Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNETC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of $1,200.00 for the return of the security deposit; for compensation from the Landlord of $14,400.00, related to a Notice to End Tenancy for Landlord's Use of Property dated April 25, 2021 ("Two Month Notice"); and to recover the $100.00 cost of their Application filing fee.

The Tenants, the Landlord, and counsel for the Landlord, M.D. ("Counsel"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 13, 2020, with a monthly rent of $1,200.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $600.00, and no pet damage deposit.

The Two Month Notice was signed and dated April 25, 2022, it has the rental unit address, it was served via email on April 25, 2021, with an effective vacancy date of July 1, 2021. The Two Month Notice was served on the grounds 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 Tenants have two primary claims: the return of double the security deposit and compensation relating to the Two Month Notice.

#1 RETURN OF DOUBLE THE SECURITY DEPOSIT BACK → $1,200.00

The Parties agreed that the Tenants vacated the residential property on July 1, 2021, and that they texted their forwarding address to the Landlord, requesting the security deposit back on July 5, 2021. The Parties agreed that the tenancy started with a different owner. Counsel said that his client purchased the property in December 2020.

In the hearing, the Landlord said that the Tenants left a large amount of garbage and other debris on the residential property, including derelict vehicles, which the Landlord had to clean up. The Landlord confirmed that he kept the Tenants' security deposit, as he said: "I have to work on sorting out the garbage they left and repairs by myself, and so I think I should keep that, and not return it."

#2 COMPENSATION RELATED TO TWO MONTH NOTICE → $14,400.00

I asked the Tenants why I should award them with the compensation they seek in this

claim. In the hearing they said:

> After he gave us the two months to end the tenancy, we didn't dispute it; we thought him and his family were going to move into the unit. Shortly after the notice, there was surveyors that showed up on the property - about a week after the notice. But no notice was given that they were coming. I texted [the Landlord] to say that he has to give us 24 hours' notice before doing this.
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> Five days later someone was looking for surveyors, and found out that they were arranged three months prior. That's fine, he can do that if he pleases. Surveyors don't do stuff without advance notice.
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> A sign went up to lease the property. I asked how he was going to do that when we're renting the property. He said he doesn't know what he's doing with it
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> On July 1, there with a developer, and they were in the house. We were getting our last few things out of the yard. And all throughout the texting – we have a developer coming - it wasn't sitting right. Why, if you're moving in here? After we moved out, we obviously saw construction had started happening at the unit. You're not moving in, if you're gutting things. Then there was some posts online about how the property was for rent. I sent all the screenshots of these ads and that he was renting it out as commercial property.

Counsel said:

> As background to the purchase of the property, [the Landlord] purchased it in December 2020, . . . it is a little over 10 acres in size with a manufactured home on one end. He wanted to move into the manufactured home, while he built a new property. He didn't request this of the tenants initially, but he arranged to have them move out by July 1. His intention was to move in and live in the rental unit while constructing a new permanent residence on the property
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> [The Landlord] discovered some deficiencies in the home. He got a permit to do some renovations before he moved his family in. However, the municipality said the home was deficient. [The Landlord] submitted his correspondence with the municipality - he submitted a letter of the approving officer. He said the structure was sited illegally without a building permit. Alterations were made to the structure, which void it from the building code. It was not fit for human habitation and he was not permitted to move into it. The tenants should not have been living

there. [The Landlord] was not able to make personal use of the property, because he was required to tear it down.

He sold it for $1,000.00; he's been working on construction on a new house, but that has not begun yet. He was prohibited from moving into the house by law. He didn't plan to rent it out to anyone else.

The Landlord submitted a copy of an emailed latter from the municipality dated September 7, 2021. This email includes that the municipality:

> …has determined that we cannot accept the existing structure as a dwelling unit. Keeping in mind that this structure was sited illegally without a Building Permit to begin with, and that the existing septic system was installed without … approval, there is enough evidence of alteration to the structure that would otherwise void it's CSA-Z240 standard that exempts the unit from the requirements of the BC Building Code.
> . . .
> In the meantime, the [municipality] will require that this unit be removed, demolished or certified through P.Eng. approval within 90 days (Monday Dec 6, 2021) of receipt of this e-mail.
> . . .
> Thank you,
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> [Name]
> Chief Building Official

The Tenants said:

> Everything happened after we were evicted. We were evicted because he was going to move in there. The house was completely livable. His showing up with a developer before moving into the house makes me think he had an ulterior motive. You can do minor repairs, but they were moving walls and big stuff in the house. I feel they almost should have done an eviction for construction purposes – that's all that happened after we were already long gone.
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> The [municipality] correspondence – that was after the fire and they found multiple trailers and storage containers, and that the house was not up to standard. That was in the package that they sent us. It was dated after the fire. I received an original letter on September 15 from them trying to resolve this in the plans to live there.

Counsel said:

> The ad that [the Tenant's] referring to is not an ad for a residence, it is for use of some of the 10 acres of land for storage for cars, boats and trailers. He was trying to find some other way to use the property to generate revenue. He was informed by the city that this was not allowed – space for boats and trailers.

Counsel said that the manufactured home – the rental unit - was removed at the end of December 2021.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

#1 RETURN OF DOUBLE THE SECURITY DEPOSIT BACK → $1,200.00

I find that the Tenants provided their forwarding address to the Landlord on July 8, 2021, three days after it was texted to the Landlord. I find that the tenancy ended on July 1, 2021. Section 38 (1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (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:
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> (c) repay, as provided in subsection (8), any security deposit or pet

famage 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.

The Landlord was required to return the $600.00 security deposit within fifteen days of July 8, 2021, namely by July 23, 2021, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38 (1). The Landlord provided no evidence that he returned any amount of the security deposit or applied to the RTB for dispute resolution, claiming against the security deposit. The Landlord said that he incurred costs cleaning up the residential property after the Tenants vacated; however, he did not apply to the RTB for an order allowing him to keep the security deposit. Therefore, I find the Landlord failed to comply with his obligations under section 38 (1).

Section 38 (6) (b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I, therefore, award the Tenants with **$1,200.00** from the Landlord in recovery of double the security deposit, pursuant to sections 38 and 67 of the Act.

#2 COMPENSATION RELATED TO TWO MONTH NOTICE → $14,400.00

Section 51 (2) of the Act states that a landlord must pay the tenant an amount that is equivalent to 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.

In the Two Month Notice dated April 25, 2021, the Landlord indicated that the he or a close family member, intends to occupy the rental unit. The Landlord confirmed in the hearing that this was his intention in serving the Two Month Notice to the Tenants.

However, the Landlord said that he was not allowed to move into the rental unit after an inspection by the municipality, as evidenced in the email from the municipality above.

Section 51(3) of the Act states:

> (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
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> (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
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> (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 effective vacancy date on the Two Month Notice was July 1, 2021, and I find that within six months, by January 31, 2022, the stated purpose for the Two Month Notice had not been accomplished.

I accept the evidence that the Landlord did not use the rental unit for the purposes stated on the Two Month Notice. However, I find that the Landlord had extenuating circumstances that prevented him from accomplishing the stated purpose As it turned out, the Tenants should not have been living in this rental unit, either. As such, I find that the Landlord is excused from paying the amount required under subsection 51 (2) of the Act, because extenuating circumstances – the unit was uninhabitable – prevented him from pursuing the intended purpose of the Two Month Notice.

Therefore, I find that the Tenants are not entitled to a monetary award equivalent to 12 times the monthly rent of $1,200.00 payable under the tenancy agreement. I dismiss this claim without leave to reapply, pursuant to sections 51 (3) and 62 of the Act.

Summary

The Tenants are successful in their claim for double the security deposit back from the Landlord of $1,200.00; however, they were unsuccessful in their claim for 12 times the monthly rent, as the Landlord had extenuating circumstances that prevented him from achieving the stated purpose of the Two Month Notice. As such, this claim is dismissed without leave to reapply.

As the Tenants were only partially successful in their Application, I decline to award

recovery of the $100.00 Application filing fee, pursuant to section 72 of the Act.

Conclusion

The Tenants are partially successful in their Application, as they proved on a balance of probabilities that the Landlord owed them the return of double the security deposit in the amount of **$1,200.00**.

However, the Tenants are unsuccessful in their claim for 12 times the monthly rental income, as the Landlord proved that he had extenuating circumstances pursuant to section 51 (3) of the Act, which prevented him from achieving the stated purpose of the Two Month Notice. The Tenants claim in this regard is dismissed without leave to reapply.

The Tenants' claim for recovery of the $100.00 Application filing fee is also dismissed without leave to reapply.

I grant the Tenants a Monetary Order under section 67 of the Act from the Landlord in the amount of **$1,200.00**. This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 16, 2022

Residential Tenancy Branch