Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, MNSD, FFT

Introduction

In this dispute, the tenant seeks compensation against their former landlord pursuant to sections 38, 51, and 67, of the *Residential Tenancy Act* (the "Act"), and, recovery of the filing fee pursuant to section 72 of the Act.

On March 11, 2020 the tenant filed an application for dispute resolution and an arbitration hearing was held, by teleconference, on July 17, 2020. The hearing was adjourned to August 6, 2020, at which the tenant and landlord attended. I gave the parties a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the tenant entitled to any or all of the amount claimed?
2. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

By way of background, the tenancy started on September 1, 2018 and ended on either February 15 or March 1, 2020. Monthly rent was $2,000.00 and the tenant paid a security deposit of $1,000.00. A copy of the written tenancy agreement was submitted into evidence.

In the description section of the tenant's application for the return of the security deposit in the amount of $2,000.00, she states the following:

> I am seeking the return of damage deposit plus $1000.00 compensation for failing to return the damage deposit without consent within 15 of end of tenancy. Notice to vacate and new address were provided to the landlord via text on January 6, 2020. Landlord accepted and acknowledged receipt of same on January 8, 2020. The landlord entered the unit numerous times between February 16 and March 1 2020 with her own key and without providing notice thus proving she was aware the tenancy had terminated.

In the description section of the application for compensation in the amount of $24,000.00, the tenant states the following:

> As Per "Two Month Notice to End Tenancy for Landlords Use of Property" The landlord is obligated to compensate me the equivalent of 1 month rent by effective date of notice. 1/2 month rent value of $1000 was withheld by tenant on final 15 days of tenancy, I sought the other half or $1000.00 from landlord. The landlord refused to pay this money, stating i am not entitled to it, therefore, as per the RTA The landlord "must" compensate the tenant the value of 12 months rent.

The tenant testified that the landlord gave her a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice", and a copy of which was submitted into evidence) on December 20, 2019. The Two Month Notice indicated that the tenancy would end on March 1, 2020. The tenant did not dispute the Two Month Notice, which further indicated that purchasers of the property intended to occupy the rental unit.

On January 6, 2020, the tenant sent a text message to the landlord which read as follows (relevant portions only, reproduced as written):

Tenant: […] My new addy will be [street number and name].
I ment to give you formal written notice that im moving feb 15th when i saw you.

On January 8, the landlord responds as follows:

Landlord: Hey [tenant's name]- I'm all good with whatever works best for you, I can do what I have to in there when it's empty.

The tenant testified that she vacated the rental unit on February 16, 2020, and that all she left behind was her bicycle (which was in a separate lockup near the parking) and some cleaning supplies. After she moved, the landlord dropped of a "cleaning checklist"

to the tenant's new address. It should be noted that the tenant's new address is located almost directly across the street from where the landlord resides. According to Google Maps, it is a 1 minute walk between the parties' residences.

The tenant then testified about the landlord not being totally happy with the cleaning of the rental unit, so the tenant returned a few times to take care of extra cleaning. It was, however, "starting to get silly" so she stopped coming back, and "I never heard from her again." The tenant gave evidence that she never received her security deposit back from the landlord and at no time did she give the landlord authorization to retain the deposit. She added that there was no Condition Inspection Report completed.

There was also an issue regarding the keys: the tenant returned two sets of keys to the landlord but kept one key so that she could go back and do more cleaning. The tenant's son apparently then lost the key.

The tenant paid rent for January 2020 but did not pay rent for February 2020 as compensation for the one month rent amount that is permitted under section 51(1.1).

In addition to her claim for the return and doubling of the security deposit, the tenant seeks compensation for the filing fee, lost wages resulting from the tenant having to attend the hearing the first time, and, $60.00 for an old power sander that the landlord did not, or has not, returned. The sander is "a few years old" and cost a little bit more than $100.00 when purchased new, remarked the tenant. There is also a small claim for postage costs related to the dispute.

In her testimony and submissions, the landlord wanted to clarify that not all of her and the tenant's communications throughout the tenancy was solely by text. The more "formal matters" were communicated by other means.

The landlord drew my attention to the text of January 6, 2020, in which the tenant stated that she "meant to give formal notice," and argued that this statement does not constitute a formal notice that is required under the Act. She "was still expecting a formal notice" and she "did not waive my right to" receiving a formal notice.

As to what the tenant left behind in the rental unit, the landlord commented that there "was more than just a bike . . . there were plants on the deck and a dishwasher full of dishes." She further stated that "I didn't ask her multiple times to clean" the rental unit. During this time (after February 15) the tenant still have the keys to the rental unit, and it

was the position of the landlord that the tenancy ends when the keys are returned to the landlord.

Regarding when and how the landlord received the tenant's forwarding address, she testified that the first name she received the tenant's forward address in writing was when she received the Notice of Dispute Resolution Proceeding package. I asked her about the text of January 6, in which the street name and number were included, and the landlord argued that this information alone is "not a complete address."

Next, the landlord referred to a text from the tenant, dated February 3, 2020, in which the tenant refers to her not yet giving a formal notice. The tenant disputed this and said that the text is taken out of context. In further rebuttal, the tenant testified that the landlord "came and took the modem" on February 12, 2020. She also added that the landlord "came and went as she pleased" on a regular basis between February 16 and March 1, and without any 24-hour notice. In response, the landlord said that she "did not once go into the rental unit without notice," and that the tenant's testimony is not true.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Preliminary Issue of Notice and Forwarding Address

Before turning to the individual claims, I must first resolve two issues: (1) when did the tenancy end, and (2) when did the landlord receive the tenant's forwarding address in writing?

The Two Month Notice stated that the tenancy would end on March 1, 2020. The tenant sent a text message to the landlord on January 6, 2020 indicating that she would be moving on February 15, 2020. The landlord responds, "I'm all good with whatever works best for you […]" on January 8, 2020.

While the landlord's contention is that the tenant never gave formal notice to end the tenancy (under, for example, section 45 of the Act), what cannot be ignored is the landlord's statement "I'm all good with whatever works best for you" is, I must conclude, the landlord's acceptance that the tenancy would end on February 15, 2020.

Moreover, on February 1, 2020, the tenant texts the landlord about a medical emergency that would result in her "moving out a day late. I have a truck Feb 16. And im recruiting muscles to help get it all done in hopefully half a day." The landlord does not dispute or raise any issue in response to this update text, further suggesting that the landlord did accept that the tenancy was to end on (or about) February 15.

Further, the landlord also sent a text to the tenant in which she states, "I also told the realtors that you're moving out on Feb 15 as the buyers were potentially interested in moving up the possession date." The landlord then remarks about the buyers wanting a "move out notification" from the tenant, and that "all *they* want is a note from you stating you are moving out before the date provided on both notices I gave you (March 1)" (emphasis added).

In other words, nowhere in the communication is the landlord insisting on a formal notice being given. Again, this leads me to conclude that the landlord agreed to the tenancy ending on February 15, 2020, and thus, both parties mutually agreed to end the tenancy. And this is where section 44(1)(c) of the Act comes into play.

Section 44(1)(c) of the Act states that "A tenancy ends only if one or more of the following applies: […] the landlord and tenant agree in writing to end the tenancy".

In this case, while the communication was by text message rather than by e-mail or by physical, paper-based written correspondence, the communication between the two parties was, in fact, in writing. Thus, I must conclude that the parties agreed, in writing, to end the tenancy on February 15, 2020.

Second, the landlord received the tenant's forwarding address by text – again, in writing – sometime between January 6 and 8, 2020. The text message from the tenant uses the word "addy" (which is slang for "address"). The address given, while not including the city or postal code, is the same street name as that on which the landlord resides. This, in my mind, is more than sufficient for the purposes of knowing where the landlord would be required to send the tenant's security deposit. It is, quite literally, across the street from where the landlord lives.

In summary, I find that the tenant provided, and the landlord received, the tenant's forwarding address in writing on or about January 8, 2020. Further, I find that the tenancy ended on February 15, 2020.

General Overview of Claims

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
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> . . .
>
> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Claim for Compensation – Section 51 of the Act

As explained during the hearing, the tenant inadvertently applied for twelve months' compensation under section 51(2) of the Act. However, as the application contained no particulars regarding the landlord (or the purchaser) not using the rental unit for the purpose stated on the Two Month Notice, there is no claim to be made pursuant to this section of the Act.

Regarding the tenant's other claim under this section, I cite section 51(1) of the Act, which states:

> 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.

The tenant testified that she did not pay the rent for February 2020, "as compensation" for the amount she was due by operation of section 51(1) of the Act.

While the tenancy technically ended on February 15, 2020, the tenant continued to have possession of one of the keys (the other two sets being returned) and she returned to the rental unit to retrieve various belongings (including her bike) and to take care of some additional cleaning. The tenant, I find, vacated the rental unit on February 16, 2020, but was permitted by the landlord to re-enter the rental to take care of remaining matters. There is no evidence that the tenant continued to occupy or live in the rental unit. Indeed, that the landlord removed the internet modem on February 12 suggests that the landlord expected the tenancy to end on February 15 or 16, 2020.

The tenant is entitled to receive an amount equivalent to one month's rent under the tenancy agreement. She withheld rent of $1,000.00, representing the two weeks that she intended to occupy the rental unit. However, the landlord has not compensated her an additional $1,000.00, for which the tenant is entitled under section 51(1) of the Act, and the landlord was therefore in breach of this section of the Act. The tenant would not have suffered a loss but for the landlord's breach of the Act.

Taking into consideration all the oral testimony and documentary evidence 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 for $1,000.00 in order for the landlord to meet the requirements of one month's rent payable as per section 51(1) of the Act.

(Given that this amount is set by the Act, the factor of mitigation is not considered.)

Claim for Compensation – Return of Security Deposit

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

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.

In this dispute, I have found that the tenancy ended on February 15, although, alternatively, the tenancy may have ended on February 16 when the tenant vacated the rental unit. The landlord's position, of course, is that the tenancy ended on March 1, 2020. However, regardless of what date the tenancy ended, the landlord did not repay the security deposit to the tenant within 15 days after the date the tenancy ended, nor did she make an application for dispute resolution claiming against the security deposit within 15 days after the date the tenancy ended, whatever the parties' may have considered to be the end of tenancy date. (Indeed, the landlord only recently filed an application against the tenant on July 27, 2020.)

Section 38(6) of the Act states that

(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.

Here, the landlord did not comply with subsection 38(1) of the Act in that they failed to return the security deposit and they are, as a result, required to pay the tenant double the amount of the security deposit in the amount of $2,000.00.

Claim for Compensation – Power Sander

Regarding this aspect of the tenant's claim, while $60.00 is perhaps an approximate value of the sander, the tenant did not submit any documentary evidence, such as a receipt, establishing that it is worth this amount. Or, any documentary evidence or calculation as to how this depreciated amount was determined.

The burden to prove an amount of loss is on the applicant, and in the absence of any documentary evidence I find that the tenant has not met that onus. Therefore, I dismiss this aspect of the tenant's claim without leave to reapply.

Claim for Compensation – Lost Wages and Postage Expenses

Regarding this aspect of the tenant's claim, while I had previously asked the tenant to submit wage losses, after careful consideration and in consultation with a senior, supervising arbitrator, I must find that lost wages and postage expenses are not damages which can be awarded under the Act.

The reason for this is because they are not losses incurred as a direct result from the landlord's breach of the Act. As such, they are not recoverable, and these claims are therefore dismissed without leave.

Claim for Recovery of the Filing Fee

While the three claims for the power sander, the lost wages, and postage expenses are dismissed, the tenant was otherwise successful in her application.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. Therefore, I grant the tenant compensation of $100.00 for the filing fee.

Summary

In total, the tenant is awarded compensation in the amount of $3,100.00. A monetary order in this amount is issued, in conjunction with this decision, to the tenant.

Conclusion

The tenant's application is granted, in part.

I grant the tenant a monetary order of $3,100.00, which must be served on the landlord. Should the landlord fail to pay the tenant the amount owed, the tenant may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 7, 2020

Residential Tenancy Branch