



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, return of double the security deposit and double the pet deposits. An agent appeared on behalf of the landlord and confirmed he was acting on behalf of the landlord. Both parties were provided the opportunity to be heard with respect to matters pertaining to this application.

The landlord's agent confirmed service of the tenant's application and evidence. No documentary evidence was submitted by the landlord or landlord's agent for this hearing.

Issues(s) to be Decided

1. Has the tenant established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
2. Has the tenant established an entitlement to return of double the security deposit, pet deposits and interest?

Background and Evidence

I was provided the following undisputed evidence. The month-to-month tenancy commenced May 1, 2007 requiring the tenant to pay rent of \$650.00 per month on the 1st day of every month. The tenancy agreement provides that the tenant paid a \$325.00 security deposit and a \$100.00 pet deposit May 1, 2007. At the end of the tenancy the

tenant was paying rent of \$674.00 per month. The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) with an effective date of July 15, 2010. The tenant paid rent for June 2010 in full and did not pay any rent for July 2010. The tenant vacated the rental unit July 12, 2010.

I also heard undisputed testimony that on July 22, 2010 the landlord's son appeared on behalf of the landlord for an inspection of the rental unit with the tenant. The tenant gave the landlord's son a letter to the landlord requesting return of her deposit and half month's compensation and included her forwarding address. The tenant did not authorize any deductions from her security deposit or pet deposit in writing. Condition inspection reports were not prepared or given to the tenant. On August 9, 2010 the landlord and tenant met to discuss the tenant's letter and damages to the unit. The parties could not reach an agreement and on August 30, 2010 a tenant's Application for Dispute Resolution was received by the Residential Tenancy Branch. As of the date of this hearing the landlord has not returned the deposits to the tenant and did not file an Application for Dispute Resolution to retain the deposits.

In making this application the tenant is seeking compensation for the following amounts:

Double the security deposit paid May 1, 2007, plus interest	\$ 658.19
Double the pet deposit paid May 1, 2007, plus interest	202.53
Double the pet deposit paid October 2007, plus interest	201.88
Half month's rent	<u>337.00</u>
Total claim	\$ 1,339.60

The tenant submitted that in addition to the pet deposit of \$100.00 paid May 1, 2007 the tenant paid the landlord an additional \$100.00 pet deposit in October 2007 when the tenant's boyfriend moved and brought another pet into the unit. The landlord's agent pointed out that the tenancy agreement does not indicate payment of a second pet deposit. The tenant agreed the second pet deposit is not reflected in the tenancy

agreement but explained that the landlord had provided her with a receipt for the additional pet deposit. The landlord's agent subsequently acknowledged that the landlord had offered to return \$525.00 to the tenant, which is sum of the security deposit and two pet deposits, during the meeting of August 9, 2010. The agent submitted that the tenant refused the landlord's offer as the tenant wanted more compensation. The landlord's agent submitted that the tenant's request for interest and half of a month's rent are unreasonable.

The landlord's agent submitted that the tenant is not entitled to compensation for half month's rent as the tenant moved out on her own free will. The landlord's agent submitted that the tenant could have resided in the rental unit throughout August 2010 and that her compensation was obtained by free rent for August 2010. When asked to explain this submission, the landlord's agent stated the 2 Month Notice was issued in June 2010 and not May 2010. The tenant refuted the agent's testimony by describing how she was served by the landlord in person on May 10, 2010 at the rental unit.

The landlord's agent was also of the position the tenant's claim for interest was excessive given the low interest rates paid by the banks.

Although the landlord had not filed an Application for Dispute Resolution with respect to damages to the rental unit, the landlord's agent attempted to provide testimony related to damages to the rental unit. The tenant indicated she would not authorize any deductions for damages during this hearing; therefore, I refused to hear evidence with respect to damages. The landlord's agent was informed of the landlord's right to file an Application for Dispute Resolution with respect to claiming damages to the rental unit.

Documentary evidence provided and considered in this decision is the tenancy agreement, 2 Month Notice, letter to the landlord dated July 22, 2010, proof of service of the tenant's Application for Dispute Resolution and the tenant's written submission of events.

Analysis

Upon consideration of all of the evidence before me, I make the following findings with respect to the two issues raised by the tenant in this application.

Return of security deposit and pet deposits

As the parties were informed during the hearing, the landlord's claims for damages were not issues for me to decide for this proceeding as the landlord had not made an Application for Dispute Resolution. The purpose of this hearing was to determine whether the landlord complied with the Act with respect to the handling the deposits. The landlord is at liberty to make a separate application for damages.

Under the Act a landlord may not require or accept more than one pet deposit in respect of a tenancy agreement, even if the number of pets increases. However, from the testimony I heard from both parties, I am satisfied that the landlord did require and accepted two \$100.00 pet deposits from the tenant. While this is a violation of the Act, I find the landlord retains the obligation to handle each pet deposit in accordance with section 38 of the Act.

Section 38 of the Act provides for the return of security deposits and pet deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for damages if the landlord has met the inspection report requirements. In this case, I find the landlord did not meet the inspection report requirements and the landlord did not have the tenant's written consent for any deductions. Accordingly, the landlord was required to comply with section 38(1) of the Act by either returning the security deposit, pet deposits and interest to the tenant or making an Application for Dispute Resolution within 15 days from the later of the day the tenancy ending or the date the landlord received the tenant's forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit and pet deposit. The requirement to pay double the amount of the deposits is not discretionary and must be administered in accordance with the Act.

I find that the tenancy ended and the tenant provided her forwarding address to the landlord in writing but the landlord did not repay or make an Application for Dispute Resolution within 15 days. Therefore, the landlord must now pay the tenant double the security deposit, pet deposits plus interest on the original amount of the deposits.

As the landlord's agent was informed during the hearing, interest is calculated based upon the requirement to do so under section 38 of the Act at the interest rate established by section 4 of the Residential Tenancy Regulation. The Residential Tenancy Branch provides a calculator on its website to calculate interest on deposits. Using this calculator I have determined that the tenant's interest calculations are in accordance with the requirements of the Act and regulations.

In light of the above, I find the tenant entitled to the amount she is seeking for recovery of the double the security deposit, pet deposits and interest.

Tenant's compensation for landlord's use of property

Section 51 of the Act sets out that a tenant who receives a notice to end tenancy for landlord's use is entitled to compensation equivalent to one month's rent. The compensation may be in the form of one of the following:

- 1) financial restitution, where the landlord pays the tenant the equivalent of one month's rent on or before the effective date of the two month notice,
- 2) occupancy, where the tenant withholds the last month's rent and occupies the rental unit rent-free for that last month, or
- 3) a combination of both.

The landlord's agent submitted that the landlord served the 2 Month Notice in June 2010. The tenant testified that the landlord served her with the 2 Month Notice May 10, 2010. I prefer the tenant's submission as her version is consistent with the 2 Month Notice served upon her and the tenant was present for the service of the 2 Month Notice whereas the landlord's agent was not a witness to the service. Therefore, I find the tenant received the 2 Month Notice May 10, 2010 as the tenant stated.

Having found the tenant received the 2 Month Notice May 10, 2010 I do not find the tenant was entitled to reside in the rental unit throughout August as the landlord's agent submitted. Although the effective date on the Notice was incorrect and should have read July 31, 2010 the latest the tenant had the right to possess the rental unit was July 31, 2010 and not in August 2010. Therefore, the tenant has not received the equivalent of one month's rent by way of occupancy for August 2010.

Upon hearing from the tenant I find that upon receipt of the 2 Month Notice she was aware that the effective date did not comply with the Act. However, I also accept her version of events, as they were undisputed by the landlord's agent during the hearing, that she had telephoned the landlord to discuss the effective date and that the landlord disagreed that the effective date was incorrect. I further accept that the undisputed submission of the tenant that the landlord instructed the tenant to contact him if she had difficulty finding a new home for July 15, 2010 and they would discuss it further. Therefore, I accept that the tenant made every effort to comply with the effective date as provided on the 2 Month Notice by the landlord and the tenant should not be prejudiced by complying with the landlord's notice to end tenancy.

Since the tenant had the benefit of free occupancy for one-half of July 2010, I find the tenant entitled to financial restitution equivalent to half month's rent in accordance with my findings above. In other words, by paying the tenant half month's rent, the tenant has received total compensation of one month's rent as provided by section 51(1) of the

Act. Therefore, the tenant's request for \$337.00 in compensation under section 51(1) of the Act is granted.

Monetary Order

As the tenant was successful in this application, the tenant is awarded the filing fee paid for making this application. I calculate that the landlord is obligated to pay the tenant the following amount:

Double security deposit and interest	\$ 658.19
Double pet deposits and interest	404.41
Tenant's compensation – section 51(1)	337.00
Filing fee	<u>50.00</u>
Monetary Order for tenant	<u>\$ 1,449.60</u>

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant was successful in this application and has been provided a Monetary Order in the amount of \$1,449.60 to serve upon the landlord.

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: October 13, 2010.

Dispute Resolution Officer