



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and a cross-application by the landlords for a monetary order. The tenants were represented at the hearing by A.M. and the landlords were represented by S.M.

The landlord had submitted documentary evidence including photographs to the Residential Tenancy Branch. At the hearing, the landlord acknowledged that he had not served the evidence on the tenant. As the tenant had no knowledge of the landlord's evidence, I have not considered that evidence.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?
Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in or around December 2010 at which time a \$275.00 security deposit was paid and that the tenancy ended in May 2011. The tenant testified that in March 2011, he paid his rent for April and shortly thereafter the landlord told him that he had to vacate the rental unit because the landlord's family member would be living there. The tenant claimed that he gave the landlord the proper form from the Residential Tenancy Branch and explained that he should use the form to end the tenancy and further explained that he was entitled to a free month's rent. The landlord used the form and served it on the tenant. Although it was not submitted into evidence, the parties agreed on the content of the form.

The tenant testified that the landlord had originally wanted him to vacate the rental unit by April 30 and the tenant told the landlord that if he were to vacate in April, the landlord was obligated to return his rent for April. The tenant claimed that the landlord then stated that he wanted to keep the rent for April and told the tenant that he could stay until the end of May and that May would be rent-free.

The landlord testified that he had given the tenant an informal one month notice which was just written on a piece of paper and that the tenant had come back to him, asking him to give a 2 month notice to end tenancy. The landlord claimed that although his mother was coming from India, he had told the tenant that his mother would be living with him, not in the rental unit. The landlord claimed that the tenant did not pay any rent for April or May and seeks to claim unpaid rent for those months.

The parties agreed that the rental unit has been re-rented to a third party. The tenant seeks an award of \$1,100.00, which is the equivalent of two months' rent, pursuant to section 51(1) of the Act which provides that if a landlord who has given a 2 month notice to end tenancy does not use the rental unit for the stated purpose must pay the tenant double the monthly rent.

The tenant also seeks an award of double his \$275.00 security deposit. The tenant claimed that he gave the landlord's wife his forwarding address in writing on May 26. At the hearing I asked the male landlord, who was representing the landlords, if he had received the forwarding address on May 26. He confirmed that he had received the address on that date. Later in the hearing, the landlord testified that after he had made this statement, his wife, who was also in the room, corrected him and said that she had not received the forwarding address until she was served with the tenants' application for dispute resolution.

Analysis

Having heard the testimony of the parties, I prefer the tenant's version of events to that of the landlord. The landlord was inconsistent in his testimony and his version did not have the ring of truth. It did not make sense why the landlord would have told the tenants they had to move out if his mother was planning to live with him instead of in the rental unit.

Having found the tenant to be more credible than the landlord, I prefer the tenant's testimony where the testimony of the parties conflicts. I find that the landlord served the tenants with a 2 month notice to end tenancy and that he led the tenants to believe that his mother intended to move into the rental unit. I find that the landlord's mother or other family member did not move into the rental unit and I find that pursuant to section 51(2), the tenants are therefore entitled to an award of \$1,100.00 which represents 2 months' rent. I award the tenants \$1,100.00.

I find that the tenants paid rent in the month of April and that because they were served with a 2 month notice to end tenancy, no rent was payable for the month of May

pursuant to section 51(1.1) of the Act. I therefore dismiss the landlords' claim in its entirety.

I find that the landlords received the tenants' forwarding address in writing on May 26 and that they failed to return the security deposit or file a claim against the deposit within 15 days of having received the address. I find that the tenants are entitled to an award of double their security deposit pursuant to section 38(6) of the Act and I award the tenants \$550.00.

Conclusion

The tenants are awarded \$1,650.00 and I grant them a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlords' claim is dismissed.

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: September 23, 2011.

Residential Tenancy Branch