Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, OLC, MNR, PSF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied:

- for a monetary Order for money owed or compensation for damage or loss;
- for the return of double the security deposit;
- for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement;
- to recover the cost of emergency repairs; and
- for an Order requiring the Landlord to provide services or facilities.

At the hearing the female Tenant withdrew the application for an Order requiring the Landlord to provide services or facilities, as the rental unit has been vacated.

At the hearing the female Tenant withdrew the application to recover the cost of emergency repairs, as that claim was made in error.

The female Tenant stated that on October 20, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, at the service address noted on the Application. The Landlord acknowledged receiving these documents by registered mail and I therefore find that they have been served in accordance with section 89 of the *Residential Tenancy Act (Act).*

On October 20, 2015 the Tenant submitted 18 pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlord with the Application for Dispute Resolution. The Landlord stated that she is in possession of these documents, although she cannot recall how/when they were served to her. As the Landlord is in possession of this evidence it was accepted as evidence for these proceedings.

On December 03, 2015 the Tenant submitted 26 pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the

Landlord by registered mail on December 03, 2015. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On December 07, 2015 the Landlord submitted 24 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant on November 30, 2015. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

The Articling Student asked to call a witness to testify about the condition of the rental unit at the end of the tenancy. As the condition of the rental unit at the end of the tenancy is not relevant to the issues in dispute at these proceedings the request to call this witness was denied.

Issue(s) to be Decided:

Is the Tenant entitled to the return of double the security deposit?
Is the Tenant entitled to compensation for vacating the rental unit?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began on May 01, 2015;
- the Tenant agreed to pay $675.00 in rent by the first day of each month;
- a security deposit of $337.50 was paid;
- the Landlord received a forwarding address for the Tenant, in writing, on August 01, 2015;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- on November 12, 2015 a Residential Tenancy Branch Arbitrator issued an Order that requires the Landlord to return the full security deposit to the Tenant; and
- the Landlord has not returned the security deposit to the Tenant.

The Landlord and the Tenant agree that they did not have a written tenancy agreement but that they verbally agreed the tenancy would be for a “trail period” of three months. The female Tenant stated that she understood this to mean the tenancy would end after three months if she was not compatible with another person living in the rental unit under a separate tenancy agreement, with one month’s notice. The Landlord stated that she understood this to mean the tenancy would end after three months if the

Tenant was not compatible with all people living in the residential complex, with one month's notice.

The Landlord stated that on August 12, 2015 she filed an Application for Dispute Resolution in which she applied to retain the Tenant's security deposit. This is consistent with Residential Tenancy Branch records.

The Tenant is seeking a return of double the security deposit.

The female Tenant stated that:

- she was lying in bed when she realized water was entering the bedroom through an open window;
- she subsequently determined that the Landlord was watering the garden;
- she told the Landlord to stop watering the garden;
- the Landlord did not stop watering the garden;
- the Landlord did not apologize for spraying water into the bedroom;
- the Landlord told her to close the window;
- an argument ensued;
- the Tenant shut off the water to the exterior of the residential complex for approximately fifteen minutes; and
- the next morning the Landlord sent her a text message advising her that she must vacate the rental unit.

The Landlord stated that:

- she accidentally sprayed water into the Tenant's bedroom window when she was watering the garden;
- she apologized for the accident;
- she told the Tenant she should close her window;
- an argument ensued; and
- the Tenant shut off the main water to the exterior of the residential complex for a period of time.

The Landlord and the Tenant agree that the Landlord sent the Tenant a text message on July 11, 2015, a copy of which was submitted in evidence. The parties agree that in this text message the Landlord informed the Tenant she must vacate the unit by July 31, 2015.

The Landlord and the Tenant agree that the Landlord posted a handwritten note on the door of the rental unit on July 14, 2015, an illegible copy of which was submitted in evidence. The parties agree that in this note the Landlord informed the Tenant she must vacate the unit by July 28, 2015.

The female Tenant stated that as a result of these messages she was concerned that she would not have a place to live on July 28, 2015 so a cancer agency provided her

with a hotel room for that night and she was able to move into her new home on July 29, 2015.

The female Tenant stated that when she returned to the rental unit on July 30, 2015 she determined the lock to the unit had been changed. The Landlord stated that she did not change the lock to the unit but she subsequently learned that the other person occupying the rental unit under a separate tenancy agreement had changed the lock.

The Landlord and the Tenant agree that the rental unit was vacated on July 29, 2015.

The female Tenant stated that she understood that she was not required to vacate the rental unit without one month's notice but she did not wish to remain in the unit as a result of the conflict between her and the Landlord.

The female Tenant stated that in spite of her desire the leave she wished to remain in the rental unit until the end of July. She stated that the Landlord's actions caused her to vacate prematurely and that she had to cancel her final chemotherapy appointment that was scheduled for July 29, 2015 due to the need to move into a new home.

The Tenant is seeking compensation for "aggravated damages" as a result of the need to move out of the rental unit prematurely and costs for moving to her new home.

The Articling Student argued that the parties had not agreed to extend the tenancy past the three month "trial period" and that the Tenant should have made arrangements to find a new home for August 01, 2015, which would have mitigated the impact of how this tenancy ended.

Upon reviewing the written submissions after the hearing concluded I note that the Tenant made many allegations of disturbances/inconveniences that occurred during this short tenancy. These issues were not raised by the Tenant at the conclusion of the hearing when she was given the opportunity to raise issues that had not yet been discussed and they were not mentioned in her detailed explanation of her claim for $3,500.00. Those disturbances/inconveniences have not, therefore, been considered in this adjudication.

The Tenant is seeking compensation for costs associated to participating in this hearing, including mailing costs and transportation costs.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord complied with section

38(1) of the *Act*, as the Landlord filed an Application for Dispute Resolution seeking to retain the security deposit within 15 days of receiving the forwarding address.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord complied with section 38(1) of the *Act,* I find that the Tenant is not entitled to the return of double her security deposit and I dismiss that portion of her claim.

The Tenant has already been granted an Order that requires the Landlord to refund her security deposit and I therefore am unable to reconsider that matter during these proceedings.

On the basis of the undisputed evidence I find that the Landlord and the Tenant argued after the Landlord sprayed water into the Tenant's bedroom window while the Landlord was watering the garden. I have no reason to conclude that the Landlord intentionally sprayed water into the bedroom. I find that the Tenant is not entitled to any compensation as a result of this incident because I find the Tenant could have greatly minimized the impact of the altercation by simply closing her bedroom window and by not turning off the water to the exterior of the residential complex.

When a landlord wishes to end a tenancy in accordance with sections 46, 47, 48, 49, and 49.1 of the *Act,* the landlord must serve notice to end the tenancy in a manner that complies with section 52 of the *Act*. Section 52 of the *Act* stipulates that in order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,
(b) give the address of the rental unit,
(c) state the effective date of the notice,
(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
(e) when given by a landlord, be in the approved form.

I find that the text message the Landlord sent on July 11, 2015 which declared the Tenant must vacate the rental unit by July 31, 2015 does not constitute notice to end tenancy in accordance with sections 46, 47, 48, 49, and 49.1of the *Act,* because it does not comply with section 52 of the *Act*. Specifically, it is not signed by the Landlord; it does not give the address of the rental unit; and it is not given in a form approved by the Residential Tenancy Branch. The format used by the Landlord does not declare whether the Landlord is ending the tenancy in accordance with sections 46, 47, 48, 49, or49.1of the *Act* and it does not inform the Tenant of her right to dispute the notice.

I find that the handwritten note the Landlord posted on the door on July 14, 2015 which declared the Tenant must vacate the rental unit by July 28, 2015 does not constitute notic to end tenancy in accordance with sections 46, 47, 48, 49, and 49.1 of the *Act.* Although the copy of the note that was submitted in evidence is illegible, I am satisfied on the basis of the description of the note that it was not given in a form approved by the Residential

Tenancy Branch. Specifically, it does not declare whether the Landlord is ending the tenancy in accordance with sections 46, 47, 48, 49, or49.1of the *Act* and it does not inform the Tenant of her right to dispute the notice.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49., and 50 of the *Act.* The evidence shows that neither party gave proper notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act.*

On the basis of the undisputed evidence, I find that the Landlord and the Tenant understood that the tenancy was for a "trial period" of three months and that the tenancy could be ended with one month's notice after that trial period. I find that this is different than a fixed term tenancy agreement in which the parties agree that the Tenant must vacate on a particular term as both parties understood one month's notice would be given to end the tenancy.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that the tenancy agreement required the Tenant to vacate on a particular date, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act.*

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act.*

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended on July 29, 2015 when the Tenant vacated the rental unit.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act.*

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act.*

On the basis of the Tenant's testimony that she understood she did not have to vacate the rental unit without proper one month's notice, I dismiss the claim for any costs associated with moving out of the rental unit. If the Tenant did not wish to incur those costs she could simply have opted not to vacate the rental unit, as she had not been given proper notice.

On the basis of the undisputed evidence I find that the Tenant was unable to access the rental unit on July 30, 2015 as the locks had been changed and that she was able to access the property to remove the last of her belongings on August 01, 2015 with the

assistance of the police.

Section 28 of the *Act* stipulates that a tenant is entitled to the quiet enjoyment of a rental unit, which includes exclusive possession of the rental unit. I find that the Tenant's right to exclusive possession of the rental unit was breached when the locks were changed on, or about, July 30, 2015. I find this was a significant breach of the Tenant's right to the quiet enjoyment of her rental unit as it required her to seek police assistance and it made her move significantly more difficult. I find that the Tenant is entitled to compensation that is the equivalent of ½ of one month's rent for this breach, which is $337.50.

In adjudicating this matter I find that the Landlord is obligated to pay compensation to the Tenant even if the other occupant of the rental unit changed the locks. The other occupant of the rental unit does not have the right to change locks without the authority of the Landlord and the Landlord has the right to pursue compensation from that occupant to recover this expense.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Tenant's claim for compensation for costs related to participating in these proceedings, including mailing and transportation costs.

Conclusion:

I grant the Tenant a monetary Order for $337.50. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims 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 *Residential Tenancy Act*.

Dated: December 17, 2015

Residential Tenancy Branch