

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, regulation or tenancy agreement / the double return of the security deposit / and recovery of the filing fee.

The tenant's agent participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and the notice of hearing (the "hearing package"), the landlord did not appear. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mailing of the hearing package, and the Canada Post website provides confirmation that the hearing package was "successfully delivered."

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the original fixed term of tenancy was from February 1, 2006 to January 31, 2007. Thereafter, tenancy continued on a month-to-month basis. Monthly rent at the outset of tenancy was \$2,000.00, and a security deposit of \$1,000.00 was collected. At the time when tenancy ended monthly rent was \$2,150.00.

Pursuant to section 49 of the Act (**Landlord's notice: landlord's use of property**), the landlord issued a 2 month notice to end tenancy dated December 29, 2009, making the effective date of the notice February 28, 2010. The reason shown on the notice for its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Subsequently, on January 13, 2010 the tenant's agent gave the landlord notice of the tenant's intent to end the tenancy effective January 31, 2010. During a telephone conversation with the landlord on February 1, 2010, the tenant's agent informed the

landlord of his address for the purpose of the landlord's forwarding repayment of the tenant's security deposit. Thereafter, by way of e-mail dated May 19, 2010, the tenant's agent again informed the landlord of the tenant's forwarding address in care of his own address. However, to date, no repayment of the security deposit has been made.

Neither has the tenant received payment from the landlord in the amount equivalent to 1 month's rent, pursuant to section 51 of the Act (**Tenant's compensation: section 49 notice**).

Additionally, the tenant's agent testified that the landlord's reasons for issuance of the 2 month notice were not the reasons shown on the notice. Specifically, none of "the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse," occupied the unit after the end of tenancy, and the unit was sold. Further, even if the landlord had provided reasons on the notice for ending the tenancy which arose from his intent to sell the unit, there is no evidence that "all of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." In the result, the tenant claims in the application that there was a "failure to provide a valid and legitimate 'reason to end tenancy,'" and following from this the tenant seeks additional compensation pursuant to the relevant legislation.

Analysis

Pursuant to section 38 of the Act, a landlord must repay the tenant's security deposit within 15 days of the later of the end of tenancy, or the time when the landlord receives the tenant's forwarding address in writing, or make a claim against the security deposit by filing an application for dispute resolution. Based on the documentary evidence and the affirmed / undisputed testimony of the tenant's agent, I find that the landlord has done neither. Accordingly, pursuant to section 38(6) of the Act, I find that the tenant has established entitlement to "double the amount of the security deposit" of **\$2,000.00** (2 x \$1,000.00) plus interest calculated to be **\$34.96**.

Pursuant to section 51 of the Act, following the landlord's issuance of the 2 month notice, the tenant "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." Based on the documentary evidence and the affirmed / undisputed testimony of the tenant's agent, I find that the tenant has not received this amount. Accordingly, I find that the tenant has established entitlement to **\$2,150.00** which is the equivalent of one month's rent.

Pursuant to section 51(2) of the Act, a tenant is entitled to “an amount that is the equivalent of double the monthly rent” if “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.” Based on the documentary evidence and the affirmed / undisputed testimony of the tenant’s agent, I find that the landlord did not make use the unit for the purpose stated on the 2 month notice to end tenancy. Further, even if the landlord had indicated on the notice that the property had been sold, as earlier stated, there is no evidence that “all of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.” Accordingly, I find that the tenant has established entitlement to **\$4,300.00** which is the equivalent of “double the monthly rent” (2 x \$2,150.00).

As the tenant has succeeded in this application, I also find that she is entitled to recover the **\$100.00** filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$8,584.96** (\$2,000.00 + \$34.96 + \$2,150.00 + \$4,300.00 + \$100.00). Should it be necessary, this order may be served on the landlord, filed 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*.

DATE: January 31, 2011

Dispute Resolution Officer