



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This decision pertains to the Tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The Tenant seeks the following relief:

1. a monetary order for compensation for monetary loss;
2. a monetary order for double security and pet damage deposits; and,
3. a monetary order for recovery of the filing fee.

The Tenant and Landlord (P.R.) attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant testified that they served the Landlords the Notice of Dispute Resolution Proceeding (the "package") on April 28, 2018, by way of registered mail. The Landlord confirmed receiving the package and acknowledged reviewing the contents.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues

1. Is the Tenant entitled to a monetary order for compensation for monetary loss?
2. Is the Tenant entitled to a monetary order for double security and pet damage deposits?
3. Is the Tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The Tenant testified that they entered a one-year fixed term tenancy on November 1, 2016, and after the year the tenancy became a periodic tenancy. Monthly rent was \$875.00, and the Tenant paid a security and pet damage deposit of \$750.00.

On October 21, 2017, the Landlords sent a letter to the Tenant advising them that "We are giving you 2 months notice that as of January 1, 2017 rent for your suite will be raised to market value \$1100.00." The Tenant told the Landlords that they disagreed with the rent increase. Twelve days later, the Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property for the reason that the Landlord "has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant."

Not wanting to wait to find a place to live, on November 24, 2017, the Tenant served the Landlords with a letter titled "10 Day Notice to Move Out Early" under section 50 of the Act, with an end tenancy date of December 4. In the letter, the Tenant provided their forwarding address.

On November 25, 2017, the Landlords posted an ad in Kijiji, in which the rental unit was listed as available for rent. Monthly rent was advertised at \$1,200.00. The ad included four colour photographs of the rental unit, two photographs of which showed the interior of the rental unit with the Tenant's furniture and personal property. Just after the Tenant moved out, one of the Landlords' other renters moved into the subject rental unit (the "New Renter").

The Tenant found a new place for December 1. The Tenant's monthly rent in their new place is \$900.00 on a one-year fixed term, which is \$25.00 a month more than the rental unit. The Tenant moved out December 2 and had the carpets cleaned December 4. The Tenant paid full rent for December and was not refunded the difference for rent for December 5-31, in the amount of \$762.00. On January 1, 2018, the Landlord sent a text message to the Tenant: "Will email you're damage deposit tomorrow best to you in 2018". The Tenant received the security and pet damage deposit on January 16, 2018.

The Tenant claims compensation for: (1) twelve months of rent difference of \$300.00; (2) a refund of the rent for December 5-31 for \$762.00; (3) compensation of \$230.00 for moving costs; (4) two months' rent worth of compensation (\$1,750.00) for not renovating the rental unit; (5) double the security and pet damage deposit for being returned late for \$750.00; and (6) \$100.00 for the filing fee.

The Tenant submitted into evidence, and referred to in testimony, the following: (1) a copy of a receipt from a moving company; (2) a letter from the Landlord regarding the rent increase; (3) a letter from the Tenant for their 10 day notice to end tenancy; (4) a receipt for \$750.00 security and pet deposits; (5) a text message from the Landlord to the Tenant regarding the return of deposit; (6) an email transfer confirmation dated January 16, 2018; (7) the Two Month Notice from the Landlords; (8) a Kijiji ad of the rental unit being available for rent; (9) bank statements showing rent payments of \$875.00; (10) a copy of a tenancy agreement for the Tenant's new rental unit.

The Landlord did not dispute the above-noted testimony or evidence of the Tenant. The Landlord acknowledged returning the security and pet damage deposit late. The Landlord testified that they let all four tenants know that the rent would be increased to market rates in January 2018 and that they "did everything by the book." They said that they offered all the tenants three free months of rent. (The Tenant does not recall this offer.) The primary issue, the Landlord explained, is that the rents were below market.

Regarding renovations, the Landlord testified that the Tenant had left the rental unit and that there was "not much to do," other than some very minor repairs and touching up the rental unit with some fresh paint. They acknowledged that the New Renter moved into the subject rental unit after the Tenant left, and has lived there since.

Analysis

Claim for Security and Pet Damage Deposit

Section 38 (1) of the Act reads as follows:

- Except as provided in subsection (3) of (4) (a), within 15 days after the later of
- (a) the date the tenancy ends,
 - (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.

Section 38 (6) of the Act states that if a landlord does not comply with subsection 38 (1), the landlord may not make a claim against the security or pet damage deposit and must pay the tenant double the amount of the security and pet damage deposit.

The Tenant provided the Landlords with their forwarding address in writing before they vacated the rental unit. The Landlord returned the security and pet damage deposit on January 16, 2018, and acknowledged that they returned the deposits late.

Taking into consideration all of the evidence, unchallenged testimony, and the testimony of the Landlord presented before me, and applying the law to the facts, I find that the Tenant has met the onus of proving their claim that they are entitled to double the security and pet damage deposit. As such, I grant a monetary award of \$750.00.

Claim for Compensation for Two Months' Rent

Section 49 of the Act outlines various landlord's uses of property by which they may end a tenancy. Subsection 49 (6) (b) allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner requiring the rental unit to be vacant.

Section 51 (2) (a) of the Act states that if "steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice" then the landlord must pay the tenant an amount that is the equivalent to double the monthly rent payable under the tenancy agreement.

The Tenant argued that because the New Renter moved in to the rental unit so quickly after they moved out, that the Landlord never intended in good faith to renovate or repair the rental unit requiring it to be vacant. Indeed, it was agreed that the New Renter has lived continuously in the rental unit since is proof of the Landlords' intentions. The Landlord testified that the New Renter moved into the rental unit in mid-December 2017 and has been living there ever since. The Landlord testified that other than some minor repairs and fresh paint, nothing else needed to be done.

Taking into consideration all of the evidence, unchallenged testimony, and the testimony of the Landlord presented before me, and applying the law to the facts, I find on a balance of probabilities that the Tenant has met the onus of proving their claim that the Landlords did not intend to renovate the rental unit, rather their own evidence is they ended the tenancy in order to raise the rent for the rental unit. I find the Landlord never intended to renovate the unit, nor were sufficient steps taken to do so, and therefore, I must order the Landlord to compensate the Tenant for breach of section 51(2). As such, I grant a monetary award for \$1,750.00 pursuant to section 51 (2) of the Act.

Claim for Compensation for Refund of Partial December 2017 Rent

Section 50 (1) of the Act states that when a landlord ends a periodic tenancy under section 49, the tenant may end the tenancy early by (a) giving the landlord at least 10 days written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

Section 50 (2) of the Act states that if a tenant paid rent before giving notice under section 50 (1), upon receiving the notice the landlord must refund any rent paid for a period after the effective date of the notice.

In this case, the Landlords' two month notice had an effective date of January 1, 2018. The Tenant gave the Landlords ten days' written notice on November 24, 2017. The Tenant testified that they paid a full month's rent for December in the amount of \$875.00. However, because they vacated the rental unit on December 4, they argued that they are entitled to a refund of \$762.10 (at a per diem rate of \$28.23). The Landlord did not dispute this aspect of the Tenant's claim.

Taking into consideration all the evidence and unchallenged testimony of the Tenant presented before me, and applying the law to the facts, I find on a balance of probabilities that the Tenant has met the onus of proving their claim that they are entitled to a refund of the rent for December 5-31, 2017. As such, I grant a monetary award in the amount of \$762.10.

Claim for Compensation for Difference in Rent and for Moving Costs

Section 67 of the Act empowers me to determine the amount of, and order that a party pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement.

The Tenant argued that but for the Landlords' breach of section 49 of the Act, they would not have had to find a new place resulting in a higher rent at \$25.00 per month. Tenant further argued that but for the Landlords' breach of the Act, they would not have incurred \$230.00 in moving costs. The Landlord did not dispute this aspect of the claim.

Taking into consideration all the evidence, unchallenged testimony, and the testimony of the Landlord presented before me, and applying the law to the facts, I find that the

Tenant has met the onus of proving their claim that they suffered a loss from the Landlords' breach of the Act. The Tenant's claim for compensation in the amount of \$100.00 (\$25.00 / month x 12 months) is reasonable, as is their claim for moving in the amount of \$230.00. As such, I grant a monetary award of \$330.00 pursuant to section 67 of the Act. Further, I grant a monetary award of \$100.00 for the filing fee.

A total monetary order for \$3,892.10 is calculated as follows:

Claim	Amount
Late security and pet damage deposit	\$750.00
Refund of partial December 2017 rent	762.10
Two months' rent	1,750.00
Difference in rent for 12 months	300.00
Moving costs and Filing Fee	330.00
Total:	\$3,892.10

Conclusion

I grant the Tenant a monetary order in the amount of \$3,892.10. This order must be served on the Landlords and may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

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: June 8, 2018

Residential Tenancy Branch