



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

The tenants seek recovery of double their security deposit and compensation for damage or loss in the sum of \$2,430.00.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issues(s) to be Decided

Have the tenants met the burden of proving they are entitled to recovery of their security deposit and compensation for damage and/or loss?

Background and Evidence

The tenants gave evidence that this tenancy began in June 2011 with a series of fixed term tenancies and finally a month-to-month tenancy. The tenants say they vacated the rental unit on January 31 or February 1, 2013. The tenants say the landlord has not yet returned their security deposit. The tenants say they paid a deposit of \$800.00 and they are now seeking \$1,600.00 to be returned to them in accordance with the *Residential Tenancy Act*. The tenants did not supply evidence that they had provided their forwarding address in writing to the landlord. The tenants testified that they asked for their deposit back and the landlord said “No”. The tenants say they did not provide their forwarding address in writing because the police were involved at move-out.

The tenants also say they did not receive the one months’ rent compensation to which they are entitled. The tenants agree that they were not served with a formal 2 month Notice to End Tenancy although the landlord did give them a letter advising them they had to move out within 2 months.

The landlord agreed that they did intend for their daughter to occupy the suite and they did send a letter to the tenants asking them to vacate by the end of February 2013 but that the tenants found a new rental unit and vacated on their own accord in January 2013 after failing to pay all of January's rent.

With respect to the security deposit, the landlord submits that on December 19, 2012 she received a government cheque for half of January 2013 rent. On January 1, 2013 when the landlord asked for the remaining \$400.00 the tenants said they did not have the money. A week later the tenants informed the landlord that they had found a new suite and asked the landlord to apply their \$400.00 security deposit to the remainder of January's rent outstanding.

Analysis

The tenants have brought this claim and bear the burden of proving it. 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 writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order to allow 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 pay the tenants double the amount of the deposit (Section 38(6)). If tenants do not supply their forwarding address in writing within a year the landlord may retain the deposit.

The triggering event is the provision by the tenants of their forwarding address to the landlord in writing. In this case the tenants' evidence is that they did not provide their forwarding address in writing to the landlord. This means that the landlords had no obligation to return the deposit. The tenants' application for recovery of double their deposit is therefore premature and is dismissed with leave to reapply.

However, the landlords have now received the tenants' forwarding address as set out in their Application for Dispute Resolution. The landlords' are therefore now required to return the deposit to that address or make application to retain the deposit within 15 days of receipt of this Decision. I note that the landlords have argued that they have the tenants' permission to retain the deposit. However, as this was the tenants' application and I have found that the landlords' obligation to return the deposit or seek to retain it has not yet been triggered, I make no finding in this regard however given that the tenants have made application seeking recovery of their deposit, it seems clear that there was/is a dispute between the parties on this point. In any event, the landlords

must now comply with Section 38 of the *Residential Tenancy Act* and either return the deposit or file an Application for Dispute Resolution seeking to retain the deposit if they believe they have cause.

With respect to the claim for compensation of two months' rent, the *Residential Tenancy Act* sets out how a tenancy ends, it says:

44 (1) A tenancy ends **only** if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

When a Notice under Section 49 [*landlord's use of property*] is given tenants are entitled to compensation described in Section 51:

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.

With respect to the form and content of the Notice Section 52 of the Act states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.**

(Emphasis added)

Therefore, in order for a tenancy to end under Section 49 triggering compensation payable under Section 51, tenants must be served with a Notice in the "...approved form". The evidence of the tenants is that they were not served with such a Notice and indeed no such Notice has been submitted in evidence. Without such a Notice being served, no compensation is payable. I therefore dismiss this portion of the tenants' claim.

With respect to the tenants' claim for recovery of \$30.00 in costs in relation to this hearing, the only costs I have the authority to award is the cost of recovery of the filing fee paid for the application. In this case the tenants' filing fee was waived and I dismiss the tenants' claim for cost recovery.

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 02, 2013

Residential Tenancy Branch

