problems identified by the tenant. The landlord testified that the tenant is a hoarder and that when the electrician attended at the subject rental property to look at the heaters, the electrician was unable to inspect them because they were covered with the tenant's belongings.

The landlord entered into evidence a signed letter from an electrician which states:

> In late December 2018, I was asked by [the landlord], to visit the apartment at [the subject rental property] to inspect the heating and do any repairs required.
>
> I did visit the apartment and reported to [the landlord] that it was not possible to inspect the wall heaters as they were covered with 'stuff'. I would state that the

apartment was used by a “hoarder”. I asked that all material be cleared to 2 feet from the walls so that it would be possible to inspect the heating. To my knowledge this was not done.

The landlord testified that he told the tenant that he would have to clean up before the heaters could be repaired and that the tenant did not remove his possessions. Both parties agree that the landlord provided the tenant with space heaters.

The tenant testified that an electrician did not attend at the subject rental property and that only the landlord’s handyman attended. The tenant testified his belongings were not on the heaters and that he was not told to clean up before repairs could be made.

The landlord entered into evidence photographs of the subject rental property that he testified were taken in either late 2018 or early 2019. The photographs show massive amounts of personal possessions stacked to the ceiling. The tenant testified that those photographs were taken when he was packing and sorting his belongings.

Tenant’s claim for doubled security deposit

The tenant testified that he personally provided the landlord with his forwarding address in writing in late January 2019. The landlord testified that he does not recall receiving the tenant’s forwarding address in writing.

Both parties agree that the landlord did not ask the tenant to complete a move out condition inspection at the end of the tenancy. No condition inspection reports were entered into evidence.

The advocate submitted that the tenant is entitled to double the return of the security deposit because, contrary to section 38 of the *Act*, the landlord did not return the tenant’s security deposit to the tenant and because the landlord’s right to retain the security deposit was extinguished pursuant to section 36(2) of the *Act.*

Tenant’s claim for 12 months’ rent pursuant to section 51 of the *Act*

The tenant testified that the landlord’s mother did not move into the subject rental property until August of 2019 because the landlord completed major renovations at the subject rental property.

The advocate submitted that as stated in the settlement agreement, the tenancy ended on February 1, 2019 pursuant to the Two Month Notice to End Tenancy for Landlord's Use of Property. The advocate submitted that the tenant was evicted for family use but instead, the landlord completed major renovations.

The advocate submitted that the Residential Tenancy Act provides a different Notice to End Tenancy for renovation, which the landlord should have used. The advocate submitted that section 51(2) of the *Act* provides that the tenant is entitled to 12 months' rent 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.

The advocate submitted that the landlord completed renovations for a period of six months, and that this period of time was not reasonable. The advocate submitted that the landlord has not provided any evidence that his mother has occupied the subject property for at least six months. The advocate testified that the landlord provided the tenant with the Two Month Notice in bad faith and that the tenant is entitled to 12 months' rent compensation.

The landlord testified that the tenant was a hoarder who resided in the subject rental property for nearly 10 years and that the subject rental property required repair and renovation after the tenant moved out to make the subject rental property habitable for his mother.

The landlord's written submissions state:

> A period of months was required to clean out the detritus left behind by [the tenant]. The condition of the apartment at his leaving required me to rent bins to haul out the garbage left behind.
>
> Work was required to rip out floors which were soaked with urine and feces. Work was required to remove built ins.
>
> A period of clean-up was required to because of the years of cigarette smoking, the dog having soaked carpet and floors with urine and feces, and the apartment being left full of garbage.

> The apartment was cleaned, re-floored, painted, and new appliances installed. The living room window was changed as the old one was found to have damp sills. None of this is immediate; I have a family to care for and a restaurant to run. The work was done diligently, and as expenses allowed.
>
> My mother had movers deliver furniture and a new bed once new carpet had been laid in late July. She moved in on August 1st while some work continued in the apartment. My mother continues to reside in the apartment.

The landlord entered into evidence a Residential Tenancy Agreement effective July 1, 2019 between himself and his mother. The landlord entered into evidence a hydro bill in his mother's name starting August 1, 2019. The landlord entered into evidence a photograph taken after the tenant moved out showing a large amount of debris and belongings at the subject rental property.

The tenant testified that he did not leave personal property at the subject rental property except for a fridge and a worktable because the garbage bins blocked the front door and prevented the large items from being removed. The tenant testified that his dog did not urinate on the floor and that the property had a rat problem. The landlord testified that the bins on site to collect the tenant's garbage did not block the front door or prevent the larger items from being removed.

Analysis

Tenant's claim for breach of settlement agreement

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;

2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that, as per the December 14, 2018 decision, the landlord was required to have a certified, licensed professional inspect and fix if recommended by the professional, the heat at the rental unit, so that it was in proper working order, by December 21, 2018.

Based on the letter from the electrician entered into evidence, I find that the landlord complied with term 7 of the settlement agreement and had a licenced professional attend at the subject rental property in December 2018, for the purpose of inspecting and repairing the heaters. I accept the electrician's account as to the condition of the property which is supported by the photographic evidence showing materials stacked to the ceiling.

I find that the condition of the subject rental property, namely materials piled on or around the heaters, prevented the electrician from making the repairs set out in the December 14, 2018 decision. I find that the tenant is not entitled to benefit from his failure to provide access to the heaters. I find that the tenant has not proved, on a balance of probabilities, that the landlord failed to comply with the settlement decision and is therefore not entitled to the relief sought. The tenant's claim for $1,300.00 for breach of term 7 of the settlement agreement is dismissed without leave to reapply.

Tenant's claim for doubled security deposit

Residential Tenancy Policy Guideline #17 states:

> The obligations of a landlord with respect to a security deposit run with the land or reversion. Thus, if the landlord changes, the new landlord retains these obligations.

I accept the tenant's testimony that he paid the previous landlord a security deposit of $325.00. I find that this accords with the standard practice of charging a security deposit equal to ½ the rent at the start of a tenancy. I find that the current landlord is responsible for returning the deposit at the end of the tenancy, as stated in Residential Policy Guideline #17.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Sections 35 and 36 of the *Act* state that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete a condition inspection report in accordance with the regulations and provide the tenant a copy of that report in accordance with the regulations.

The landlord testified that no move out inspection report was completed. Responsibility for completing the move out inspection report rests with the landlord. I find that the landlord did not complete the condition inspection report in accordance with the Regulations, contrary to sections 35 and 36 of the *Act.*

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished.

The tenant testified that the landlord was personally served with his forwarding address in January of 2019. No proof of services documents to prove the above service were entered into evidence. The landlord testified that he did not recall being served with the

tenant's forwarding address. I find that the tenant has not proved that the landlord was served with the tenant's forwarding address in writing.

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

As the tenant has not proved that the landlord was served with his forwarding address, the landlord is not yet required to return the tenant's security deposit. The tenant's claim for the return of double the deposit is therefore dismissed with leave to reapply. The tenant must serve the landlord with his forwarding address in writing and may re-apply for the return of the security deposit. I note that leave to reapply is not an extension of any limitation periods.

Tenant's claim for 12 months' rent pursuant to section 51 of the *Act*

Section 51 of the *Act* states:

> **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)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.

Residential Tenancy Policy Guideline # 50 states:

Reasonable Period

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord’s close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.

Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

> This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy.
>
> A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy. A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Based on the testimony of the both parties, I find that the tenant moved out sometime in the first two weeks of February 2019. I accept the landlord's undisputed testimony that his mother started moving in furniture late in July 2019 and that she moved in on August 1, 2019. I accept the landlord's testimony that his mother currently resides in the subject rental property. I accept the landlord's testimony that the subject rental property was in need of repair before his mother could move in. I accept the landlord's testimony which is supported by photographic evidence that the tenant left a significant amount of belongings at the subject rental property at the end of the tenancy. I find that the tenant breached section 37(2)(a) of the *Act* which states:

> (2) When a tenant vacates a rental unit, the tenant must
>
> (a)leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

I find that given the significant duration of the tenancy (approximately nine years), the materials left at the property after the tenancy and the hoarding conditions present in the property during the tenancy, it is not surprising that the subject rental property required some repairs/renovations before the landlord's mother moved in. I find that the landlord's mother moved into the subject rental property as soon as the circumstances permitted, those circumstances being the need for repairs required for reasonable habitation due to the tenant's breach of section 37(2)(a) of the *Act* and the age of the unit.

The ill section 51 of the *Act* is aimed at preventing is a landlord evicting a tenant under the guise of a family member moving in and then the landlord not following through with the reason for ending the tenancy and using the subject rental property for another purpose. In this case, it is not disputed that the landlord's mother moved into the subject

rental property. The landlord's mother is currently residing in the subject rental property as stated on the Two Month Notice.

I find that presence in the *Act* of a provision to end the tenancy for renovation does not mean that the landlord should have used that section. The requirements to end a tenancy for renovation are extremely high and require vacant possession. The renovations completed by the landlord prior to his mother moving were not significant enough to require vacant possession and so that avenue was not legitimately open to the landlord.

While the timeline example provided in Residential Tenancy Policy Guideline #50 is short, 15 days, the policy guideline states that the period of time is usually short, not that it is always short. Again, the policy guideline states that the steps should be taken as soon as possible or as soon as the circumstances permit. I find that in this case, given the length of the tenancy and the hoarding conditions of the tenancy, the circumstances permitted a longer period of time for the landlord's mother to move into the subject rental property as reasonable repairs were required.

Considering the above circumstances, I find that it was reasonable for the landlord to repair the subject rental property prior to his mother moving in. I find that the repairs were completed in a reasonable period of time (approximately 5-6 months).

Based on the testimony of the landlord and the hydro bill entered into evidence, I find that the landlord's mother moved into the subject rental property on August 1, 2019 and continues to reside at the subject rental property as of the date of the hearing. I find that the rental unit has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, in accordance with section 51(2)(b).

As I have determined that the landlord did not breach section 51(2) of the *Act*, I dismiss the tenant's application for 12 months' rent.

Conclusion

The tenant's application for

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51

are dismissed without leave to reapply.

The tenant's application for a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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: June 1, 2021

Residential Tenancy Branch