

DECISION

Dispute Codes

MNDC, MNSD, FF

Introduction

This was an application by the tenant for a monetary order including the return of double the amount of their security deposit as per Section 38 of the Residential Tenancy Act (the Act), and double the amount of rent payable under section 51 of the Act.

Both parties attended the conference call hearing and provided their submissions, evidence and affirmed testimony, and were permitted to ask questions and attempt to resolve their dispute.

Issue(s) to be Decided

Is the tenant entitled to a monetary order, and if so, in what amount?

Background and Evidence

The rental unit is a residential house. The tenancy began on December 01, 2009 with rent in the amount of \$1550 payable on the first day of each month. The tenant paid a security deposit of \$775 at the commencement of the tenancy. There was no move in inspection conducted or recorded.

The tenant moved out of the rental unit on December 31, 2009 pursuant to the landlord's Notice to End Tenancy for Landlord's Use of Property given to the tenant on October 29, 2009 with the reason: *The landlord has all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.* There was a cursory move out inspection conducted by the parties but no inspection results were recorded, nor did the

landlord conduct and record the move out condition of the rental unit in the absence of the tenant.

The parties do not dispute that the tenant provided, and the landlord received, the tenant's forwarding address the day after the tenant vacated. The landlord subsequently returned a portion of the security deposit to the tenant in the amount of \$143.43. The tenant filed this application for dispute resolution on May 07, 2010.

The tenant claims the landlord did not take steps to accomplish the stated purpose for ending the tenancy and that the rental unit has not been used for the landlord's stated purpose, subject to a reasonable period after the effective date of the landlord's Notice to End – December 31, 2009.

The landlord testified that the rental unit is currently rented at an amount less than the tenants paid during the disputed tenancy. The landlord claims they had every intention to accomplish the stated purpose for ending the tenancy, but by mid December 2009 they found that they were unable to secure funding from a lending institution so as to carry out the intended demolition, and rebuild the house. The landlord submitted that he made, "the mistake of putting the cart before the horse". The landlord then notified the tenants that he could not carry out his intentions for the property, but the tenants were now bound by other commitments and were carrying on with their planning toward vacating. The property was consequently relisted for rent soon after the tenants vacated.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an Order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps *must be taken* within fifteen (15) days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. The tenant provided a forwarding address in writing on January 01, 2010. The tenant did not consent to the landlord's retention of the deposit. The landlord did not return the entire deposit or make an application for a monetary order and an order to retain the deposits within 15 days of receipt of the forwarding address. On preponderance of the evidence, I accept and make the finding that in this tenancy e-mail communication was a primary means of providing written communication between these parties.

The security deposit was not refunded within 15 days as required by section 38 and the doubling provision of section 38(6) therefore applies. I grant the tenant's application in this regard, and award them the sum of \$1550.98 including interest on the original deposit amount. This award is offset, or reduced by the amount of \$143.43 returned by the landlord. As a result, the tenant's entitlement in respect to the security deposit is for **\$1407.55**.

Section 51 (2) of the Act, states as follows;

Tenant's compensation: section 49 notice

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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.*

On the face of the evidence and on preponderance of the testimony of the landlord; despite the landlord's intentions or in spite of the landlord's plans for the intended use of the landlord's property for their own use, the rental property was not utilized for the landlord's use and the landlord did not accomplish the stated purpose for ending the tenancy. The rental unit is currently re-rented, albeit at a lower rent than the disputed

tenancy. As a result, I find the tenant is entitled to double the monthly rent payable under the tenancy agreement of \$1550 per month. I grant the tenant **\$3100** in respect to this portion of their claim.

The tenant is entitled to recover the **\$50** filing fee for this application for a total claim in the aggregate of **\$4557.45**.

Conclusion

I grant the tenant a Monetary Order under section 67 in the amount **\$4557.45**. If necessary, this order may be registered in the 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*.