



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on June 9, 2018, the Tenant requested return of double their security deposit and recovery of the filing fee. By Amendment filed on June 22, 2018 the Tenant's increased their claim to \$5,700.00 to include a request for monetary compensation from the Landlord pursuant to section 51(2) of the *Residential Tenancy Act*.

The hearing was conducted by teleconference at 1:30 p.m. on November 13, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The Landlord stated at the outset of the hearing that he only recently received the Tenants' materials as he had moved and was not at the address to which the materials were sent. Although an adjournment was offered to him to provide him the opportunity to review and respond to the Tenant's materials, he declined and asked to proceed with the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

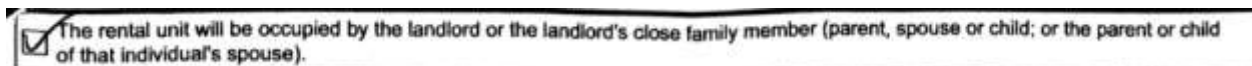
Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit paid?
2. Are the Tenants entitled to compensation pursuant to section 51(2) of the *Residential Tenancy Act*?
3. Should the Tenants recover the filing fee?

Background and Evidence

The Tenant M.C. testified as follows. The tenancy began November 1, 2017. Monthly rent was payable in the amount of \$2,200.00 and the Tenants paid a security deposit in the amount of \$1,100.00.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use on November 29, 2017 with an effective date of the Notice was January 31, 2017. The reasons cited on the Notice were as follows:



On December 29, 2017 the Tenants provided the Landlord with their forwarding address in writing. A copy of the email was provided in evidence, as well as the Landlord's email response dated January 1, 2018.

The Tenants did not dispute the Notice, and moved from the rental unit on January 24, 2018. The Tenant confirmed this was also the date they met with the Landlord to do the move out condition inspection.

M.C. confirmed that they did not exercise their rights pursuant to section 50 of the *Act* to move out earlier with 10 days' notice to the Landlord, rather they simply moved out

earlier as they were able to find another place to live. As such, no claim for return of rent on a prorated basis was advanced.

The Tenants confirmed that they received the \$1,100.00 security deposit on February 9, 2018. M.C. confirmed that the funds were sent by regular mail.

M.C. stated that the property was being shown by realtors while they were still there and was sold January 29, 2018. The Tenants provided a copy of the real estate listing for the property as well as the assessment roll report confirming the sale of the property.

The Landlord responded to the Tenants' submissions as follows. He confirmed that he mailed out the security deposit on February 5, 2018. Email communication between the parties confirmed that the cheque was sent by the Landlord on February 5, 2018 and apparently received by the Tenants on February 9, 2018.

In terms of the Notice, the Landlord stated that he disclosed to the Tenants that he was no longer able to maintain the property for financial reasons. He also stated that he was having difficulty obtaining a response from the strata as to his ability to continue renting the property (although it had been rented for some time prior). He confirmed that he received the Strata's response on January 26, 2018 confirming rentals could continue. The Landlord stated that his intention was to move into the property, or sell the unit, whatever occurred first.

In reply, the Tenant confirmed that the forwarding address provided was her husband's work. The Tenant confirmed that he checked the mail each day he was at work and the deposit was not there on the February 8, 2018, but apparently received on the February 9, 2018 (he left early that day and received the funds after the long weekend).

Analysis

After consideration of the testimony, evidence and submissions of the parties, and on a balance of probabilities I find as follows.

The parties disagree as to the date the tenancy ends. The Tenants submit it is January 24, 2018, the date they vacated the rental unit and participated in the move out inspection. The Landlord argues it is January 31, 2018, the effective date of the Notice.

A tenancy may only end in accordance with the *Act* as set out in section 44 which provides as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I find the tenancy ended on January 24, 2018, the date the Tenants vacated the rental unit and the parties completed the move out inspection. While the Landlord gave

notice to end the tenancy on January 31, 2018, the tenancy ended earlier when the Tenants were able to move out. I note that the date of the move out inspection was agreed to by the parties, and this early move out date facilitated the sale of the property on January 29, 2018.

The Tenants seek return of double their security deposit on the basis the Landlord failed to return their deposit within 15 days of the end of the tenancy.

Section 38 reads as follows:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(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.

The use of the word “within” in section 38(1) requires the first day of the calculation of days to be excluded and the last day included such that **I find the Landlord had until February 8, 2018 to return the funds to the Tenants or make an application for dispute resolution.**

The Landlord testified that he mailed the cheque to the Tenants on February 5, 2018.

Section 90 of the *Act* addresses the issue of when documents are deemed received and reads as follows:

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

(b) if given or served by fax, on the 3rd day after it is faxed;

(c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

(d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left.

Although the deeming provisions indicate that the documents mailed on February 5, 2018 would be deemed received on February 10, 2018, the Tenants testified that they received the cheque on February 9, 2018 such that I find they received the funds on February 9, 2018.

In any case, I find the Landlord failed to return the funds or apply for arbitration, within 15 days of the end of the tenancy (February 8, 2018) as required under section 38(1) of the *Act*.

Having made the above findings, I must Order, pursuant to sections 38(1) and (6) of the *Act*, that the Landlord pay the Tenants the sum of **\$2,200.00**, comprised of double the security deposit (2 x \$1,100.00).

The Tenants also applied for two month's rent pursuant to section 51(2) of the *Act*.

There was no dispute that the rental property sold on January 29, 2018.

The reasons cited on the Notice were that the Landlord, or a close family member of the Landlord (as defined by section 49), intended to reside in the rental unit.

Section 51(2), as it was at the time the Notice was issued, provided as follows:

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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) 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, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find that the rental unit was not used for the stated purpose on the Notice. As such, and pursuant to sections 49 and 51(2) the Tenants are entitled to a further \$4,400.00 representing double the monthly rent (2 x \$2,200.00).

As the Tenants have been substantially successful, they are entitled to recover the filing fee of \$100.00

Conclusion

The Tenants are entitled to the sum of **\$5,600.00** calculated as follows:

2 x security deposit (\$1,100.00 x 2)	\$2,200.00
2 x monthly rent	\$4,400.00
Filing fee	\$100.00
TOTAL	\$6,700.00
<i>Less funds received</i>	<i>\$1,100.00</i>
TOTAL AWARDED	\$5,600.00

The Tenants are granted a Monetary Order in the amount of \$5,600.00. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) 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: November 13, 2018

Residential Tenancy Branch