



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNSD, FF, O

Introduction

This review hearing was scheduled pursuant to a decision issued September 6, 2012 to grant the tenants' application for review of the original decision issued August 23, 2012.

The hearing dealt with the tenants' application for return of double the security deposit and compensation related to receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property. Only the tenants appeared at the hearing.

I was provided testimony that the tenants' Application for Dispute Resolution was originally given to the female landlord in person on June 19, 2012. In response, a written submission dated August 12, 2012 was received by the Branch from both named landlords.

The tenants testified that the Notice of Review Hearing was given to the male landlord in person by the female tenant and her mother within three days of receiving the September 6, 2012 decision to grant the review hearing.

I heard that the named landlords are a couple and reside at the same address. I deemed service upon one of landlords to be sufficient service upon both landlords since the service on June 19, 2012 resulted in a written submission signed by both named landlords. Therefore, I proceeded to hear from the tenants without the landlords present; however, I have accepted and considered the written submissions of the landlords as representative of their position.

Issue(s) to be Decided

1. Have the tenants established an entitlement to return of double the security deposit?
2. Have the tenants established an entitlement to tenants' compensation under section 51 of the Act?

Background and Evidence

The tenancy commenced June 1, 2011 under a verbal tenancy agreement and the tenants paid a \$325.00 security deposit. There was no move-in or move-out inspection report prepared by the landlords. The tenants were required to pay rent of \$650.00 on the 1st day of every month. The tenants also paid "last month's rent" in the amount of \$650.00 at the beginning of the tenancy.

The landlord issued a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) on April 1, 2012 and personally served it upon the tenants on April 3, 2012. Rent for April 2012 had already been paid when the Notice was served. The Notice has a stated effective date of May 31, 2012 and indicates the reasons for ending the tenancy are that:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse
- A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares
- All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit
- The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant

The tenants submitted that they enquired with the landlord about the return of their "last month's rent" and the tenant's compensation for receiving the 2 Month Notice. The landlord responded by stating that the only way they would receive return of their last month's rent would be to vacate before May 2012 and that he did not care about the requirements to pay compensation under the Act.

The tenants moved out April 27, 2012 and they were refunded the "last month's rent". However, they did not receive the tenant's compensation payable to tenants who receive a 2 Month Notice. Accordingly, the tenants are seeking the equivalent of one month's rent, or \$650.00, for receiving the 2 Month Notice.

In addition, the tenants are seeking an additional two month's rent, or \$1,300.00, because the landlord did not fulfill the reasons indicated on the Notice. The tenants

submitted that after they moved out the rental unit remained vacant and the landlord put the property up for sale. The tenants stated the landlord did some improvements to prepare the house for sale but that major renovations were not needed or made. As evidence, the tenants provided photographs of a for-sale sign in front of the house and newspaper advertisements.

Finally, the tenants are seeking return of double the security deposit. The tenants testified that the landlords were given the tenants' forwarding address verbally. The tenant was of the belief the female landlord was given the tenants' address in writing although she was not certain as to what date this occurred and did not have documentary evidence to support this assertion.

Below, I have summarized the landlords' position as provided in their written submission dated August 12, 2012:

- The landlords are not in the rental business but the landlords decided to help the tenants by giving them a place to live;
- The landlords informed the tenants that the rental term was to be one year;
- The landlord called the tenants April 1, 2012 to give them the 2 Month Notice effective June 1, 2012;
- The effective date of June 1, 2012 coincided with the one year term;
- The landlord explained to the tenants that the reason for ending the tenancy was so that the landlord could "fix, paint and change things to get the house ready for sale";
- The landlord indicated four reasons on the Notice to End Tenancy so that "my back would be covered";
- The tenants did not pay rent for May or June 2012; and,
- The property was not left sufficiently clean and was damaged so the security deposit was not returned.

Documentary evidence provided to me included copies of: the 2 Month Notice; rent receipts; photographs of the house with a for sale sign and advertisements; and, written submissions of both parties.

Analysis

Upon consideration of all of the evidence before me I provide the following findings and reasons.

I reject the landlords' position that they are not in the rental business as a basis to find the Act does not apply to this tenancy. The Act applies to all residential tenancies in the Province, including tenancies created under a verbal tenancy agreement, unless the living accommodation is specifically excluded by the Act. I find no basis to exclude this tenancy from the application of the Act. Further, parties cannot agree to contract or otherwise avoid the requirements of the Act and any terms that contradict the Act are unenforceable.

With respect to the term of the tenancy I find insufficient evidence to find that there was a one year fixed term tenancy that required the tenants to vacate the rental unit at the end of the fixed term as suggested by the landlords. Such fixed term agreements must be in writing to be enforceable. In the absence of a written tenancy agreement I find there was a month-to-month tenancy and that the tenancy ended pursuant to the landlords issuing a *2 Month Notice to End Tenancy for Landlord's Use of Property*.

Tenant's compensation

Where a tenant receives a 2 Month Notice under section 49 of the Act, as in this case, section 51 of the Act provides for compensation payable to the tenant.

Section 51(1) provides that a tenant in receipt of a 2 Month Notice shall receive compensation equivalent to one month's rent. The tenant may withhold their last month's rent and reside in the unit for that month, or if the rent has already been paid, the landlord must refund the last month's rent. Further, the tenant may end the tenancy before the effective date indicated on the 2 Month Notice.

Based upon the rent receipts provided to me, I am satisfied the tenants paid rent for April 2012, which was their last month of tenancy, and that April's rent not refunded to them by the landlords. Rather, I find the rent refunded to them was the rent they overpaid at the beginning of the tenancy and they were entitled to that amount because the Act prohibits a landlord from collecting "last month's rent" before it is due.

I further accept the tenants' undisputed testimony that the landlords encouraged the tenant's to leave at the end of April 2012 and the landlords were aware that the tenancy was going to end at the end of April 2012.

In light of the above, I order the landlords to pay the tenants the equivalent of one month's rent, or \$650.00, under section 51(1) of the Act.

Section 51(2) of the Act provides that where a landlord does not use the rental unit or take steps to accomplish the stated purpose on the Notice within a reasonable period of time after the tenancy ended then the landlord must pay the tenants additional compensation equivalent to two month's rent.

Based upon the tenants' evidence and the landlords' statements I accept that the landlords took steps to "fix, paint and change things to get the house ready for sale" and then put the house up for sale while it remained vacant. I find these actions do not satisfy any of the stated purposes indicated on the Notice. Therefore, I find the tenants entitled to additional compensation of two month's rent, or \$1,300.00.

Security deposit

Under section 38(1) of the Act a landlord is required to return the security deposit to the tenant or file an Application for Dispute Resolution seeking authorization to retain it within 15 days of the tenancy ending or the date the landlord receives the tenant's forwarding address in writing, whichever date is later. Where the landlord fails to comply with this section of the Act the landlord must pay the tenants double the security deposit.

In this case, I find the tenants did not provide sufficient evidence that they provided a forwarding address to the landlords in writing prior to filing this Application, or if they did, the date they did so. Accordingly, I find I am unsatisfied that more than 15 days elapsed since a forwarding address was provided in writing and that the landlords failed to comply with section 38(1) of the Act prior to the filing of this Application. Therefore, I do not find the tenants have established an entitlement to return of double the security deposit.

Nevertheless, I am satisfied the landlords have extinguished their right to claim against the security deposit for damage since the landlords failed to prepare condition inspection reports as required by the Act. Therefore, I order return of the single amount of the security deposit, or \$325.00, to the tenants.

The landlords do retain the right to make their own Application seeking compensation from the tenants if the tenants are responsible for causing damage to the rental unit.

Monetary Order

Given the tenants were largely successful in their Application I award the filing fee to the tenants.

The tenants are provided a Monetary Order calculated as follows:

Tenant's compensation – section 51(1)	\$ 650.00
Tenant's compensation – section 51(2)	1,300.00
Security deposit	325.00
Filing fee	<u>50.00</u>
Monetary Order	\$2,325.00

The tenants must serve the Monetary Order upon the landlords and may enforce as necessary in Provincial Court (Small claims) as an order of the court.

Conclusion

The tenants have been provided a Monetary Order in the amount of \$2,325.00 to serve upon the landlords 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: November 07, 2012.

Residential Tenancy Branch