Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD RR MNDC FF

Introduction:

Both parties attended the hearing and gave sworn testimony. The company landlord is represented by a Director who is hereinafter referred to as 'the landlord'. The tenant provided evidence that they had served the landlord with the Application for Dispute Resolution and Amendment by registered mail and the landlord agreed they received it; however, the landlord said the information on how to respond etc. was not included. They agreed they got the tenant's evidence package. The landlord provided evidence that the tenant supplied their forwarding address by email on April 28, 2017. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) An Order to return double the security deposit pursuant to Section 38;
b) An Order for a refund of overpaid rent and a penalty of two months rent for insufficient notice;
c) Compensation for cleaning and repairs to unit and insurance on the landlord's contents; and
d) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to compensation as claimed?

Preliminary Issue:

The landlord's representative requested the landlord's name be amended to the name of the company who was the landlord. The tenant objected because it was an out of Province country and she was concerned about ability to collect an order in another jurisdiction. However, I find the lease in evidence has the company name as landlord so it is amended as requested.

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. There were difficulties in this hearing for the original director/shareholder of the company who had negotiated the lease and worked with the tenants

died so the parties are relying on email communications and other documents between them. The evidence based on the lease is that the tenancy commenced October 1, 2015 for a fixed term to September 30, 2016 and thereafter from month to month. Rent was $1700 and a security deposit of $850 was paid. A lease extension was signed on September 26, 2016 for 12 months from October 1, 2016 to September 30, 2017 and the rent was raised to $1749 a month. No 3 month formal Notice of Rent Increase was served but August 10, 2016, the landlord advised the tenants of the increase of 2.9% and the reasons for it.

At some point the landlord decided to sell the property and told the tenants by email on April 2, 2017. The tenant said it was because the landlord was infringing the strata bylaws by renting in excess of the time permitted. The tenants considered this was Notice to End their tenancy and immediately looked for another place. They have a dog and had moved from another country so this was very disruptive to them. They agreed no Two Month Notice to End Tenancy pursuant to section 49 was served on them. They said they vacated in April and the landlord provided email evidence from the male tenant stating they were vacating May 6, 2017. The female tenant said the keys were left in the drawer of the unit on May 6, 2017 but they had gone and rented their new place from May 1, 2017. The tenant claims compensation as follows:

1. $1749. Refund of rent for May 2017
2. $850 x 2 refund of security deposit for not sent in time and in the wrong amount ($800). The landlord said there were damages and they only withheld $50. There was contention over the providing of the forwarding address in writing. In evidence is a forwarding address provided by the male tenant on April 28, 2017. It is in another country but the female landlord said they reside down there also and were there and would have received the security deposit if it had been sent. She contends it was never sent to that address as no evidence of the initial cheque or cancelled cheque was provided. $800 was sent August 27, 2017 as written in the landlord's evidence to another address that was provided to be forwarded to the tenant.
3. $3498: Refund of 2 months rent for tenancy ending due to sale
4. $392: Refund of $49 month for 8 months due to rent increase without notice as required.
5. $50: for paint to fix mark on wall at possession. Tenant said former Director agreed.
6. $120: for replacing a damaged blind at beginning of tenancy. Tenant said former Director agreed.
7. $219: for shampooing carpets dirty at beginning of tenancy.
8. $300: for renters' insurance for it covered the landlord's property (rented furnished). The landlord said they have their own insurance to cover their properties. The renters' insurance was to cover the tenants' property. He noted they had many boxes of belongings and other items.

Many documents were provided by both parties which have been reviewed but are not necessarily quoted in the Decision. On the basis of the documentary and solemnly sworn evidence a Decision has been reached.

Analysis:

I find the weight of the evidence is that the tenant vacated the property on May 6, 2017. While the tenant contended they had another place and were not sleeping at the property, I find they did not leave keys or yield possession until May 6, 2017 according to the email evidence from the male tenant and the oral testimony today. Section 26 of the Act provides a tenant must pay rent when due. I find rent for May was due on May 1, 2017 according to the lease. Therefore, I find the tenant not entitled to a refund of May's rent.

In respect to the security deposit, the *Residential Tenancy Act* provides:

Return of security deposit and pet damage deposit
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.

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that they paid $850 security deposit as stated on their lease. I find they vacated on May 6, 2017 and served the landlord by email on April 28, 2017 with their forwarding address in writing. I find they gave no permission for the landlord to retain the deposit and only received $800 refund of the security deposit after August 17, 2017. Although the landlord contended the address sent by email was incorrect and they had sent a cheque to that address in time, I do not find their evidence credible for they provided no supporting evidence such as a cancelled or returned cheque or mail. The landlord stated they

have not filed an Application to claim against the deposit. Pursuant to section 38 above, I find the tenant entitled to recover double their security deposit less the $800 already received.

In respect to the tenant's claim for a refund of two months' rent for ending the tenancy due to sale, I find section 51 of the Act provides for one month free rent to a tenant who receives a Notice to End Tenancy under section 49 of the Act. Section 49 deals with ending tenancies for landlord's use of the property or for sale or for renovations for example. I find the tenant was never served a section 49 Notice to End Tenancy, in fact, I find they were never served any Notice to End Tenancy. I find section 52 of the Act requires a landlord to serve notices in the approved form so she was not served a Notice to end her tenancy. The tenant explained that she did not know the rules of the Act and she considered it notice when she got an email from the landlord stating he was going to sell the unit. As I explained to the tenant in the hearing, their tenancy would be continued under a purchaser until legally ended in accordance with the Act. I find they are not entitled to two months' rent refund. I dismiss this portion of their claim.

As stated above, a landlord is required to serve Notices in the approved form. I find the landlord did not serve a Notice of Rent Increase as required under sections 52 and 42 of the Act. I find the landlord's handwritten notice does not comply with section 42(3) of the Act so the tenant is entitled to the refund of the illegal rent increase for the 8 months she paid it for a total of $392.

In respect to the tenants' claims #5, 6, and 7 above, I find insufficient evidence that they had the landlord's consent to reimburse them for the improvements. Although the female tenant said the previous director promised to reimburse her, I find it improbable that he did. He may have consented to the improvements to improve their enjoyment of the premises but if he had promised reimbursement, I find it unlikely that he would not have reimbursed them within the one and a half years they lived there. I find the tenants not entitled to compensation for the improvements claimed. I dismiss this portion of their claim.

In respect to their claim for compensation for renters' insurance, I find the insurance is exactly what it states; it is renters' insurance to cover their belongings and liability while in the property. I find the evidence is that landlord had their own insurance to cover the property. I find the tenants not entitled to compensation for their renters' insurance. I dismiss this portion of their claim.

Conclusion:

I find the tenant entitled to a monetary order as calculated below. I find them entitled to recover filing fees for this Application.

Refund of original security deposit	850.00
Double security deposit	850.00
Less amount received	-800.00
Refund of illegal rent increase	392.00
Filing fee	100.00

Total Monetary Order to Tenant	**1392.00**

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: November 29, 2017

Residential Tenancy Branch