Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, O

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 the security deposit, and for "other".

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch with the Application were sent to the Landlord, via registered mail, although she is uncertain of the date of service. The Executrix with the initials "T.M." acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On October 05, 2016 twenty-nine pages of evidence were submitted to the Residential Tenancy Branch on behalf of the Landlord. The Executrix with the initials "T.M." stated that this evidence was served to the Tenant, via registered mail on October 05, 2016. The Tenant stated that this evidence was received on October 06, 2016. As the evidence was served in accordance with the timelines established by rule 3.15 of the Residential Tenancy Branch Rules of Procedure, it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord was not permitted to give evidence regarding the condition of the rental unit at the end of the tenancy, as the Landlord has not filed an application for compensation relating to the condition of the unit at the end of the tenancy.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit and for compensation for loss of quiet enjoyment of the rental unit?

Background and Evidence:

The Tenant stated that:

- the tenancy began on March 27, 2014;
- the Tenant and the Landlord did not sign a tenancy agreement;
- the rental unit was vacated on April 02, 2014;
- the Tenant agreed to pay $800.00,
- rent was due by the first day of each month;
- she paid a security deposit of $400.00 in cash on March 21, 2014,for which she did not receive a receipt;
- the Landlord did not return any portion of the security deposit;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit;
- on April 02, 2014 she gave the Landlord a letter, which was submitted in evidence; and
- on April 02, 2014 she gave the Landlord a second piece of paper which contained her forwarding address, which she did not submit in evidence.

The Executrix with the initials “T.M.” (hereinafter referred to as TM) stated that:

- the Landlord passed away on February 23, 2016;
- she understands the tenancy began on April 01, 2014;
- she does not believe the Tenant and the Landlord signed a tenancy agreement;
- the rental unit was vacated on April 02, 2014;
- she does not know how much rent the Tenant agreed to pay;
- she does not know when rent was due;
- she does not know if a security deposit was paid;
- she does not know if the Landlord returned any portion of the security deposit;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit;
- the Landlord received the letter dated April 02, 2014, which was submitted in evidence; and
- she does not know if the Tenant gave the Landlord a second piece of paper on April 02, 2014 which contained the Tenant’s forwarding address.

The letter dated April 02, 2014 declares that:

- the Tenant will vacate the rental unit “no later than April 03, 2014”;
- the Landlord agrees to return $360.00 of the security deposit;
- the parties agree to a “mutual release, consenting that you will not pursue the tenant for any more monies owed”; and
- the Tenant will not be obligated to pay rent for April of 2014.

The Tenant stated that she wrote the letter, dated April 02, 2014, and that it was presented to the Landlord, who signed the letter to indicate his agreement with the

content of the letter. She acknowledges that her name is misspelled in the letter which she explained is because she is “not perfect”.

TM argued that the letter may not have been written by the Tenant, as the Tenant’s name is misspelled in the letter and that the signature on the letter is not the Landlord’s signature. She stated that the Landlord’s signature on the letter is different that his signature that appears on page 19 of the Landlord’s evidence package.

The Tenant is seeking compensation for moving costs, in the amount of $230.00, and $8,800.00 for loss of quiet enjoyment of the rental unit. In support of this claim the Tenant stated that:

- when she viewed the unit there was a small fridge in the rental unit and the Landlord promised to replace it with a larger fridge;
- when she moved into the rental unit the unit was not equipped with a larger fridge;
- when she viewed the unit, which was furnished, the Landlord told her she could move her own bed into the rental unit;
- when she moved into the unit the Landlord told her she could not move her own bed into the unit;
- when she moved into the rental unit she was told her boyfriend could not stay overnight;
- prior to the tenancy beginning the Landlord agreed that hydro was included in the rent;
- after the tenancy began the Landlord tried to get her to pay a portion of the hydro;
- when she moved into the rental unit the Landlord was aware she had three cats;
- a few days after the tenancy began the Landlord opened her window and crawled into the rental unit;
- after crawling through the window the Landlord was yelling at her about cleaning her litter box;
- the Landlord threw the litter box into the yard;
- she called the police who attended and told the Landlord he could not enter her apartment “illegally” and/or determine when her litter box should be cleaned;
- when the Tenant was moving out of the rental unit on August 02, 2014 she told the Landlord she was leaving the cats in the rental unit and would return later that day to complete the move and retrieve her cats;
- when she returned late in the day on August 02, 2014 she found the Landlord sitting in the dark in the rental unit;
- when she entered the rental unit on August 02, 2014 the Landlord began yelling about being late and slapped her hand when she tried to turn on a light switch;
- on August 02, 2014 the Landlord was verbally aggressive to her; he “backed her into a corner”, and was pointing his finger in her face;
- on April 02, 2014 the Landlord told her that he had reported her to the SPCA;

- when she was leaving the rental unit on August 02, 2014 after removing all of her property, the Landlord placed two hands on her back and pushed her;
- she does not know if the Landlord actually reported her to the SPCA;
- she does not know why the Landlord contacted the police on April 01, 2014;
- the Landlord's phone records show that he also contacted the police on April 02, 2014;
- she understands the Landlord was a private investigator and he could have been contacting the police on April 01, 2014 or April 02, 2014 for social reasons;
- the police have never asked her if she was attempting to exchange sexual favors for rent;
- she moved out of the rental unit because the Landlord told her she must;
- the Landlord did not provide her with written notice to end the tenancy; and
- she wanted to comply with the Landlord's verbal request to move because of the Landlord's erratic behaviour.

In response to the claim for moving costs and loss of quiet enjoyment, TM stated:

- she does not know if the Landlord offered to provide the Tenant with a larger fridge;
- she does not know if the Landlord agreed to allow the Tenant to move her bed into the unit and subsequently changed his mind;
- she does not know if the Tenant was told that her boyfriend could not stay overnight;
- she does not know whether the Landlord agreed to pay the hydro costs for the rental unit;
- she understood that the Tenant had permission to have one cat;
- she does not know if the Landlord entered the rental unit though a window and threw a litter box outside;
- she does not know if the Landlord was inside the rental unit on August 02, 2014;
- she does not know if the Landlord reported the Tenant to the SPCA;
- on April 01, 2014 the Landlord contacted the police in regards to the Tenant;
- the police officer who responded to that call told the Tenant that the Landlord had reported that the Tenant was offering to exchange sexual favors for rent; and
- the police officer who responded to that call told her that the Landlord and the Tenant were both making various accusations.

The Witness for the Tenant stated that:

- the Tenant is his former girlfriend;
- he was present when the Tenant paid a security deposit of $400.00 to the Landlord, in cash;
- he was present when the Tenant agreed to pay monthly rent of $800.00;
- he was present when the Landlord promised to provide the Tenant with a larger fridge;
- he was present when the Landlord told the Tenant she could not have overnight guests;

- on August 02, 2014 he witnessed the Landlord and the Tenant sign a document in which they mutual agreed to end the tenancy;
- he was helping the Tenant move on August 02, 2016 and when he walked into the dark apartment he saw the Landlord and the Tenant "come together and go apart", although he did not witness physical contact due to the darkness of the room;
- on August 02, 2014 he "thinks" he overheard the Landlord tell the Tenant he had reported her to the SPCA; and
- after he left the rental unit on August 02, 2014 the Tenant told him the Landlord had pushed her.

The Landlord submitted a letter from the Witness for the Landlord, which is not dated. The Witness for the Landlord stated that the aforementioned letter was written sometime in September of 2016 and that the declarations in that letter are true.

The Tenant stated that she did not offer sexual favors to the Landlord in exchange for rent and that the information in the letter signed by the Witness for the Landlord is hearsay evidence.

Analysis:

On the basis of the testimony of the Tenant, the testimony of the Witness for the Tenant, and the absence of evidence to the contrary, I find that the Landlord and the Tenant entered into a tenancy agreement and that the Tenant paid a security deposit of $400.00.

On the basis of the testimony of the Tenant and the absence of evidence to the contrary, I find that the Landlord did not return any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit; and that the Tenant provided the Landlord with a forwarding address, in writing, on April 02, 2014. Although the Tenant did not provide a copy of the document in which she provided the Landlord with her forwarding address, I find it entirely possible that she did not retain a copy of that document. In the absence of evidence that refutes the Tenant's testimony that a forwarding address was provided, I must accept the Tenant's testimony that it was provided on April 02, 2014.

Section 44(1)(c) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. On the basis of the letter dated April 02, 2014, I find that this tenancy ended by mutual consent on April 03, 2014, pursuant to section 44(1)(c) of the *Act.* Although the letter is not well written, I find that the intent of the letter is that the tenancy is ending by mutual consent.

In determining that the tenancy ended on the basis of the letter of April 02, 2014, I have placed no weight on the TM's submission that the letter was not written by the Tenant. Even if the letter was drafted by someone other than the Tenant, it would serve to end

the tenancy provided it was signed by both parties.

In determining that the tenancy ended on the basis of the letter of April 02, 2014, I have placed no weight on TM's submission that the signature on the letter is not the same as the Landlord's signature that appears on page 19 of the Landlord's evidence package. I have placed no weight on this submission, in large part, because the Landlord has submitted no evidence from a handwriting expert to support this submission. While I accept that the signatures on the two documents are different, I have no expertise in handwriting comparison. I am also aware that people sometimes sign their names in different ways or simply initial documents, which could have occurred in these circumstances.

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 failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(4)(a) of the *Act* stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if, 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. On the basis of the letter dated April 02, 2014, I find that at the end of the tenancy the Tenant gave the Landlord written authority to retain $40.00 from her security deposit. I find that the agreement that only $360.00 of the deposit would be returned is explicit consent that the Landlord could retain $40.00.

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 did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit that remained at the end of the tenancy, which is $720.00. ($360.00 X 2)

On the basis of the testimony of the Tenant, the testimony of the Witness for the Tenant, and the absence of evidence to the contrary, I find that the Tenant was promised a larger fridge prior to the start of the tenancy and that the promise was not fulfilled by the time the Tenant moved into the rental unit. I find that this was not necessarily a reason to end the tenancy, as it is entirely possible that a larger fridge could have been provided within a reasonable time period or that the Tenant could have had that matter resolved by filing an Application for Dispute Resolution.

Given that this tenancy lasted for such a short period of time, I find that being without a large fridge was a relatively minor inconvenience and that the Tenant is not entitled to compensation for being without a fridge.

On the basis of the testimony of the Tenant, the testimony of the Witness for the Tenant, and the absence of evidence to the contrary, I find that the Tenant was told that she could move her bed into the rental unit and when she attempted to do so the Landlord told her that she could not move it into the unit. As landlords do not have the right to determine what furniture can be moved into a rental unit, I find that the Tenant was under no obligation to comply with the Landlord's direction. I find that she was free to move the bed into the unit and place it wherever she wished in the available space.

As the Tenant was under no obligation to comply with the Landlord's direction not to move her bed into the rental unit, I find this was not necessarily a reason to end the tenancy nor is she entitled to compensation if she opted not to move the bed into the unit. In the event the Tenant was unclear about her right to move the bed into the rental unit she had the option of contacting the Residential Tenancy Branch for advice and direction.

On the basis of the testimony of the Tenant, the testimony of the Witness for the Tenant, and the absence of evidence to the contrary, I find that the Tenant was told that her boyfriend could not stay overnight. As landlords do not have the right to restrict guests from staying overnight, I find that the Tenant was under no obligation to comply with the Landlord's direction.

As the Tenant was under no obligation to comply with the Landlord's direction not to have overnight guests, I find this was not necessarily a reason to end the tenancy nor is she entitled to compensation if she opted not to have guests. In the event the Tenant was unclear about her right to have guests she had the option of contacting the Residential Tenancy Branch for advice and direction.

On the basis of the testimony of the Tenant and the absence of evidence to the contrary, I find that the Tenant was told that hydro was included in the rent and that the Landlord subsequently asked her to pay a portion of the hydro. As the parties had agreed that hydro was included in the rent prior to the start of the tenancy, I find that the Tenant was under no obligation to pay for hydro consumption.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

On the basis of the testimony of the Tenant and the absence of evidence to the contrary, I find that the Tenant's right to quiet enjoyment was breached when the Landlord crawled through her window; argued with her; and threw her litter box out the

window. I find that this would be upsetting for the average person and that the Tenant is entitled to compensation for this significant breach of her right to quiet enjoyment.

On the basis of the police intervention I find it possible that the Landlord may not have entered the suite again without lawful authority if the tenancy had continued and that this incident was, therefore, not necessarily a reason to end the tenancy.

On the basis of the testimony of the Tenant, the testimony of the Witness for the Tenant, and the absence of evidence to the contrary, I find that the Tenant's right to quiet enjoyment was breached when the Landlord entered her rental unit on August 02, 2014; waited for her in a darkened room; was verbally and physically aggressive to the Tenant; and stated that he had reported the Tenant to the SPCA . I find that this would be upsetting for the average person and that the Tenant is entitled to compensation for this significant breach of her right to quiet enjoyment.

Residential Tenancy Branch Guideline #6 stipulates, in part, that when determining the amount of compensation due to a tenant as a result of a breach of the right to quiet enjoyment, I must determine the amount by which the value of the tenancy has been reduced as a result of the seriousness of the breach, the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I find that the incident involving the litter box and the incident on August 02, 2014 were both very serious breached of the Landlord's right to enter the tenancy and that they therefore reduced the value of this tenancy by 50%, which is $400.00.

On the basis of the letter dated April 02, 2014 I find that the Landlord agreed that the Tenant would not have to pay rent for April of 2014. I find that the Tenant has, therefore, been more than amply compensated for the breach to her right to quiet enjoyment of the rental unit and I do not find that she is entitled to additional compensation.

As there is no evidence that the Landlord or the Tenant gave written notice to end a tenancy in a manner that complies with section 45 of the *Act* or that the Landlord gave written notice to end the tenancy, I find that the Tenant was not obligated to vacate the rental unit. When all of the aforementioned incidents are considered in their entirety, I can understand why the Tenant would opt to end the tenancy by mutual consent.

Landlords and tenants typically mutually agree to end the tenancy when it is mutually beneficial to the parties and/or neither party has the right to end the tenancy on a particular date by giving written notice to end the tenancy on that date. As has been previously stated, I find that the parties mutually agreed to end this tenancy on April 03, 2016. As the parties mutually agreed to end the tenancy, I cannot conclude that the Landlord is obligated to pay for moving costs incurred by the Tenant, just as I would not conclude that the Tenant would be obligated to pay for costs associated to re-renting the unit.

In adjudicating this matter I have placed little weight on the evidence provided by the Witness for the Landlord, as it is largely irrelevant to the issues in dispute at these proceedings.

Conclusion:

The Tenant has established a monetary claim of $720.00, which is double the security deposit, less the amount the Tenant agreed the Landlord could retain, and I am issuing a monetary Order in that amount. In the event that the Landlord's estate 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: October 19, 2016

Residential Tenancy Branch