



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR, CNC, FFT
 LL: MNRL-S, MNDL, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenants made an Application for Dispute Resolution on January 7, 2023 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.
- an order cancelling a One Month Notice to End Tenancy; and
- an order granting the return of the filing fee.

The Landlord’s Application for Dispute Resolution was made on March 13, 2023 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- a monetary order for damage or compensation;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the parties agreed that the tenancy had ended on February 28, 2023. As such, I find that the Tenants’ Application to cancel a One Month Notice and a 10 Day Notice to End Tenancy are now moot. I therefore dismiss the Tenants’ Application without leave to reapply. During the hearing, the Tenant referred to monetary claims for compensation. I notified the Tenant that they are at liberty to submit

a new application for compensation should they feel entitled to any, however, as the Tenants' Application had not been amended to include monetary claims, I am not at liberty to decide on such claims in this decision.

The Tenant confirmed receipt of the Landlord's Application and documentary evidence. I find these documents were sufficiently served pursuant to Section 71 of the *Act*. The parties were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for damage or compensation pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order to retain the Tenants' security and pet damage deposits, pursuant to Section 38 and 67 of the *Act*?
4. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 1, 2022. During tenancy, rent in the amount of \$1,800.00 was due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$900.00 and a pet damage deposit in the amount of \$500.00, both of which the Landlord continues to hold. The tenancy ended at the end of February 2023.

The Landlord is claiming for \$1,800.00 as the Tenants failed to pay rent for the month of February 2023. The Tenant stated that the Landlord served them with a Two Month Notice to End Tenancy dated September 2, 2022, with a March 1, 2023 effective date (the "Two Month Notice"). The Tenant stated that the Two Month Notice provides the Tenants with compensation equivalent to one month of rent. As such, the Tenant stated that he felt entitled to withholding the last month of rent.

The Landlord stated that he served the Tenants with a One Month Notice to End Tenancy on December 31, 2022 with an effective date of February 28, 2023 (the "One

Month Notice"). The Landlord stated that the One Month Notice essentially cancelled the Two Month Notice served to the Tenants, therefore, they are not entitled to the one month compensation, and were required to pay rent for February 2023. The Tenant stated that they did not agree to the Landlord cancelling the Two Month Notice. The Tenant stated that they complied with the Two Month Notice and vacated the rental unit accordingly.

The Landlord is claiming compensation in the amount of \$149.00 as the Tenants were not complying with the rules around the use of the garbage receptacle. The Landlord stated that he cautioned the Tenants in writing on several occasions requesting that they do not dispose of large items in the garbage can, they flatten cardboard for recycling and that they separate their recycling and organics from their garbage to not overfill the garbage can that is shared between the Landlord and Tenants.

The Landlord stated that the City did not empty the garbage can as it had once again been overfilled. The Landlord stated that he was required to hire a dump company to attend and remove the garbage for a fee of \$149.00. The Landlord provided the caution letters, an invoice, and pictures in support.

The Tenant stated that they received the Landlord's caution notices, however, they thought that it was the Landlord's attempt at evicting them. The Tenant denied misusing the garbage service and stated that the Landlord would fill the garbage can with his garbage, leaving little to no room for the Tenants' garbage. The Tenant stated that the Landlord could have mitigated his loss by bringing the extra garbage to the dump himself, rather than hiring a dump service to remove the garbage.

The Landlord is seeking to retain the Tenants' deposits towards these claims. The Tenants are seeking the return of double their deposits.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

The Landlord is seeking compensation in the amount of \$1,800.00 as the Tenants failed to pay rent for February 2023. The Tenants feel entitled to withholding the last month of rent as they were served a Two Month Notice under Section 49 of the Act.

Section 51(1) of the Act 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. 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.

According to the Residential Policy Guideline 11 (C) WITHDRAWAL OF NOTICE TO END TENANCY: A landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given. A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below). It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

In this case, I accept that the parties agreed that the Tenants were required to pay rent in the amount of \$1,800.00 each month. I accept that the Landlord served the Tenant in with a Two Month Notice on September 2, 2022 with an effective vacancy date of March 1, 2023. The Landlord is of the impression that the One Month Notice served to the Tenants cancels the Two Month Notice previously served to the Tenants, therefore, they would not be entitled to one month of rent in compensation.

I find that according to Policy Guideline 11, the Landlord is not permitted to unilaterally withdraw the Two Month Notice. Instead, the Two Month Notice can only be withdrawn by consent of both parties. In this case, I find that there is insufficient evidence to demonstrate that the Tenants consented to the withdrawal of the Two Month Notice. I find that the One Month Notice does not invalidate the Two Month Notice.

In light of the above I find that Tenants are entitled to compensation equivalent of one month's rent payable under the tenancy agreement, pursuant to Section 51 of the *Act*. I find that the Tenants were within their right to withhold rent in the amount of \$1,800.00 for February 2023. I therefore dismiss the Landlords claim for loss of February 2023 rent without leave to reapply.

With respect to the Landlord's claim for \$149.00 for garbage disposal fee, I find that the Landlord provided sufficient evidence that they made several attempts at working with the Tenants to have them come in compliance with the regulation surrounding garbage disposal. I find that the Tenants did not comply with these recommendations, which

resulted in the garbage not being picked up by the city. I find that it is reasonable for the Landlord to pay for a service to collect the garbage which cost \$149.00.

I do not accept the Tenants argument that the Landlord could have disposed the garbage himself at the dump for less. I find that the Tenants could have mitigated the loss themselves by complying with the Landlord's recommendations and/or disposing of their own nonconforming garbage to the dump themselves. I find that the Landlord is entitled to compensation in the amount of **\$149.00**. Having been partially successful, I find that the Landlord is entitled to the recovery of the **\$100.00** filing fee.

The Tenant requested the return of double their deposits. I accept that the Landlord continues to hold the Tenants' deposits totalling \$1,400.00. Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against 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 comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

I find that the parties agreed that the tenancy ended on February 28, 2023. I find that the Landlord submitted their Application to retain the Tenants' deposits on March 13, 2023. I find that the Landlord's Application was within the 15 days permitted, therefore, I find that they have not breached Section 38 of the *Act* and the Tenants are not entitled to the doubling of their deposits.

The Landlord has demonstrated an entitlement to compensation in the amount of \$249.00. I find it appropriate in the circumstances to order that the Landlord retain \$249.00 from the \$1,400.00 in deposits held in satisfaction of the claim (\$1,400.00 - \$249.00 = \$1,151.00).

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,151.00, which represents the remaining balance of their deposits less the previously mentioned deductions.

Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$249.00 which has been deducted from the Tenants' deposits. The Tenants are

granted a monetary order in the amount of \$1,151.00 which represents the remaining balance of the Tenant's deposits. The order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

Residential Tenancy Branch