Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding 568 DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the Landlord: MNDL-S, FFL
For the Tenants: MNSDS-DR, MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The Landlord's application pursuant to the Act is for:

1. a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation or tenancy agreement, pursuant to section 67;
2. an authorization to retain the security deposit (the deposit), under section 38; and
3. an authorization to recover the filing fee, under section 72.

The Tenants' application pursuant to the Act is for:

1. an order for the landlord to return the deposit, pursuant to section 38;
2. a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
3. an authorization to recover the filing fee for this application, under section 72.

The landlord's agent FK (the Landlord) and tenants JA (the Tenant) and NP attended the hearing on April 25, 2024. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This decision should be read in accordance with the interim decision dated December 20, 2023.

Landlord’s application

The Landlord affirmed that his former assistant registered mailed the notice of application and evidence to the Tenants one day after he submitted the application. The Landlord does not know the tracking number.

The Tenants confirmed receipt of the notice of application without evidence.

The Landlord stated that he believes his former assistant did not include the evidence in the registered mail packages.

Based on the Landlord’s testimony, I find the Landlord served the notice of application, but not the evidence.

The notice of application states:

> 01 - I want the tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy - request to retain security and/or pet damage deposit $10,000.00
> Applicant's dispute description
> Repair of doors, walls, countertops and cabinet repairs Full exterior cleanup of entire property Waste disposal of hazardous
> and environmentally damaging materials Tire disposal Repair and replacement of a metal door and lighting Removal of scrap
> metal discarded on site Cleanup of creek bed with household garbage Removal of damaged and broken items left on site

The Tenant testified that she was not able to understand the claims, as there is no breakdown of the amounts claimed or monetary order worksheet.

Section 59(2)(b) of the Act states that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

I find the application is vague, as it does not provide the amounts for each claim the Landlord is making and the Landlord did not serve evidence. I find the Landlord breached section 59(2)(b) of the Act by not providing the full particulars of the dispute with the application.

I find that it is not fair to proceed with the hearing, as the Tenants could not understand the claims. I find that the Tenants must be able to clearly understand the claims in order to present a response to the claims.

I find it is fair to grant the Landlord leave to reapply, as I did not hear the merits.

Thus, I dismiss the application with leave to reapply.

The Landlord must bear the cost of the filing fee, as the Landlord was not successful.

Tenants' application

The Landlord confirmed receipt of the notice of application, amendment and the evidence (the materials) and that he had enough time to review these documents.

Based on the undisputed testimony, I find the Tenants sufficiently served their materials in accordance with section 71(2)(c) of the Act.

Correction of the rental unit's address

At the outset of the hearing the parties corrected the tenancy address.

Pursuant to section 64(3)(a) of the Act, I have amended the applications.

Issues to be Decided

Are the Tenants entitled to:

1. an order for the landlord to return the deposit?
2. a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2)?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the Tenants' claims and my findings are set out below.

The Tenant said the tenancy started on July 1, 2013. The Landlord does not know when the tenancy started, as when he purchased the rental unit in September 2022 the Tenants were already in the unit.

Both parties agreed the tenancy ended on February 13, 2023, when the Tenants returned the keys to the Landlord. Monthly rent when the tenancy ended was $1,800.00, due on the first day of the month. The Landlord collected and holds the $850.00 deposit.

The Tenants did not authorize the Landlord to retain the deposit.

The Landlord confirmed receipt of the forwarding address in writing on February 19, 2023.

The parties also agreed there was no move in inspection.

The Tenant affirmed there was a walk through when the tenancy ended, but the Landlord did not complete an inspection report.

The Landlord stated he completed a move out inspection report (the report).

The Landlord served a 2 month notice to end tenancy for landlord's use (the Notice). The Tenants submitted a copy of the Notice into evidence. It is dated November 7, 2022 and it states the landlord 568 Developments Ltd. (the company) intends to move to the rental unit. The effective date was January 20, 2023. I note the company is the named respondent landlord.

The Landlord testified he owns 10% of the company, his uncle owns 20% and two other non-family related partners own the remaining of the company.

The Landlord said he served the Notice because he intended to move to the rental unit.

The Tenants are seeking $20,400.00, as the Landlord did not move to the unit.

The Landlord affirmed that he could not move to the unit because when the Tenants moved out there was a large amount of garbage, tires, chemicals and motor vehicle oil and debris abandoned in the unit and it was not suitable for him to move with his wife and children. The Landlord stated there was carpet damage, mould and urine smell in the unit.

The Landlord testified that he finished renovating the unit by the end of April 2023, listed it to re-rent in May and re-rented it on June 1, 2023 for $2,800.00.

The Landlord said his witness was not available to testify.

The Tenant affirmed the rental unit was perfectly fine for occupancy when she moved out and the Tenant lived in the unit with her husband and two children until the end of the tenancy. The rental unit did not have a substantial amount of garbage, tires or debris when the tenancy ended.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Deposit

Section 23(1) of the Act states the landlord must complete a move in inspection when the tenancy starts.

Section 24(2)(c) of the Act states the right of a landlord to claim against the deposit for damage to residential property is extinguished if the landlord does not complete the move in inspection.

I accept the uncontested testimony the Landlord did not inspect the unit when the tenancy started. I find the Landlord extinguished his right to claim against the deposit, per section 24(2)(c) of the Act.

I accept the uncontested testimony the Landlord received the forwarding address in writing on February 19, 2023, the Tenants did not authorize the Landlord to retain the deposit and the Landlord did not return it.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished his right to claim against the deposit and did not return the balance of the deposit within the timeframe of section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit retained.

Policy Guideline 17 states unless the tenant has specifically waived the doubling of the deposit, the arbitrator will order the return of double the deposit.

According to the deposit interest calculator (available at http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html), the interest accrued on the deposit is $24.38.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the Tenants are entitled to a monetary award of $1,724.38. (double the deposit of $850.00 plus the interest accrued).

12 month compensation

Per Rule of Procedure 6.6 and section 51(2) of the Act, the respondent Landlord has to onus to prove that the stated purpose for ending the tenancy was accomplished.

Section 51(2) of the Act states that a landlord or a purchaser must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord does not establish that the stated purpose for ending the tenancy was accomplished.

Section 51(3) states the landlord or purchaser may be excused from paying the tenant the amount required by section 51(2) if extenuating circumstances prevented the landlord or purchaser from accomplishing the stated purpose for ending the tenancy.

I find the parties agreed to end the tenancy on February 19, 2023, as this was the date the Tenants returned the unit's keys to the Landlord.

I accept the uncontested testimony that the Landlord served the Notice because the Landlord, co-owner of the company, intended to move to the unit.

Section 49(1) of the Act defines family corporation as a corporation in which all the voting shares are owned by one individual or the individual's siblings, parent, spouse or child, or parent of child of that individual's spouse.

Based on the Landlord's testimony, I find the company is not a family corporation, as the Landlord only owns 10% of the company and the other owners do not meet the definition of section 49(1) of the Act. However, the Act does not require that a notice to end tenancy be valid for tenants to be entitled to the compensation of section 51(2).

The Landlord has the onus to prove that extenuating circumstances prevented him from occupying the unit for 6 months after February 19, 2023, as this was the date the tenancy ended and this date is after the Notice's effective date of January 20, 2023.

Policy Guideline 50 provides examples of extenuating circumstances:

> E. EXTENUATING CIRCUMSTANCES
> An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:
> • A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.
> The following are probably not extenuating circumstances:
> • A landlord ends a tenancy to occupy a rental unit and they change their mind.
> • A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

The parties provided conflicting testimony about the unit's condition when the tenancy ended. The Landlord did not provide any documentary evidence to support his claims and did not call witnesses.

The Landlord provided a vague explanation about his witness not being able to testify and did not ask for an adjournment. The Tenant's amendment is dated April 9, 2023. The Landlord had 8 months to serve his evidence and have a witness available to testify during the hearing.

Based on the above, I find the Landlord failed to prove, on a balance of probabilities, that extenuating circumstances prevented him from occupying the rental unit for 6 months after the Tenants moved out.

I accept the uncontested testimony that the monthly rent when the tenancy ended was $1,800.00.

As such, per section 51(2) of the Act, the Tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable (12 x $1,800.00 = $21,600.00).

However, the Tenants limited their claim to $20,400.00. Thus, I award the Tenants $20,400.00.

Filing fee and summary

I authorize the Tenants to recover the filing fee in the amount of $100.00, as the Tenants were successful.

In summary:

Claim	**$**
Deposit	1,724.38
12 month compensation	20,400.00
Filing fee	100.00
Total	**22,224.38**

Conclusion

Pursuant to sections 38, 51(2) and 72 of the Act, I grant the Tenants a monetary award in the amount of $22,224.38.

The Tenants are provided with this order in the above terms and the Landlord must be served with this order in accordance with the Act. Should the Landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 1, 2024

Residential Tenancy Branch