Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on February 10, 2020 the Dispute Resolution Package and evidence the Tenants submitted with the Application were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenants submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act),* however the Landlord did not appear at the hearing.

As the aforementioned documents have been served to the Landlord, the evidence was accepted as evidence for these proceedings and the hearing proceeded in the absence of the Landlord.

Preliminary Matter

In the Application for Dispute Resolution the Tenants declared that “One month notice to end tenancy for Landlord’s Use of Property given on January 1 2020 effective February 1 2020”. In the Application for Dispute Resolution the Tenants also declare they are seeking the return of their security deposit and a refund of rent paid as a result of a rent increase on July 01, 2018.

The Tenants submitted a Monetary Order Worksheet. On the first page of the Worksheet the Tenants declared that they are seeking compensation for "Non-compliant increase of rent and 1 month notice to end tenancy".

On the second page of the Monetary Order Worksheet the Tenants declared they are claiming $1,250.00 for "Monthly Rent Receipt", $1,150.00 for "Monthly rent receipt – 1 month end to tena", and $1,100.00 for the security deposit not being returned.

I find that the Landlord knew, or should have known, from the aforementioned information that the Tenants were seeking compensation for an unlawful rent increase and to recover double their security deposit. I will therefore consider those claims at these proceedings.

At the hearing the male Tenant stated that the claim for "One month notice to end tenancy for Landlord's Use of Property given on January 1 2020 effective February 1 2020" arises from the Landlord giving them verbal notice to end the tenancy because the Landlord's husband would be moving into the unit. The Tenants contend that they should have been served with a Two Month Notice to End Tenancy for Landlord's Use if the Landlord wished to end the tenancy for this reason, in which case they would have been entitled to compensation that is the equivalent of one month's rent.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act [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.

I find that the Tenants did not provide sufficient notice that they were seeking compensation pursuant to section 51(1) of the *Act*. In reaching this conclusion I was influenced by the absence of any reference to the need to provide compensation after being served with notice to end tenancy pursuant to section 49 of the *Act*. Although the Tenants appear to suggest that they were served with a One Month Notice to End Tenancy for Landlord's Use of Property (which does not exist), they acknowledge that they were not served with either a One Month Notice to End Tenancy for Cause or a Two Month Notice to End Tenancy for Landlord's Use.

I find the information provided in the Monetary Order Worksheet is very unclear and would not help the Landlord understand the Tenants were seeking compensation pursuant to section 51(1) of the *Act*.

Section 52(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute. I find that the Application for Dispute Resolution does not fully comply with section 52(2)(b) of the *Act*, because it does not include full particulars of the claim for compensation pursuant to section 51(1) of the *Act*.

Section 52(5)(c) of the *Act* authorizes me to refuse an application that does not comply with section 52(2)(b) of the *Act*. I refuse to consider the Tenants' application for compensation pursuant to section 51(1) of the *Act*. I find that it would be unfair to the Landlord to consider this claim, as she was not clearly informed of the Tenants' intent to claim compensation pursuant to section 51(1) of the *Act.*

The Tenants retain the right to file another Application for Dispute Resolution in which they claim compensation pursuant to section 51(1) of the *Act.*

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?
Are the Tenants entitled to a rent refund?

Background and Evidence:

The male Tenant stated that:

- This tenancy began on July 01, 2017;
- They paid a security deposit of $550.00;
- On July 01, 2018 the rent was increased from $1,100.00 to $1,250.00;
- They paid the increased rent from July 01, 2018 to January 01, 2020;
- The female Tenant was verbally informed of the rent increase sometime in June of 2018;
- They were not provided with written notice of the rent increase prior to July 01, 2018;
- When they paid the increased rent on July 01, 2018, they received a rent receipt;
- The July 01, 2018 rent receipt, which is written in Mandarin, declares that rent has been increased from $1,100.00 to $1,250.00;
- The female Tenant signed the July 01, 2018 rent receipt because she believed she would be evicted if they did not pay the increased rent;
- On January 01, 2020 the Landlord verbally informed them they needed to move out of the rental unit by January 31, 2020, because her husband was moving into the unit;
- They were never provided with written notice to vacate the rental unit;
- They vacated the rental unit sometime prior to January 31, 2020, although they returned to the rental unit after that date for the purposes of cleaning;

- They provided a forwarding address, in writing, on February 07, 2020 by leaving it in the rental unit with the keys;
- The Tenants did not authorize the Landlord to retain any portion of the security deposit;
- The Landlord did not return any portion of the security deposit; and
- The Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenants are seeking the return of their security deposit of $550.00.

The Tenants are seeking a rent refund of $2,850.00 because they believe the Landlord did not have the right to collect the aforementioned rent increase.

Analysis:

On the basis of the undisputed evidence, I find that the Tenants paid a security deposit of $550.00, and that the rent was increased from $1,100.00 to $1,250.00 on July 01, 2018.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is calculated in accordance with the regulations. In 2018 the allowable rent increase was 4%. I find that the rent increase that occurred on July 01, 2018 was greater than 4%. I therefore find that the Landlord did not have the right, pursuant to section 43(1)(a) of the *Act*, to increase the rent to $1,250.00 on July 01, 2018.

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that has been ordered by the director on an application under section 43(3) of the *Act*. As there is no evidence that the director authorized the Landlord to increase the rent to $1,250.00, I find that the Landlord did not have authority, pursuant to section 43(1)(b), to increase the rent on July 01, 2018.

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is agreed to by the tenant in writing. I find that there is insufficient evidence to show that the Tenants agreed, in writing, to increase the rent to $150.00.

In adjudicating this matter, I have considered the rent receipt dated July 01, 2018. As I am unable to read the rent receipt, I must accept the male Tenant's testimony that the receipt declares the rent was increased from $1,100.00 to $1,250.00 on July 01, 2018. Although I accept that the female Tenant signed the rent receipt, I cannot conclude that

signing the rent receipt should be interpreted as a written agreement to increase the rent. In my view, signing a rent receipt is more commonly understood to be an agreement that the amount on the receipt was actually paid.

As there is insufficient evidence to show that the Tenants agreed to increase the rent to $1,250.00, I find that the Landlord did not have authority, pursuant to section 43(1)(c), to increase the rent on July 01, 2018.

Section 43(2) of the *Act* stipulates that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. Section 43(3) of the *Act* stipulates that a notice of a rent increase must be in the approved form. The approved from for serving notice of a rent increase is RTB-7.

Even if the Landlord had the right to increase the rent to $1,250.00, pursuant to section 43(1) of the Act, I would find that he did not have the right to collect the increased rent because he did not serve the Tenants with a RTB-7 prior to collecting the increase.

Section 43(5) of the *Act* authorizes tenancy to recover a rent increase that does not comply with the *Act*. As the Landlord collected a $150.00 rent increase for 19 months, which does not comply with the *Act*, I find that the Tenants are entitled to a rent refund of $2,850.00.

On the basis of the undisputed evidence, I find that on January 01, 2020 the Landlord verbally informed the Tenants that they were required to move out of the rental unit by January 31, 2020, because her husband was moving into the unit; that the Tenants moved out of the rental unit on the basis of that information, and that the Tenants returned the keys to the rental unit on February 07, 2020.

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 sections 45, 46, 47, 48, 49, 49.1, and 50 of the *Act.* The evidence shows that neither party gave written 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.*

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 Tenants vacated the rental unit because the fixed term of their tenancy ended, 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 when the Tenants returned the keys to the rental unit on February 07, 2020, pursuant to section 44(1)(d) of the *Act.*

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 undisputed evidence, I find that the Tenants provided a forwarding address, in writing, on February 07, 2020.

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(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 Tenants double the security deposit.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of $4,050.00, which includes double the security deposit, in the amount of $1,100.00, a rent refund of $2,850.00, and $100.00 compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. 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: July 02, 2020

Residential Tenancy Branch