



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, OPE, OPR, MND, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested return of double the security deposit, compensation in accordance with section 51 of the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The landlord has applied requesting an Order of possession for unpaid rent and Order of possession based on the end of employment with the landlord, compensation for damage to the rental unit and to recover the filing fee from the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The parties confirmed receipt of the evidence each had submitted. The landlord applied on April 9, 2013 and served the tenant with evidence, left at the tenant's door on May 27, 2013. The tenant received the photographs left at her door; but the evidence did not include copies of hydro bills. Therefore, the landlord was at liberty to make oral submissions in relation to the hydro bills.

The landlord's application details mentioned a claim against the deposit; therefore I have considered that claim.

The tenancy has ended; an Order of possession was not required.

Issue(s) to be Decided

Is the tenant entitled to return of double the \$2,100.00 security deposit?

Is the tenant entitled to compensation pursuant to section 51 of the Act, less an amount that is agreed owed for February 2013 rent?

Is the landlord entitled to compensation in the sum of \$870.00 for utility costs?

Is the landlord entitled to compensation for damage to the rental unit in the sum of \$3,300.00?

Is either party entitled to filing fee costs?

Background and Evidence

The parties agreed that the tenancy commenced on June 12, 2011. Rent was \$2,100.00 per month due on the 1st day of each month. A security deposit in the sum of \$2,100.00 was paid.

No move-in or move-out inspection reports were completed.

The tenant claimed return of double the \$2,100.00 security deposit plus \$579.29 as the balance of compensation owed as the result of a 2 Month Notice to End Tenancy.

There was no dispute that the tenancy ended as the result of a 2 Month Notice to End Tenancy for Landlord's Use issued by the landlord on January 28, 2013. A copy of that Notice was supplied as evidence.

The tenant did not dispute the Notice and on February 1, 2013 gave the landlord a letter providing notice ending the tenancy effective February 15, 2013; a copy of this letter was supplied as evidence by the landlord. The landlord said he received the letter on February 1, 2013 and that the tenant did vacate on February 15, 2013.

The landlord said that the hydro bills for the period from October 17, 2012 to February 18, 2013 show that the tenant owes 80%, totaling \$923.66. The tenant said she paid \$250.22 in October, \$253.50 in December and that she owes a further \$395.71.

The landlord said he did not return the deposit to the tenant as the tenant damaged the kitchen cabinets. Photographs of the cabinets were supplied as evidence. The landlord said that he spent "almost" or "about" \$3,300.00 to repair the cabinets.

The tenant said that the cabinets were damaged at the start of the tenancy and that this is why the landlord took double the deposit he was entitled to hold.

The landlord stated that he did not pay the tenant the equivalent of 1 month's rent, as required when a 2 Month Notice to End Tenancy for Landlord's use is issued.

Analysis

In relation to the security deposit Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit for unpaid rent or utilities.

Further, section 38(1), 38(4) and 38(6) provide:

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

- (a) the date the tenancy ends, and*
- (b) the date the landlord receives the tenant's forwarding address in writing,*

the landlord must do one of the following:

- (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...*

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount...*

(6) 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.

(Emphasis added)

In this case the landlord did not have the tenant's written permission to retain the deposit and he did not have an Order allowing him to retain the deposit; in accordance with section 38(4) of the Act.

I find that the landlord was given the tenant's written forwarding address on February 1, 2013 and that the tenancy ended effective February 15, 2013, the date the tenant vacated. I find that the tenancy ended based on proper written notice given by the tenant on February 1, 2013.

The landlord did make a claim against the deposit for unpaid utilities, but he failed to do so within fifteen days of the end of the tenancy; his application was made on April 9, 2013. Therefore, in the absence of a claim made within fifteen days of February 15, 2013 I find, pursuant to section 38(6) of the Act, that the landlord is holding a security deposit in the sum of \$4,200.00.

Section 51(1) of the Act provides:

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.

Therefore, as the tenant received a 2 Month Notice to End Tenancy for Landlord's Use and she did not dispute the Notice, I find that the tenant is entitled to compensation in the sum of \$2,100.00, in accordance with section 51 of the Act. The tenant gave the landlord more than 10 days written notice, as required by section 50 of the Act.

The tenant gave proper written notice to end the tenancy earlier than the date on the Notice; therefore I find that she is correct that the landlord would be entitled to rent payment for the fifteen days of February that she remained in the unit. By agreement the tenant acknowledges and I find, pursuant to section 63(2) of the Act, that the landlord is entitled to unpaid February 2013 rent, to the 15th of that month, in the sum of \$1,035.60.

The amount I have found that is owed to the tenant is based upon the requirements of the Act; less agreed deductions.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of evidence that the tenant was given a copy of the utility bills or written notice of any amount owed other than the sum she agrees was due, I find that the landlord is entitled to compensation in the sum of \$395.71. Further, the amount the landlord said was owed during the hearing differed from that claimed. The balance of the amount claimed for utilities is dismissed.

In the absence of any evidence of the state of the kitchen cabinets at the start of the tenancy and in the absence of any evidence verifying the sum claimed by the landlord, I find that the claim for damage to the cabinets is dismissed. Further, during the hearing the landlord appeared to be guessing as to the sum he may have spent for repair; which led me to doubt the veracity of the claim. In the absence of a condition inspection report at the start of the tenancy and other evidence in support of the claim for damage, I find that the tenant's submission was more credible and preferred it over the landlord. The photographs were not clear; they were blurred and failed to provide convincing evidence of the state of the rental unit.

Therefore, I find that the claim for damage to the rental unit is dismissed.

As the landlord's claim only succeeded due to the agreement of the tenant, I decline filing fee costs to the landlord.

I find, as the tenant's application has merit, that she is entitled to the \$50.00 filing fee.

Therefore, I find that the tenant is entitled to:

Double the \$2,100.00 security deposit	\$4,200.00
Compensation for the undisputed Notice ending tenancy	\$2,100.00
Less agreed utility costs	\$395.71
Less February rent agreed owed to landlord	\$1,035.60
BALANCE OWED TO TENANT	\$4,868.69

Based on these determinations I grant the tenant a monetary Order in the sum of \$4,868.69. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The tenant has established a claim in the sum of \$6,300.00 less the sums owed to the landlord.

The tenant is entitled to filing fee costs.

The landlord's claim is dismissed.

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: June 11, 2013

Residential Tenancy Branch

