



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDC, MNSD, MNETC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for the following:

- compensation for a monetary loss or other money owed;
- a return of their security deposit;
- compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice); and
- recovery of the cost of the filing fee.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed.

The parties confirmed receiving the other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to the monetary compensation claimed, and a return of double her security deposit?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy start date was January 1, 2020, and ended on July 8, 2020, when the tenant vacated the rental unit. Monthly rent was \$1,300 and the tenant paid a security deposit of \$650. There was no written tenancy agreement for this tenancy.

The undisputed evidence is that the landlord has not returned the security deposit to the tenant and there was not a move-in or move-out condition inspection report (Report).

The tenant's monetary claim is \$2,465.

As to the tenant's claim of \$100 for compensation for a monetary loss or other money owed, the tenant confirmed that this was a mistaken claim that she was unable to change. The claim is actually for recovery of the filing fee.

As to the tenant's claim of \$1,300, double the security deposit of \$650, the tenant wrote in her application as follows:

I am requesting double my security deposit back. I left the house in a clean condition with normal wear and tear. No reason was brought to my attention until I asked two weeks later. Plus he denied me a walk through at the end. I took photos tho! Since he didn't meet me when I moved out or give me a time for a walk through I did as he asked and left keys for him. His daughter was in and out of the basement suit no concern was raised until I requested my money.

[Reproduced as written]

The tenant submitted that she provided the landlord with her written forwarding address in a letter, sent by registered mail on August 15, 2020, and the landlord did not return the security deposit. For this reason, the tenant requests that her security deposit be returned and that the amount be doubled.

Filed into evidence was a copy of the letter and registered mail receipt showing the Canada Post tracking number.

As to the tenant's a monetary claim of \$965, the tenant wrote in their application the following:

A pro-rated fee is owed to the me(the tenant) under the eviction notice given by my landlord for landlord use. I moved out early with notice given to him verbally and through text. He was fully aware of my move out date. There was no tenancy agreement signed but the tenancy notice to end shows we were in a tenant/landlord situation.

[Reproduced as written]

The tenant confirmed that the landlord did not serve a Two Month Notice to End Tenancy for Landlord's Use of Property RTB form, rather they received a letter from the landlord, reproduced in part as follows:

Notice to Terminate Rental Agreement

Notice to [] tenant in possession:

Take notice that:

- 1) Pursuant to our agreement January 1 2020 you are the tenant at [] (the "Premises"), of which you hold possession
- 2) Land Lord Use (Daughter)
- 3) Due to the above mentioned reason, the Landlord hereby elects to terminate the agreement
- 4) This notice requests you leave the premises in the condition received in compliance with the Province of British Columbia. Accordingly, please ensure property is surrendered by 12 noon on August 1st 2020.

This notice to quit is given pursuant to the applicable laws of the Province of British Columbia and in no way impairs or limits any of the other remedies or rights that the landlord may have under the agreement or under said laws

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenant asserted that as they vacated the rental unit pursuant to that communication by the landlord, and as they vacated the rental unit on July 8, 2020, they are entitled to the pro-rated rent from July 8-31, 2020.

The tenant asserted that the RTB form was not available online during the time they received the landlord's letter, and claimed that as this was the substitute for that form, they were entitled to the monetary compensation requested.

In response, the landlord confirmed receiving the tenant's written forwarding address in the August 15, 2020, letter and not returning the tenant's security deposit. The landlord confirmed there was no move-in or move-out Report.

In a written submission, the landlord asserted that the tenant did not provide proper notice to vacate and that their daughter moved into the rental unit as stated in the written letter to the tenant.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The onus to prove their case is on the person making the claim.

As to the tenant's claim for a monetary loss which amounted to a request for recovery of the cost of the filing fee, the tenant confirmed this was a mistake. I therefore **dismiss** the tenant's claim of \$100, without leave to reapply.

As to the tenant's claim of \$1,300, section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay any security deposit to the tenant or make an application for dispute resolution claiming against the security deposit.

If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

In this case, I find the tenant provided sufficient evidence that the tenancy ended on or about July 8, 2020, when they vacated the rental unit, the landlord received the tenant's

forwarding address by registered mail letter after it was mailed on August 15, 2020, and that the landlord has not returned any portion of the tenant's security deposit or filed an application claiming against the security deposit. As the landlord confirmed receipt of the letter, I find the landlord was deemed to have received the letter by August 20, 2020, 5 days after it was mailed.

I therefore find the landlord was obligated to return the tenant's security deposit, in full, or make an application claiming against the tenant's deposit no later than September 4, 2020, 15 days after the date the forwarding address was received.

In contravention of the Act, the landlord kept the security deposit, without filing an application claiming against the deposit.

I therefore **order** the landlord to return the tenant's security deposit of \$650, and that this amount must be doubled.

I therefore find the tenant has established a monetary claim of **\$1,300**, comprised of their security deposit of \$650, doubled to \$1,300.

As to the tenant's claim of \$965, for pro-rated rent for July 2020, I find the following applies:

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.

Form and content of notice to end tenancy

52 **In order to be effective,** a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1)for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and (e)when given by a landlord, be in the approved form.

In this case, the tenant did not receive a notice to end tenancy under section 49 of the Act. The tenant submitted that they did not receive the RTB 2 Month Notice form as that was not available online in June 2020. I accept that it was not available and the reason for that is landlords were not allowed to evict tenants during that time for that reason due to the government mandated restrictions related to Covid-19.

While I accept the landlord asked the tenant to vacate, I find it was the tenant's choice to vacate the rental unit, as they were not legally obligated to vacate.

Based on the above, I find the tenant has failed to prove the landlord ended the tenancy in accordance with section 49 of the Act and therefore, I find the tenant has submitted insufficient evidence to show they are entitled to compensation under section 51(2) of the Act or otherwise. Therefore, I **dismiss** the tenant's monetary claim of \$965, without leave to reapply.

As I find the tenant had some success with their application, I grant the tenant recovery of the cost of the filing fee of \$100.

For the above reasons, I find the tenant has established a monetary claim of \$1,400, comprised of their security deposit of \$650, doubled to \$1,300, and the filing fee of \$100.

I grant the tenant a monetary order in the amount of **\$1,400**.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is **cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application is granted, in part, and they are awarded a monetary award in the amount of \$1,400 as noted above.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 15, 2023

Residential Tenancy Branch