



Dispute Resolution Services

Page: 1

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 all or a portion of her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlords 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 parties agreed that the landlords sent the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) requiring the tenant to end her tenancy by March 1, 2013, by email on December 10, 2012. Although email is not an allowable method of providing notice to end a tenancy to a tenant, both parties agreed that the landlords sent the 2 Month Notice and the tenant received that Notice. The male landlord (the landlord) testified he received the tenant's January 10, 2013 notice that she was ending her tenancy by January 30, 2013 by email. The parties agreed that this tenancy ended on January 30, 2013, by which time the tenant had provided vacant possession to the landlords and had returned her keys to the rental unit.

The landlord confirmed that both landlords received copies of the tenant's dispute resolution hearing package sent to the landlords by registered mail on March 2, 2013. I am satisfied that the tenant served her hearing package to the landlords in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy as a result of the landlords' refusal to compensate the tenant the equivalent of one month's rent after the landlords issued the tenant a 2 Month Notice? Is the tenant entitled to a

monetary award for the return of a portion of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on February 1, 2011. At the expiration of the initial term, the tenancy continued as a periodic tenancy. Monthly rent was set at \$1,360.00, payable in advance by the first of each month. The tenant paid the landlords a security deposit of \$680.00 on January 24, 2011.

Although both parties agreed that they participated in joint move-in and joint move-out condition inspections, the landlords did not prepare written condition inspection reports for either of these inspections and hence did not forward copies of condition inspection reports to the tenant.

The tenant's application for a monetary award of \$1,410.00, included a request for a monetary award of \$1,360.00 for the landlords' failure to allow her one month's free rent at the end of this tenancy after having issued the tenant the 2 Month Notice. The tenant also requested the amount she identified as owing from her security deposit, which she calculated as \$50.00. She confirmed that the landlords had returned \$450.00 from her security deposit on February 13, 2013. She maintained that the landlords had wrongfully withheld a portion of her security deposit at the end of her tenancy.

The landlord confirmed that he had withheld a portion of the tenant's security deposit as she had not properly cleaned the premises at end of her tenancy. He said that he was still cleaning up after her tenancy, months later. In the tenant's February 4, 2013 email, she identified two options to resolve the landlord's concerns about the condition of the rental unit at the end of her tenancy. First, she stated that she could return to the rental unit and correct the deficiencies. The second option she identified was that the landlord could deduct an amount, which she then estimated at \$180.00, from her security deposit. She noted that this would leave \$500.00 owing from her security deposit to be returned to her. Rather than identifying which of the options cited by the tenant in her email would be acceptable, the landlord sent the tenant a cheque for \$450.00 on or about February 13, 2013.

The landlord did not dispute the tenant's assertion that she paid her January 2013 rent in full and that the landlords have not compensated her an amount equivalent to one month's rent as required by the *Act*. He said that he disagreed with the legislative

provision that enabled the tenant to apply for a monetary award equivalent to one month's rent after the landlords issued the tenant their 2 Month Notice. He

Analysis – Tenant's Application for a Monetary Award for Landlords' Failure to Reimburse her for One Month's Rent at the end of her Tenancy

Section 51 of the *Act* reads in part as follows and applies to situations where a landlord has issued a tenant a 2 Month 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...*

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount...

As outlined below, section 50 of the *Act* allowed the tenant after receiving the landlords' 2 Month Notice to notify the landlord that she was ending her tenancy by the end of January 2013 (i.e., by January 31, 2013).

50 (1) *If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by*

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

In considering the circumstances surrounding this tenancy, I first note that both parties seem to have adopted the practice of communicating and exchanging documents with one another using email, rather than signed written documents. From the outset, the landlords sent the tenant a standard Residential Tenancy Agreement by email. However, no signed or dated copy of that Agreement was entered into written evidence by either party and the tenant maintained that this was the only copy provided to her.

Similarly, no signed copy of the Addendum to that Agreement was entered into written evidence, although one appears to have been drafted and dated. This pattern of replacing the signed and dated documents required by the *Act* with emailed documents continued when both parties advised one another of their intentions to end this tenancy. The landlord's 2 Month Notice was not signed by the landlord, but the landlord confirmed that he sent it to the tenant by email. The tenant confirmed that she received the 2 Month Notice. For her part, the tenant also sent her notice to exercise her right under section 50 of the *Act* to end her tenancy before the stated effective date of the landlord's 2 Month Notice by email.

Had the receipt of the notices to end this tenancy been at issue, the rights and obligations under the *Act* with respect to the service of documents may have called into question exactly how this tenancy ended and whether either party had met their statutory obligations under the *Act*. However, both parties confirmed that they sent and received one another's notices to end this tenancy, albeit in a much less formal fashion than required by the *Act*. While I recognize that the parties did not abide by the requirements of the *Act* in their preparation and service of documents to one another, I find on a balance of probabilities that the tenant vacated the premises by January 30, 2013 after assuming that the landlords had issued a valid 2 Month Notice. Given the informal way that both parties conducted their business with one another by email, I find that the emailed notices to end this tenancy formed the basis for the end of this tenancy. In coming to this determination, I also note that the landlords bear responsibility as the initial presenters of the Residential Tenancy Agreement to the tenant for the lack of compliance with the requirements of the *Act* during the course of this tenancy.

Based on the undisputed evidence of the tenant, I find that the tenant did not receive compensation as set out in section 51(1) of the *Act* after notifying the landlords of her intention to end this tenancy early and in accordance with section 50 of the *Act*. I find that the tenant is therefore entitled to a monetary award of \$1,360.00, an amount equivalent to one month's rent.

Analysis – Security Deposit

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 or pet damage 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 landlord confirmed that he received the tenant's forwarding address on December 20, 2012. I find that the landlords have not returned the tenant's security deposit in full within 15 days of the end of this tenancy. The landlord testified that the landlords have not applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. However, the landlord maintained that the tenant had given him her permission to retain \$180.00 of her security deposit.

Agreements by email do not constitute written authorization as required under section 38(4)(a) of the *Act*. However, for the reasons outlined in the previous section of this decision, I would be willing to consider accepting that the parties had established such a pattern of communicating with one another by email during this tenancy that the tenant's emailed agreement to withhold a portion of her security deposit complied with the requirements of section 38(4)(a) of the *Act* in the context of this tenancy.

I do not find that the tenant's emails signify an actual agreement on her behalf to authorize the landlords to keep a portion of her security deposit. Rather than any actual agreement with the landlords, I find that the tenant identified two options for the landlords' consideration. While the landlords' agreement to one of these options would have led to the tenant's agreement under section 38(4)(a) of the *Act*, I find insufficient evidence to demonstrate that the landlords chose either of these options. When the tenant did not hear back from the landlord with respect to her proposals, she sent an additional email enquiring as to his preference. At that stage, the tenant remained willing to return to the rental unit to conduct further cleaning if that were the landlord's preference. Rather than comment on either of her proposals or seek her agreement to his own proposal, the landlord appears to have arbitrarily selected a third option, which further reduced the amount of the security deposit returned to the tenant. Under these circumstances, I am not satisfied that the email exchanges cited by the landlord during the hearing constituted the tenant's written authorization pursuant to section 38(4)(a) of the *Act* to allow the landlords to keep any portion of her security deposit.

Prior to this hearing, the landlords were notified in the tenant's application for dispute resolution that the tenant was seeking a monetary award for the landlords' failure to return a portion of her security deposit. After considering the evidence before me, including the sworn testimony of the parties, I find that there is undisputed evidence that

the landlords failed to return \$230.00 from the tenant's security deposit and had no legal right to do so.

In accordance with section 38 of the *Act* and as required in such circumstances by Residential Tenancy Branch policy, I find that the tenant is entitled to a monetary order amounting to double the security deposit with interest calculated on the original amount of the deposit only. No interest is payable over this period. As the landlords have returned \$450.00 from the tenant's security deposit, I deduct this amount from the overall monetary Order issued to the tenant pursuant to section 38 of the *Act*.

Since the tenant has been successful in this application, I allow her to recover her \$50.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to recover a monetary award for the landlords' failure to comply with section 51(1) of the *Act*, a return of the remaining portion of her security deposit, a monetary award equivalent to the value of her security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*, and the recovery of her filing fee.

| Item | Amount |
|---|-------------------|
| Monetary Award for Landlords' Failure to Comply with s. 51(1) of the <i>Act</i> | \$1,360.00 |
| Return of Remaining Portion of Tenant's Security Deposit (\$680.00 -\$450.00= \$230.00) | 230.00 |
| Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i> | 680.00 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Order | \$2,320.00 |

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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 23, 2013

Residential Tenancy Branch

