



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This conference call hearing was convened in response to the tenants' application for the return of their security deposit; for compensation for one month's rent; for the landlord to comply with the Act, regulation or tenancy agreement; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order, and if so for what amount?

Are the tenants entitled to the return of the security deposit?

Are the tenants entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a mobile home situated in a manufactured home park.

Pursuant to an agreement that was not in writing, the month to month tenancy started on January 1st, 2011. The rent was \$500.00 per month and the tenants paid a security deposit of \$250.00.

Tenant J.P. testified that he received a 2 Month Notice to End Tenancy dated April 1st for occupancy by the landlord or close family member. He stated that the rental unit

went for sale two days later. J.P. stated that around the 2nd week of April, the landlord called to advise that they could stay in the unit. He said that on April 20th, he called the landlord and gave her 10 Day Notice to End Tenancy verbally. He said that they moved out of the unit on April 21st and called the landlord the first week of May from their new residence to give their forwarding address, and to inquire about the security deposit and free rent entitlement. J.P. said that to date he has not received the security deposit nor any compensation for rent pursuant to the Act. He said that his mother called the landlord, and that the landlord offered to give back the security deposit provided that no legal action would be taken against her.

The landlord disagreed with J.P.'s version. In her documentary evidence, the landlord provided a chronological account of her dealings with the tenants, which she repeated at the hearing. She testified that she felt bad that she had to give the tenants the notice. She said that she endeavoured to find alternative arrangements, which allowed them to stay in the unit. She said that she called them on April 5th to dissolve the notice, and that in a later conversation tenant D.B. told her how happy she was that they could stay. The landlord said that the tenant's call to end the tenancy early came as a complete shock, but that nevertheless she advised them that she would return their security deposit. The landlord said that J.P. was demanding \$1250.00 for what he claimed was entitled to him because he had a legal document and the law was on his side. She said that she received a call from J.P.'s mother on May 2nd, and that she threatened her to pay her son back \$1500.00, and that she received a second call from a man purporting to be a lawyer, also demanding \$1500.00. The landlord said that she called the police as she felt threatened.

J.P. stated that a notice to end tenancy was taped on his door, that he was evicted and that he was going by the book. The landlord said that D.B. had told her that the notice was not valid anyways because the date of service should have been March 31st in order for the tenancy to end June 1st, which bolsters the landlord's argument that the tenants did not move because of the notice, but because they found more suitable accommodations.

Analysis

Based on the evidence and the parties' testimony I accept that the landlord originally issued a 2 Month Notice to End Tenancy in good faith when she believed that she would have to move into the rental unit. She testified that she found alternate measures that enabled her to keep the tenants and therefore cancelled the notice. The tenants did not dispute that the landlord called to cancel the notice, and I find the landlord's testimony credible. The tenants moved but I am not convinced on a balance of probabilities that it was on the strength of the notice. Although J.P. said that he was going, as he put it, by the book, on the evidence I find that the tenants were informed of the landlord's decision to dissolve the notice. There is nothing in the Act that prevents a landlord from doing this, nor is there any provision stating that a notice to end tenancy is final and binding, regardless of a change in circumstances; indeed, the notice states as follows: "*Tenant: you **MAY** be evicted if you do not respond to this notice.*"

I find that the notice was of no force or effect in terminating this tenancy. The tenants chose to move and therefore they were obliged to give the landlord proper notice to end tenancy.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

The landlord's obligation to return the security deposit is not triggered until receipt of the tenants' forwarding address in writing. While J.P may have given his address verbally, I find that this is not sufficient to trigger the date by which the landlord must return the security deposit and therefore the tenant's application for the return of the security deposit is premature. I note that the forwarding address is recorded on the tenant's application for dispute resolution. The landlord is hereby put on notice that she is

deemed to have received the tenants' forwarding address in writing on September 8th, 2011, which is 7 days from the date of this decision. The landlord must either make an application for dispute resolution or return the deposit to the tenants no later than September 23rd, 2011.

Take notice that if the tenants have relocated again since the hearing, the tenants are responsible for providing the landlord with their new forwarding address **in writing**, and the statutory timeline will be re-adjusted according to the date the tenants provide the landlord with that address.

Conclusion

The tenant's application is dismissed.

Concerning the security deposit, the tenants may apply for dispute resolution if the landlord fails to comply with the above.

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 01, 2011.

Residential Tenancy Branch