



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL, OLC, MNSD, MNDC

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy and to a monetary order.

The hearing was conducted via teleconference and was attended by the tenants only. The landlord did not attend.

The landlord's brother submitted a letter dated March 25, 2011 to the Residential Tenancy Branch (RTB) and to the tenants requesting the conference call scheduled for this time period be cancelled; that written submissions be accepted; and that the tenants' evidence be provided to them. The landlord or brother provided no other written submissions.

In the letter the landlord's brother states the landlord has returned "any and all mail" from the male occupant. The brother also states that he asked the male occupant to provide him, as the landlord's agent, with all documents related to this dispute and the male occupant refused the landlord's brother's request.

Section 89 of the *Act* allows a tenant to serve the landlord with notice of a hearing and any evidence relied upon for a hearing via registered mail. Section 90 stipulates that if a document is served via registered mail it is deemed to be received 5 days after the date it is mailed.

Residential Tenancy Policy Guideline #12 states "Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deeming provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing."

The tenants have provided documentary confirmation of four registered mail letters sent to the landlord dated December 1, 2010; December 3, 2010; January 3, 2011; and March 21, 2011. Based on the above, I find the landlord has been sufficiently served with notice of this hearing and with the evidence relied upon by the tenants for this hearing.

In relation to the landlord's brother's request to cancel the conference call hearing and rely on written submissions only I find in the absence of any representation for the landlord at this hearing other than the letter written by his brother, I have insufficient information to grant the landlord's brother's request to conduct the hearing by written submissions only.

I also note that by submission of this letter, I find the landlord was fully aware of this hearing and that in the absence of any response from the Residential Tenancy Branch to the landlord in response to his brother's request to cancel the conference call, it would be a reasonable expectation the landlord or his brother would have attended the conference call and/or provided written submissions disputing the tenants' claim.

As a result, I dismiss the landlord's request for an alternate method for this hearing and note the hearing proceeded in the absence of any representation from the landlord.

The tenants stated at the outset of the hearing that they had moved out of the rental unit and as such no longer wished to dispute the notice to end tenancy, as such I have amended their application to exclude cancelling the 2 Month Notice to End Tenancy for Landlord's Use of Property.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation resulting from a notice to end tenancy for landlord's use; for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 49, 50, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants testified the tenancy began in November 2008 with the female as the primary tenant and that she has had different roommates throughout the tenancy. She further stated that the monthly rent at the end of the tenancy was \$990.00 due on the 1st of each month and that on November 7, 2008 she paid a security deposit of \$475.00 to the landlord.

The tenants submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated October 25, 2010 with an effective date of December 25, 2010 citing the landlord, his spouse or a close family member of the landlord or his spouse would be occupying the rental unit.

The tenants testified they provided written notice to the landlord on October 30, 2010 that they would be vacating the rental unit by November 30, 2010. The further stated they moved out of the rental unit by November 27, 2010 and on December 1, 2010 they provided the landlord with their forwarding address in writing by registered mail.

Analysis

Section 38(1) of the *Act* stipulates a landlord must, within 15 days of the end of a tenancy and receipt of the tenants' forwarding address in writing, return the security deposit less any mutually agreed upon amounts or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) states that should landlord fail to comply with Section 38(1) he must pay the tenant double the amount of the security deposit. I accept the undisputed testimony from the tenant that the landlord was provided with their forwarding address on December 1, 2010 by registered mail, after the end date of the tenancy.

In accordance with Section 90 of the *Act* the forwarding address is deemed to be received by the landlord on December 6, 2010. As such, the landlord had until December 21, 2010 to return the security deposit or file an Application for Dispute Resolution. As the landlord has failed to do neither of these I find the landlord has failed to comply with Section 38(1).

Section 51 of the *Act* requires a landlord who issues a 2 Month Notice to End Tenancy for Landlord's Use of Property to provide the tenant with an amount equivalent to one month's rent in compensation for ending the tenancy. Section 50 stipulates that this compensation is not affected should the tenant choose to vacate the rental unit prior to the end of the 1st month after which the 2 Month Notice is given.

As such and in the absence of any contrary evidence or testimony from the landlord, I find the tenants are entitled to compensation in accordance with Section 51.

Conclusion

I find that the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,990.00** comprised of \$950.00 double the security deposit; \$990.00 compensation for ending the tenancy for landlord's use of the property and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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*.

Dated: April 07, 2011.

Residential Tenancy Branch