Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC MNSD FFT

Introduction

The Tenant seeks compensation under section 51(2) of the *Residential Tenancy Act* (the "Act").

The Tenant also seeks the return, and doubling, of their security deposit under section 38(6) of the Act.

The Tenant also seeks to recover the cost of the application fee under section 72 of the Act.

Issue

1. Is the Tenant entitled to compensation under section 51(2) of the Act?
2. Is the Tenant entitled to the return, and doubling, of their security deposit?
3. Is the Tenant entitled to recover the cost of their application fee?

Background and Evidence

In a dispute resolution proceeding, the applicant must prove their claim on a balance of probabilities (meaning "more likely than not"). I have considered the parties' testimony, arguments, submissions, and documentary evidence, but will only refer to evidence that is relevant and necessary to explain the decision.

The tenancy began on April 1, 2015. The tenancy ended by way of a *Two Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") which was served on June 27, 2022, and for which the effective date of the Notice being August 31, 2022. The reason indicated on the Notice for why the Landlord was ending the tenancy was so the Landlord or their spouse would occupy the rental unit. The Tenant did not dispute the Notice.

The Tenant ended the tenancy earlier by giving notice under section 50(1) of the Act on July 26, 2022, and he vacated the rental unit on August 5, 2022. He testified that he gave his forwarding address in writing to the Landlord on July 26 when he gave the Landlord his early notice to vacate. The Landlord did not dispute these facts.

On September 1, and again in mid-September, the Tenant returned to the rental unit to check for mail. He took a quick peek inside of the rental unit (it was on the ground floor and the blinds were open) and it was empty inside. He then returned on October 1 to again check for mail and found that the rental unit was still empty.

On October 15, the Tenant was “shocked” to see a for sale sign for the property, and he also found the property listing online. The property was advertised as a rental income generating property with no current tenants. There is in evidence a copy of a listing contract effective September 29, 2022.

The Landlord testified about damage in the rental unit after the Tenant left. The Landlord texted the Tenant about this damage, and essentially asked the Tenant to relinquish the $350.00 security deposit to pay for repair costs. The Tenant did not respond to this text, and the Landlord assumed that this absence of a response meant that the Tenant had accepted responsibility for the damage and repair costs.

Regarding the Notice and the rental unit, the Landlord testified that he simply “wanted it back for myself” and that he had no interest in getting a new tenant. He “just [didn’t] want to do it [be a landlord] anymore.” The Landlord acknowledged listing the home for sale but did not think that it was a problem to list his own home.

The Landlord further testified that he took back the rental unit for himself, but it is his position that this “does not mean I have to physically move in there.” He “want[ed] my house back” and that he was not up to date on all the rules and law regarding residential tenancies. The Landlord cancelled the listing after being notified of the Tenant’s claim.

In rebuttal, the Tenant argued that the Landlord took the time to fill out the Notice, and thus he ought to have read the last two pages of the Notice which set out the consequences of non-compliance.

Analysis

Claim for Return and Doubling of Security Deposit

Section 38(1) of the Act states the following (emphasis added):

> (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
> (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 damage 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.

In this dispute, the tenancy ended on August 5, 2022, when the Tenant vacated the rental unit. The Landlord had the Tenant's forwarding address by that point. However, the Landlord did not repay the security deposit or make an application for dispute resolution claiming against the security deposit.

While the Landlord *may* have had some underlying claim for compensation and a reason to withhold the security deposit, the Landlord simply did not follow section 38(1) of the Act giving him authority to due so. Further, that the Tenant did not respond to the Landlord's text messages about the costs of repairs is not legal justification for the Landlord to retain the security deposit. In other words, the Tenant's silence did not constitute consent to retain the security deposit.

For these reasons, the Landlord did not comply with section 38(1) of the Act.

Section 38(6) of the Act states the following:

> If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this application, because the Landlord did not comply with subsection 38(1) of the Act the Landlord must pay the Tenant double the amount of the security deposit for a total of $700.00.

Claim for Compensation under section 51(2) of the Act

This application for compensation is also made under section 51(2), which states:

> 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 the landlord or purchaser, as applicable, does not establish that
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> (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
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> (b) the rental unit, except in respect of the purpose specified in section 49(6)(a), 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.

By the Landlord's own admission, neither he nor his spouse ever occupied the rental unit. Rather, they left it empty because they simply wanted their house back. While the Landlord argued that ending a tenancy in this manner does not mean he has "to physically move in there," that is, however, what is in fact required under the law.

A landlord can end a tenancy section 49 of the Act if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space. However, the facts in this case are that the Landlord simply left the rental unit empty. There is no evidence before me to find that the Landlord or his spouse ever used the rental unit for any purpose.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, (available at www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl2a.pdf) is clear that to hold a rental unit in "vacant possession" is inconsistent with the intent of section 49 of the Act. Section 49 of the Act requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose. To summarize and reiterate: section 49 of the Act does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused. This, however, is what occurred in this case.

For these reasons, it is my finding that the Landlord has not established that (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, nor that (b) the rental unit was used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I am, at this point, required to consider if the Landlord is excused from paying this amount pursuant to subsection 51(3) of the Act. This section states that

> 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 applicable, 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, and
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> (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The term "Extenuating circumstances" is not defined in the Act or the regulations. However, *Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy* provides the following interpretation of the phrase, by way of examples (emphasis added):

> These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:
> • A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.

• A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
• A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.
• A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

The following are probably not extenuating circumstances:

• A landlord ends a tenancy to occupy the rental unit and then changes their mind.
• A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.
• A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

In the application before me, there is no evidence, either direct or circumstantial, for me to find that there existed extenuating circumstances to excuse the Landlord from paying compensation under section 51(2) of the Act. The Landlord simply chose not to use, or otherwise occupy the rental unit for any purpose other than for just having it sit empty.

Taking into consideration all the oral and documentary evidence before me, it is my finding that the Tenant has proven on a balance of probabilities their claim for compensation pursuant to section 51(2) of the Act. The Landlord is ordered to pay compensation equivalent to twelve times the rent in the amount of $8,400.00.

Claim to Recover Cost of Application Fee

As the Tenant was successful in their application, they are entitled to recover the cost of the application fee in the amount of $100.00, pursuant to section 72 of the Act.

Conclusion

For the reasons set out above the Tenant's application is hereby GRANTED.

The Landlord is hereby ordered to pay $9,200.00 to the Tenant forthwith.

A copy of a monetary order for this amount is issued with this Decision to the Tenant. The Tenant is required to serve a copy of the monetary order upon the Landlord by any method of service permitted under section 88 of the Act.

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act, or, by way of an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: July 22, 2023

Residential Tenancy Branch