



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for compensation for the landlord ending the tenancy with a two, four or 12 Month Notice to End Tenancy, and the landlord has not complied with the *Act* or used the rental unit for the stated purpose; and to recover the filing fee from the landlords for the cost of the application.

Both tenants and the landlord attended the hearing, and the tenants were assisted by Legal Counsel. The landlord was represented, in part, by an agent who also acted as interpreter for the landlord. One of the tenants also acted as interpreter for the other tenant. The interpreters were affirmed to well and truly interpret the proceedings from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of their skill and ability. Legal Counsel for the tenants also spoke the landlord's Native language.

One of the tenants and the landlord and the landlord's agent each gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for a cleaning fee and repair fee, and other damages?
- Has the landlord established that the landlord has complied with the *Act* with respect to ending the tenancy?

Background and Evidence

The tenant (SD) testified that this fixed-term tenancy began on April 1, 2022 and was to expire after 1 year, however the tenancy ended on October 5, 2022. There is no written tenancy agreement, however rent in the amount of \$1,350.00 was payable on the last day of each month, which was increased to \$1,500.00 for the last month of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,350.00, which has been returned to the tenants, less a \$90.00 cleaning fee with the tenants' consent. No pet damage deposit had been collected.

The rental unit is a suite inside a house, and the landlord resided on the property during the tenancy. The units were separated by a door.

The landlord never gave the tenants any documents that contain a Residential Tenancy Branch logo. The tenant requested that the landlord provide official notices in writing, and sent a link and screen shot to the landlord to advise of the landlord's legal obligations.

The tenants have provided copies of WeChat messages and translations. One of the messages contained an attachment, which was a PDF of the Residential Tenancy Branch official document in regards to raising rent, but the landlord did not fill it out and give it to the tenants. The messages continue with the landlord stating, "So you do not agree with \$1,500.00?" The tenant replied that the tenants would only agree if it is legal and that sudden notice and forcing the tenants to move out is illegal. That was sent on August 31, 2022 at 3:20 p.m. After that, the tenant got a call from the landlord informing that the landlord's family will be moving in and requesting the tenants to move out as soon as possible. The landlord also stated, "I won't rent the unit to you even if you've offered me \$2,000! Get out by tomorrow! No 7 days notice!"

The messages also indicate that the tenants hadn't finished packing and the landlord had already advertised the rental unit for rent. The advertisement was placed on October 4, 2022 for a rental amount of \$1,800.00 and contains a photograph of the kitchen which the tenant recognized as being the kitchen of the rental unit. The tenant asked by messaging why the landlord lied, to which the landlord replied, "Not a lie. They have decided not to come. Is there a problem?"

The WeChat history also includes a conversation between the tenant and the handyman, indicating that the handyman could accept \$100.00 for labour for fixing the door. Photographs have also been provided.

The tenants claim \$190.00 for repair costs and cleaning costs, as well as \$18,000.00 for the landlord's failure to comply with the *Act* and failure to use the rental unit for the stated purpose for ending the tenancy.

The landlord's agent (HL) testified that there is no agreement between the parties, but an informal tenancy and some kind of agreement respecting fixing the rental unit; a business between them. The tenants had agreed to increase rent to \$1,450.00 in one of the messages, but the landlord wanted \$1,600.00.

The relationship was not good and the tenants moved out. The landlord asked the tenants to move out, but no notice was given. The tenants could have stayed, it was their decision. The tenants had full right to remain but decided to move out by September 30, and overheld by failing to move out until October 5 without paying that rent.

Before moving out, the tenants paid the landlord \$1,500.00, and the landlord should receive compensation for the tenants overholding. The landlord does not understand the *Residential Tenancy Act*.

The landlord's agent does not know who moved into the rental unit or whether or not that person is related to the landlord. The landlord's agent is a property manager who has been representing the landlord since March, 2023. The landlord went back overseas and the landlord's agent rented the main house. One part of the rental building has a 1 bedroom suite, and the other is the main house. The main house is the one the landlord's agent helped to rent out.

The landlord testified that this is not a common or regular tenancy relationship; the parties had an employment relationship.

The advertisement provided by the tenants was posted by the landlord in October.

SUBMISSIONS OF THE TENANT'S LEGAL COUNSEL:

The compensation sought by the tenants under Section 51 rests on 2 reasons: the landlord gave a notice to end the tenancy for landlord's use of the property, and did not use the property for that purpose with no extenuating circumstances. The landlord has not provided any evidence to cover those points. Despite the landlord's calculated and persistent messages, the tenants have proven that the landlord gave the Notice but the landlord's family did not move in. That was admitted by the landlord, and aside from that, none of the landlord's evidence has any relevance. It is a tenancy protected by the *Act*, and the landlord's refusal to provide a tenancy agreement is an admission that the landlord contradicted the *Act*.

The landlord also made conflicting testimony with respect to the relationship, placing the advertisement and suggests that the relationship with the tenants was a friendship and that the landlord only rents to people the landlord knows, but placed an advertisement. Legal Counsel for the tenants also submitted that an excerpt of a case regarding Section 49 was previously heard, wherein the Arbitrator found that the section applied even though the notice was not in the proper form. The landlord benefitted from Section 49 and then must accept the obligations. The landlord was obliged to do so.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The tenants could have continued to live in the rental unit. The move-out had nothing to do with the landlord. The tenants are trying to trap the landlord.

The landlord resides in the rental unit, and the main house is rented by the landlord's agent.

Analysis

Firstly, a landlord may not determine a tenancy to be a "friendship" or "business," to avoid the *Residential Tenancy Act*. The Act states that a tenancy exists even if it is not in writing by virtue of the tenant paying rent to the landlord and a security deposit to the landlord, and all obligations of the landlord and the tenants apply. A landlord may not choose to opt out of the Residential Tenancy laws.

A landlord may not collect more than half a month's rent for a security deposit, and it's clear that the landlord in this case collected a full month's rent, and returned only \$1,260.00 to the tenants of the \$1,350.00 security deposit collected. The landlord

returned the \$1,260.00 on October 14, 2022. The tenant testified that at the start of renting the landlord said she would take \$90.00 off the deposit, prior to the beginning of the tenancy. That is not legal. The law states that a landlord must return a security deposit and/or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make a claim against the security deposit within that 15 day period. Also, if the landlord fails to ensure that the move-in and move-out condition inspection reports are completed at the beginning and end of the tenancy, the landlord's right to make a claim against the security deposit for damages is extinguished. In this case, there are no inspection reports, and therefore, I find that the landlord's right to make a claim against the security deposit is extinguished. I have no indication of when the landlord may have received the tenant's forwarding address, however it is clear that the tenancy ended on October 5, 2022. Since the landlord has failed to comply with the Act by withholding **\$90.00** as a cleaning fee, which may or may not have been required, I find that the tenant is entitled to recover that from the landlord.

A landlord may not increase rent unless it is increased according to the law, which includes serving the tenants with a Notice of Rent Increase in the approved form at least 3 months prior to the increase taking effect. In this case, the landlord gave no such notice and I accept the undisputed testimony of the tenant that the landlord increased rent to \$1,500.00 for the last month of the tenancy, an increase of \$150.00 which the tenants paid. The tenant paid \$1,500.00 for the last month of the tenancy.

The tenants have also provided evidence of paying for repairs, and have provided a photograph of the door repaired, which in my view amounts to normal wear and tear. No move-in or move-out condition inspection reports were completed, also contrary to the law, and I fail to see that the tenants are responsible for the repair. I find that the tenants have established the **\$100.00** claim.

With respect to the claim for the landlord's failure to use the rental unit for the purpose contained in the notice to end the tenancy, Legal Counsel for the tenants submitted that a previous Decision of the Residential Tenancy Branch found that although the notice was not in the approved form it contained the relevant information that caused the tenants to vacate. A copy of that Decision has not been provided for this hearing, however, I have read all of the messages exchanged between the parties. Legal Counsel for the tenants also submitted that Section 68 applies, which states:

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

(2) Without limiting section 62 (3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,

(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or

(b) set aside or amend a notice given under this Act that does not comply with the Act.

That section is generally used where a landlord gives a notice to end a tenancy in a form previously approved, or an older version of the approved form. I agree with Legal Counsel for the tenants that Section 68 also gives me the authority to make a finding that since all of the required elements of a Two Month Notice to End Tenancy for Landlord's use of Property is contained in the notice to end given by the landlord, I may amend it, giving the tenants the right to claim the monetary amount as though the proper Notice had been served. In this case, the tenants who received the notice knew that information was omitted from the Notice. Therefore, I agree with the landlord's agent that the tenants could have simply refused to move out, and the landlord would have to rely on the *Residential Tenancy Act* to end the tenancy. I am not satisfied that in this case the tenants are entitled to 12 times the monthly rent payable under the tenancy agreement.

I am, however satisfied that the tenants are entitled to monetary compensation for the landlord's breach of the *Act*. Where a landlord issues a notice to end a tenancy for landlord's use of property the landlord is required to compensate the tenants the equivalent of one month's rent. I find that the landlord caused the tenancy to end by demanding that the tenants vacate without a proper Notice and without 2 months notice and has thereby breached the *Act*. I find that the tenants are entitled to recover the last month's rent paid to the landlord as compensation for ending the tenancy in the amount of **\$1,500.00**. Also, because the landlord simply ordered the tenants to vacate the rental unit, contrary to the law, I find that the tenants have suffered damages in the equivalent of 2 months rent, or **\$2,700.00**.

The landlord's evidence includes a Monetary Order Worksheet setting out a claim of \$1,500.00 as against the tenants for overholding. I do not have an application from the landlord, and I decline to consider the landlord's Monetary Order Worksheet.

The landlord's evidence also includes a request for the tenant overholding for 5 days in October. Considering that I have no application from the landlord, I decline to consider the request.

Since the tenant has been partially successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlord.

I grant a monetary order in favour of the tenant in the amount of \$4,090.00 (\$90.00 + \$100.00 + \$1,500.00 + \$2,700.00 + \$100.00 = \$4,490.00). The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as a judgment of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,490.00.

This order is final and binding and may be enforced.

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: May 16, 2023

Residential Tenancy Branch