



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord's wife testified that she handed the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) to the tenant's adult female daughter at the rental unit on December 28, 2011. The tenant confirmed that her daughter received the 2 Month Notice. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on April 2, 2012. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of his pet damage and security deposits? Is the tenant entitled to a monetary award equivalent to the amount of his pet damage and security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to a monetary award equivalent to one month's rent as a result of the landlord's failure to compensate her for the landlord's ending of this tenancy on the basis of the 2 Month Notice? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties agreed that this periodic tenancy commenced on or about March 1, 2010. Monthly rent was set at \$1,200.00, payable in advance on the first of each month. The

landlord continues to hold the tenant's \$600.00 security deposit paid on or about March 1, 2010.

The landlord issued the 2 Month Notice so that the rental property could be demolished. The tenant testified that she removed her belongings from the rental unit by March 1, 2012, although she did not hand her keys and her forwarding address to the landlord's wife until March 3, 2012. The landlord's wife testified that the tenant did not hand the tenant's keys and her forwarding address to the landlord's wife until March 5, 2012. The landlord and his wife testified that the tenant did not properly clean the premises after she vacated and that the tenant's failure to yield vacant and clear possession until March 5, 2012 delayed the landlord's plans to demolish the building. The tenant did not dispute the landlord's sworn testimony that the rental building was demolished on April 1 or 2, 2012.

The tenant's application for a monetary award of \$2,400.00 included the following:

| Item | Amount |
|--|-------------------|
| Return of Security Deposit | \$600.00 |
| Monetary Award for Landlord's Failure to Return Security Deposit in contravention of s. 38 of the <i>Act</i> | 600.00 |
| Monetary Award for Equivalent of One Month's Rent pursuant to s.49 and 51(1) of the <i>Act</i> | 1,200.00 |
| Total Monetary Award Requested | \$2,400.00 |

The tenant also applied for recovery of her \$50.00 filing fee from the landlord.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security

deposit if “at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.”

In this case, the evidence is that the tenant yielded possession of the rental unit and gave her forwarding address in writing by at least March 5, 2012. The landlord has neither applied for dispute resolution nor returned the security deposit in full. The landlord has no written agreement with the tenant allowing him to retain any portion of the security deposit. Based on the undisputed evidence of the parties, the landlord has not complied with the provisions of section 38 of the *Act* and has not returned the security deposit within 15 days of receipt of the tenant’s forwarding address. The tenant is therefore entitled to a monetary order amounting to double the deposit with interest calculated on the original amount only. No interest is payable over this period.

Section 51 of the Act reads in part as follows:

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] 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 payable under the tenancy agreement...*

I do not accept the assertion from the landlord and/or his wife that the landlords should not be responsible for this monetary award because the landlord was unfamiliar with the legislation or because the tenant did not return the keys until after February 29, 2012. The tenant did not dispute the landlord’s 2 Month Notice and, as such, accepted the February 29, 2012 effective date identified in the 2 Month Notice.

There is undisputed testimony that the landlord accepted and cashed the tenant’s monthly rent cheque for February 2012. At this point, the landlord has not compensated the tenant for issuing the 2 Month Notice, and for that reason, the tenant is entitled to compensation pursuant to section 51(1) of the *Act*.

While the tenant may have physically moved to alternate accommodations on March 1, 2012, I find that she did overhold in this tenancy by failing to return the keys until March 3 or March 5, 2012. Based on a balance of probabilities, I find that the tenant overheld the rental unit until March 5, 2012, the date identified by the landlord in her sworn testimony. In accordance with section 57(3) of the *Act*, I reduce the amount of the tenant’s entitlement to a monetary award pursuant to section 51(1) of the *Act* by the pro-rated amount of the tenant’s overholding of the rental unit from March 1, 2012 until March 5, 2012. This results in a monetary award in the tenant’s favour in the amount of \$1,006.46 (i.e., \$1,200.00 – (5/31 x \$1,200.00) = \$1,006.46). I make no further allowance to the landlord as the landlord had no plans to re-rent the premises and has

not provided sufficient evidence to demonstrate that the landlord encountered a loss resulting from the five-day delay in obtaining the keys to the rental unit.

Having been successful in this application, I find further that the tenant is entitled recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows her monetary awards for the landlord's failure to comply with the *Act*, to obtain a return of her security deposit and to recover her filing fee:

| Item | Amount |
|--|-------------------|
| Return of Security Deposit | \$600.00 |
| Monetary Award for Landlord's Failure to Return Security Deposit in contravention of s. 38 of the <i>Act</i> | 600.00 |
| Monetary Award for Equivalent of One Month's Rent pursuant to s.49 and 51(1) of the <i>Act</i> less tenant's overholding | 1,006.46 |
| Filing Fee | 50.00 |
| Total Monetary Order | \$2,256.46 |

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 28, 2012

Residential Tenancy Branch