



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, CNL, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. Return of the security deposit and compensation pursuant to Section 38 of the Act. - Section 38
2. An Order to Cancel a 2 Month Notice to End Tenancy for Landlord's Use – Section 49
3. An Order to recover the filing fee for this application - Section 72.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing.

The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

The tenant is not (disputing) seeking to cancel a Notice to End. The tenant vacated the rental unit.

The tenant seeks compensation 1 month's rent compensation pursuant to a 2 Month Notice to End for landlord's Use. I accept this amendment to the application as this aspect of the application it is clearly articulated in the details of dispute.

Issue(s) to be Decided

Is the Notice to End tenancy valid?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed testimony in this matter is that the tenancy began September 15, 2005. Rent in the amount of \$625 was payable each month. At the outset of the tenancy, the tenant testified the landlord collected a security deposit from the tenant in the amount of \$275. The tenant claims that March 13, 2010 they were given a 2 Month Notice to End Tenancy for Landlord's Use of Property, and the tenant acted on that notice and vacated May 15, 2010, but the landlord did not give the tenant the compensation equivalent to one month's rent as provided by Section 51 of the Act. I do not have benefit of the Notice to End, or the tenancy agreement.

The tenant claims that there was no move-in inspection conducted in 2005; and, at the end of the tenancy there was not move-out inspection conducted by the parties. The tenant also claims that on the day of the end of the tenancy the tenant gave the landlord his forwarding address in writing, by way of their business card. The tenant provided evidence that the landlord subsequently hand-delivered an itemized accounting dated May 29, 2010 of the tenant's purported security deposit and the purported equivalent amount of one month's rent, and deductions as follows:

625 + 300 + 10.63 int
= 935.63
-735.00 wall filling & painting
-72.45 for carpet cleaning
-58.00 for blinds
-50 for plant & pot you took

The landlord also gave the tenant a cheque for the balance of the accounting dated May 29, 2010 in the amount of \$20. The tenant determined not to cash the cheque, and it is likely now not negotiable; and, 20 months later the tenant has file a claim for dispute resolution.

Analysis

Based on the tenant's testimony and on preponderance of the evidence supplied, I find that in the absence of a copy of the Notice to End that I am unable to determine the validity of the Notice in respect to the tenant's claimed entitlement to the Section 51 compensation claimed. I therefore **dismiss** this portion of the tenant's claim, with leave to reapply.

I accept the tenant's evidence respecting the security deposit. I find the tenancy began on September 15, 2005. The tenant paid a security deposit of \$275. The tenancy ended on May 15, 2010. I accept the tenant provided the landlord with (their) written forwarding address on May 15, 2010. The landlord returned \$20 of the security deposit and has not applied for dispute resolution.

Section 38 of the Residential Tenancy Act provides as follows:

Section 38(1)

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Further: 38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution to claim it. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

I find that the tenancy ended on May 15, 2010, and that the tenant provided (their) forwarding address in writing on that date. **I further find** that the landlord has failed to repay all the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing.

I find that the tenant has established a claim for the security deposit of \$275, accrued interest of \$10.63, and double the base amount of the security deposit in the amount of \$275, for a total of \$560.63. The tenant received \$20 of their security deposit which I will deduct from any entitlement. I find the landlord repaid this amount within 15 days of the tenancy ending. Despite the tenant's disagreement with the amount repaid, the landlord effectively paid this amount via a negotiable instrument which was available to the tenant to effectively negotiate. Therefore, I decline to replace this amount.

The tenant's application has been partly successful and therefore they are entitled to recovery of the \$50 filing fee, for a total entitlement of **\$590.63**.

Calculation for Monetary Order

Original security deposit	\$275.00
Security deposit paid to tenant	-\$20.00
applicable interest on security deposit	10.63
Filing Fees for the cost of this application	50.00
Total Monetary Award	\$590.63

Conclusion

A portion of the tenant's claim has been dismissed with leave to reapply.

I grant the tenant a monetary order under Section 67 of the Act for the amount of **\$590.63**. If necessary, this order may be 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*.

Dated: January 30, 2012.

Residential Tenancy Branch