



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was scheduled to deal with a tenants' application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. The landlord did not appear at the hearing. The tenants testified that they served the hearing documents to the landlord via registered mail on May 8, 2012 and that the registered mail was successfully delivered. The tenants verbally provided a registered mail tracking number as proof of service. I was satisfied the landlord has been sufficiently served with notification of this proceeding and I continued to hear from the tenants in the absence of the landlord.

Issue(s) to be Decided

1. Are the tenants entitled to return of double the security deposit?
2. Have the tenants established an entitlement to compensation for the landlord ending the tenancy and not using the property for the intended purpose?

Background and Evidence

The tenancy commenced January 1, 2009 and after six months the tenancy was on a month to month basis. The tenants paid a \$900.00 security deposit. The tenants were required to pay rent of \$1,800.00 on the 1st day of every month. The tenants did not pay rent for September 1, 2010 and vacated the rental unit September 7, 2010. On October 3, 2010 the tenants authorized the landlord to retain \$450.00 of the security deposit for the days they occupied the rental unit in September 2010 and the landlord refunded the balance of \$450.00 to them.

The tenants testified that prior to serving their Application for Dispute Resolution and evidence they had not provided the landlord with their forwarding address in writing. Rather, the landlord had their phone number. The tenants are of the position the landlord returned the balance of their security deposit more than 15 days after their tenancy ended, entitling them to double that amount, or \$900.00.

The tenants submitted that in March 2010 the landlord began dumping several truck loads of fill in to the yard, took down the fence, and began land surveying. In June 2010 the landlord told the tenants they should look for a new place to live as he was "ready to go" which they understood to mean demolition of the rental unit and construction of a new house on the property. The tenants also took this to mean they had two months, which would be the end of August 2010, to vacate.

The tenants submitted that after receiving the verbal notice from the landlord they made several requests for written notice from the landlord. Rather than provide the tenants with written notice the landlord told the tenants not to worry and to just let him know when they found a new place to live. Concerned the landlord would proceed with demolition while they were still living in the rental unit they proceeded to obtain new accommodation. The tenants gave the landlord notice on August 27, 2010 to end the tenancy effective September 7, 2010. The landlord complained this was not 30 days notice; however, the parties eventually agreed the landlord would accept ¼ of the monthly rent for September 2010 by way of a \$450.00 deduction from the security deposit.

The tenants asked the landlord about receiving compensation for the tenancy ending to which the landlord responded he would check into it and get back to them. They did not hear from the landlord again.

In June 2011 the landlord obtained a demolition permit and a building permit for a new house on the subject property.

The tenants are seeking compensation equivalent to one month's rent for the landlord ending the tenancy and another one month's rent for not fulfilling the intended purpose within six months of the tenancy ending.

Documentary evidence provided by the tenants included copies of: the tenant's notice to end tenancy dated August 27, 2010; the security deposit authorization letter signed October 3, 2010; the tenancy agreement; rent receipts for July and August 2011; and, a print out from the City showing the issuance of a demolition permit and the building permit dated June 23, 2011.

Analysis

Security deposit

Section 38(1) of the Act provides that a landlord must return the security deposit to the tenant or make an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, I find the tenants not entitled to return of double the security deposit as they did not provide a forwarding address to the landlord in writing more than 15 days before receiving their refund. Therefore, this portion of their claim is dismissed.

Tenant's compensation

With respect to the balance of the tenant's claim I provide the following findings and reasons. Section 49 provides that in order to end the tenancy for landlord's use of the property the landlord must give the tenant a 2 Month Notice to End Tenancy in the approved form.

Section 51 of the Act provides for compensation to a tenant who has received a Notice to End Tenancy under section 49. Section 51(1) provides:

Tenant's compensation: section 49 notice

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.

In addition to compensation under section (1) tenants may be entitled to additional compensation under section 51(2) where:

- (a) the landlord does not take steps to fulfill the stated purpose on the Notice within a reasonable amount of time after the tenancy ended; or
- (b) the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

In this case, the tenants were not provided a Notice under section 49, thus they are not entitled to compensation under section 51. Nevertheless, the Act provides that a landlord and tenant cannot avoid the Act. Section 5 provides:

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

Based upon the tenants' undisputed testimony and written submission I am satisfied the tenants' asked the landlord for written notice numerous times and the landlord would not provide such. Further, the notice given by the tenants on August 27, 2012 states: "this is in response to your notice to end tenancy in mid June 2012 as a result of your intent to build a new house on the lot of [subject property]". I was not provided any evidence the landlord objected to or disagreed with the above statement. Therefore, I accept that the tenants took action to vacate the rental unit because the landlord communicated to the tenant that he intended to demolish and construct a new dwelling on the property.

In light of the above, I find the landlord's failure to give the tenant's proper notice was an attempt to avoid the Act and avoid the requirement to pay compensation due to them under section 51. As an approximation of their damage or loss, I award the tenants the equivalent of one month's rent, which is the amount they would have received under section 51(1) had the landlord issued the tenants a proper 2 Month Notice to End Tenancy for Landlord's Use of Property.

Given there are several reasons a landlord may end a tenancy for landlord's use, I find that in the absence of a 2 Month Notice there was no "stated purpose" to determine whether landlord failed to fulfill the "stated purpose". Therefore, I deny the tenant's request for any further compensation.

Based on the foregoing I provide the tenants with a Monetary Order for the equivalent of one month's rent plus one-half of the filing fee they paid for this application. A Monetary Order in the amount \$1,825.00 is enclosed for the tenants to serve upon the landlord and enforce as necessary.

Conclusion

The tenants have been provided a Monetary Order in the amount of \$1,825.00 to serve upon the landlord and enforce as necessary.

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: July 19, 2012.

Residential Tenancy Branch