

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that on or about July 21, 2009 the landlord sent the tenant a letter advising that she was giving the tenant a 60 day notice as she was moving back into the rental unit. The tenant moved out on August 31 and seeks compensation pursuant to section 51 of the Act.

The parties further agreed that on or about October 9 the tenant sent her forwarding address to the landlord requesting the return of her \$575.00 security deposit. The tenant seeks an award of double her security deposit pursuant to section 38 of the Act.

Analysis

The tenant claims compensation under section 51 of the Act which provides 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.

51(2) In addition to the amount payable under subsection (1), if

51(2)(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

51(2)(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.

Sections 49(3) and 49(7) of the Act provide as follows:

49(3) 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.

49(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act provides as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

52(a) be signed and dated by the landlord or tenant giving the notice,

52(b) give the address of the rental unit,

52(c) state the effective date of the notice,

52(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and

52(e) when given by a landlord, be in the approved form.

The tenant's right to compensation under section 51 is not triggered unless the landlord gives a notice under section 49, which must be on the approved form pursuant to section 52. The parties agreed that the only "notice" given to the tenant was by way of the letter of July 21. The landlord did not give the tenant a notice in the approved form and therefore the landlord's notice was not effective to end the tenancy and the tenant's right to compensation was not triggered. Although the tenant chose to vacate the rental unit pursuant to an ineffective notice, this does not give her the right to compensation. The tenant's claim for compensation under section 51 is dismissed.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit. The landlord currently holds a security deposit of \$575.00. I award the tenant double that amount, which equals \$1,150.00.

Conclusion

I grant the tenant a monetary order under section 67 of the Act for \$1,150.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: March 10, 2010
