



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application for a monetary order as compensation for damage or loss under the Act, double the return of the security deposit, and recovery of the filing fee for this application. The tenant participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the landlord did not appear.

Issues to be decided

- Whether the tenant is entitled to any or all of the above

Background and Evidence

Pursuant to a written residential tenancy agreement, the term of the tenancy was from May 6, 2008 to April 30, 2009. Rent in the amount of \$700.00 was payable on the sixth day of the month, and a security deposit of \$350.00 was collected on May 6, 2008.

Problems arose between the parties during the tenancy which led to previous dispute resolution hearings. The landlord issued a 2 month notice to end tenancy for landlord's use of property dated September 26, 2008. Related to this, the landlord was granted an order of possession to be effective no later than November 30, 2008. In the decision issued by the dispute resolution officer dated October 29, 2008, it is stated, in part:

The Landlord said that as a result of ongoing problems with the Tenant, she has decided she no longer wants to rent out this suite but to use it herself. The Landlord admitted that she has foreign students stay with her from time to time

but they use other bedrooms. Consequently, she issued a Two Month Notice to End Tenancy for Landlord's Use of Property.

Subsequently, the tenant vacated the unit on or about November 28, 2008.

Within a relatively short time after his departure from the unit, the tenant determined that the landlord had placed an advertisement on craigslist for rental of the subject unit. A copy of the advertisement dated March 29, 2009 was submitted into evidence.

As for his security deposit, by letter to the landlord dated May 6, 2009, the tenant informed her of his forwarding address and requested the return of his security deposit. However, to date, his security deposit has not yet been returned.

Analysis

Section 49 of the Act speaks to **Landlord's notice: landlord's use of property**. In particular, section 49(3) of the Act states:

49(4) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline # 2 addresses **Ending a Tenancy Agreement: Good Faith Requirement**. In part, this guideline provides as follows:

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending

the tenancy is to retaliate against the tenant, then the landlord does not have a “good faith” intent. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a “good faith” intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the “good faith” intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord’s primary motive.

Further, section 51 of the Act addresses **Tenant’s compensation: section 49 notice**. In particular, section 51(2) of the Act provides as follows:

52(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.

Based on the documentary evidence and undisputed testimony of the tenant, I find that the tenant was served with a 2 month notice to end tenancy for landlord’s use of property, an order of possession was granted and the tenant vacated the unit on or about November 28, 2008.

Whether the landlord made personal use of the unit immediately after the tenant vacated is unknown. However, I find that the unit was advertised for rent on craigslist approximately four (4) months after the tenant vacated the unit. In the result, on a balance of probabilities, I am unable to conclude that the landlord has met the burden of proof in demonstrating there was a “good faith” intent in her issuance of the notice. Accordingly, pursuant to the above statutory provisions, I find that the tenant is entitled to compensation equivalent of double the monthly rent payable under the tenancy agreement.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In particular, section 38(1) of the Act provides:

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.

Further, section 38(6) of the Act provides:

38(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.

As the tenant's security deposit has not been returned within 15 days of his having informed the landlord in writing of his forwarding address by letter dated May 6, 2009, pursuant to the above statutory provisions I find that the tenant is entitled to double the amount of the security deposit.

In summary, as for the monetary order I find that the tenant has established a claim of \$2,153.44. This is comprised of double the original security deposit of \$700.00 (2 x \$350.00) plus interest of \$3.44 calculated on the original amount of the security deposit, in addition to two months' rent in the total amount of \$1,400.00 (2 x \$700.00), and finally, the \$50.00 filing fee. I therefore grant the tenant a monetary order under section 67 of the Act for \$2,153.44.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of **\$2,153.44**. This order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: August 17, 2009

Dispute Resolution Officer