



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' application for return of double the security deposit and one month's compensation for the landlord ending the tenancy for landlord's use of the property. The tenants named two landlords in making this application which I determined where the owner of the property and the property manager. The tenant testified that both named landlords were served with notice of this hearing and the tenants' evidence package. The property manager appeared at the hearing and confirmed he was acting for both named landlords and confirmed service of documents. Both parties were provided the opportunity to be heard and to respond to the submissions of the other party.

I have amended the tenants' application to correctly name the property manager, as identified on the Notice to End Tenancy issued by the property manager.

Issues(s) to be Decided

1. Are the tenants entitled to compensation equivalent to one month's rent under section 51 of the Act?
2. Are the tenants entitled to return of double the security deposit in accordance with section 38 of the Act?
3. Mutual agreement between the parties.

Background and Evidence

Upon hearing undisputed testimony of the parties, I find that the tenancy commenced in July 2003. The tenants paid a security deposit of \$875.00 shortly before the tenancy commenced. The tenants were personally served with a *2 Month Notice to End Tenancy for Landlord's Use of Property* (2 Month Notice) issued on July 29, 2009 with an effective date of September 30, 2009. The tenants paid rent for August 2009. In early August 2009, the tenants gave written notice to vacate the rental at the end of August 2009. The tenants vacated the rental unit late in the day on August 31, 2009. The tenants provided a forwarding address to the landlord, in writing, on September 1, 2009. The landlords did not pay compensation to the tenants for ending the tenancy for landlord's use of property or obtain the tenants' written consent to make deductions from the security deposit. The landlords did not refund the security deposit or make an application to retain it.

The property manager alleged that additional cleaning was required in the rental unit and damage was caused to the hardwood flooring. The landlord offered to settle this dispute for \$2,500.00 in exchange for agreeing to make no future claims against the tenants with respect to this tenancy. The tenants submitted that the rental unit was left in a reasonably clean condition but accepted the landlord's offer to settle this dispute and face no future disputes with respect to this tenancy.

Analysis

Where a tenant receives a 2 Month Notice, section 50 of the Act permits a tenant to end the tenancy earlier than the effective date on the 2 Month Notice with 10 days of written notice. Section 50(3) provides that a tenant's notice to end a tenancy early does not affect the tenant's right to receive compensation under section 51 of the Act.

Where a tenant receives a 2 Month Notice, section 51(1) of the Act provides that the landlord must compensate the tenant the equivalent of one month of rent. This compensation may be taken in the form of “free rent” during the last month of tenancy or if rent has already been paid, the landlord must pay the compensation to the tenant.

In this case, I am satisfied that the tenants gave at least 10 days of written notice to end the tenancy at the end of August 2009. Since the tenants had paid rent for August 2009 the tenants are entitled to be refunded the rent they paid in satisfaction of section 51 of the Act. Ending the tenancy earlier than September 30, 2009 did not affect the tenants’ right to this compensation.

With respect to the security deposit, I am satisfied the tenants provided a forwarding address to the landlord on September 1, 2009. Accordingly, the landlords had 15 days to either refund the security deposit, plus accrued interest, to the tenants or make an application to retain the deposit pursuant to the requirements of section 38(1) of the Act. The landlords did not comply with the requirements of section 38(1), thus by virtue of section 38(6) of the Act, the landlords are liable to pay the tenants double the security deposit.

In light of the above findings, and as the parties were informed during the hearing, the tenants have established an entitlement to receive an award equivalent to one month of rent (\$2,018.00) plus double the security deposit (\$1,750.00) plus interest on the security deposit (\$30.99) for a total award of \$3,798.99. However, in recognition of the settlement reached between the parties during the hearing, I make the following Orders:

1. The landlords must pay the tenants \$2,500.00 forthwith.
2. The landlords, which includes the property manager and the owner, are precluded from making any future claims against the tenants with respect to this tenancy.

I provide the tenants with a Monetary Order in the amount of \$2,500.00 to ensure payment. This matter is considered resolved by a final settlement reached by mutual agreement.

Conclusion

This dispute has been resolved by mutual agreement and the landlord must pay to the tenants \$2,500.00 forthwith.

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: January 07, 2010.

Dispute Resolution Officer