



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of double the security deposit retained by the landlord and a monetary order for the equivalent of one-month compensation for a Notice issued under section 49 of the Act to end the tenancy for landlord's use.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

- Is the tenant entitled to the return of the security deposit pursuant to section 38?
- Is the tenant entitled to the equivalent of one month compensation pursuant to section 51(1) for being issued a Two-Month Notice for landlord use?

Background and Evidence

The tenant testified that she moved into the unit on May 7, 2012. The rent was \$600.00 per month and a security deposit of half a month rent was paid in the amount of \$300.00. The tenant testified that the landlord issued a Two-Month Notice to End Tenancy for Landlord Use dated November 26, 2012, showing an effective date for the end of the tenancy as December 31, 2012. The tenant testified that this was posted on the tenant's door on November 2, 2012. A copy of this document was submitted into evidence.

The tenant testified that, on November 30, 2013, she provided a written 10-Day Notice that she would be vacating the unit, earlier than the effective date of the Notice, effective December 10, 2012. The tenant also provided the landlord her written

forwarding address and requested the return of her security deposit. A copy of this letter was in evidence.

The tenant testified that she did not pay any rent to the landlord for the 10-day period she occupied the rental unit in December 2012.

The tenant stated that she had already found a place to relocate to on December 1, 2012 and submitted copies of rent receipts confirming that she paid rent for her new residence.

The tenant testified that a previous dispute resolution decision had already awarded the tenant a rent abatement applicable to the month of December 2012 for loss of value to the tenancy, reducing December's rent from \$600.00 to \$546.40.

The tenant testified that the landlord did not refund her security deposit after she left, nor did the landlord pay the tenant the equivalent of one month rent.

The landlord disagreed with all of the tenant's testimony, which the landlord categorized as lies. The landlord testified that the tenant did not give any notice to vacate in December 2012 and, in fact, remained in the rental unit until January 1, 2013, at which time the tenant told the landlord she was leaving. The landlord testified that the tenant rightfully owes rent for the month of December 2012 and January 2013. The landlord testified that the tenant damaged the rental unit. The landlord's position is that the tenant is not entitled to be compensated the equivalent of one-month rent nor should the tenant be allowed to only pay a pro-rated amount of rent for December 2012.

Analysis

Security Deposit Refund

In regard to the return of the security deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the tenant's written forwarding address has been received, the landlord must either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit. I find that this landlord did not pursue either of these courses of action.

The Act also states that the landlord can retain a deposit if the tenant agrees in writing that the landlord can keep the deposit to satisfy a liability or obligation of the tenant. Otherwise the landlord must first obtain an order after the end of the tenancy allowing the landlord to keep funds rent owed or damages.

I find that the tenant did not give the landlord written permission to keep the deposit and no orders were issued permitting the landlord to keep the deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

I find that the tenant's security deposit being held was \$300.00 and, under the Act, the tenant is entitled to \$600.00, which represents double the tenant's security deposit.

Compensation for Two Month Notice to End Tenancy for Landlord's Use

Section 49(5) provides that a landlord who is an individual may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Based on the evidence, I find that the landlord issued a Two Month Notice to End Tenancy for Landlord's Use on November 26, 2012 ending the tenancy effective December 31, 2012.

Section 51(1) requires that a tenant must be paid compensation that is the equivalent of one month rent by the landlord when a Notice to End Tenancy for Landlord Use is issued. Based on the evidence submitted by the parties, I accept that the landlord did not pay the tenant the equivalent of one-month rent which would be \$600.00.

Section 50 (1) of the Act states that once a landlord gives a tenant Notice to end a periodic tenancy under section 49 [*landlord's use of property*], the tenant then has a right to end the tenancy earlier 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.

I accept, based on the documentary evidence before me, that this tenant did notify the landlord on November 30, 2012, that she would be vacating earlier than stated on the Notice, and would be leaving effective December 10, 2012.

I find that this tenant would therefore have been required to pay "*the proportion of the rent due to the effective date of the tenant's notice*", comprised of rent owed for the 10 days that the tenant had occupied the unit in December 2012.

I find that, under the Act, the tenant did not owe rent for the full month of December 2012, only the pro-rated amount of \$179.65, based on the abated rental rate, which was ordered by the previous arbitrator.

Subsection 50(2) provides that, if the tenant has already 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 falling after the effective date of the tenant's notice. This section is not applicable to the case before me as the tenant did not pay any rent at all for December 2012. I find that the tenant still owes the landlord \$179.65 to pay for the ten-day period she occupied the unit in December 2012.

I find that, the fact the tenant chose to vacate earlier than the effective date shown on the Two Month Notice, would have no effect on the tenant's entitlement to receive the one-month refund under section 51 of the Act, because section 50(3), of the Act, specifically states that a tenant's earlier notice under section 50 does not affect the tenant's right to compensation under section 51.

Based on the evidence and testimony, I find the tenant is entitled to \$1,200.00 in monetary compensation from the landlord comprised of \$600.00 for double the security deposit, and \$600.00 compensation, equivalent to one month rent for the issuing of a Two Month Notice to End Tenancy for Landlord's Use. However, I find that this amount must be reduced by the \$179.65 still owed to the landlord for the 10-day period that the tenant resided in the unit during December, 2012.

Accordingly, I hereby grant the tenant a monetary order in the amount of \$1,020.35. This Order is final and binding. It must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court if unpaid.

Conclusion

The tenant is successful in the application and is awarded a monetary order for double the security deposit and the equivalent of 1 month rent pursuant to section 51 of the Act less ten days unpaid rent owed to the landlord.

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 29, 2013

Residential Tenancy Branch

