



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order for recovery of his security deposit as well as compensation pursuant to section 51(2) of the Act. The hearing was conducted via teleconference and was attended only by the tenant

Issue(s) to be Decided

Whether the tenant is entitled to a monetary order for all or part of the security deposit, compensation pursuant to section 51(2); and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Based upon the evidence of the tenant and in reliance upon Canada Post's web site, I find that the landlord was served with the dispute resolution package by registered mail on July 20, 2013. The tenant testified the tenancy began on January 1, 2010 with a monthly rent of \$ 650.00 due on the 1st of each month and that a security deposit of \$ 325.00 was paid on or about December 30, 2012.

The tenant testified that he delivered to the landlord on July 15, 2013 a letter providing the landlord with the tenant's forwarding address. The tenant testified that he had not received any portion of his security deposit to date nor had he consented to the landlord retaining any portion thereof.

At a hearing on July 5, 2013 (file No. 806633) the following findings of fact were made:

The parties agreed that on April 8, the landlord personally served the tenant with a letter which read as follows:

Due to expansion in my family i want more space for my family. I want full space in my house so i cant rent my suit. As per Agreement

*i want to Declair 30 Days Notice To Suit Holder to move out suit
Basement of House No. [rental unit address]. Its Date today is 8 April
Monday 2013 So Please evacuate suit within month.*

The landlord testified that he re-rented the unit after the tenant moved out and that he had never had any intention of using the space for his family, but he did not want to hurt the tenant's feelings by telling him the real reason he no longer wanted the tenant living in the unit. The landlord claimed that the tenant had caused damage to the unit which cost him approximately \$1,000.00 to repair.

The Arbitrator reached the following conclusion:

Section 52 of the Act provides that when a landlord wishes to end a tenancy, he must provide the tenant with a notice in the approved form. This notice outlines the rights and responsibilities of both parties. I accept that neither party was aware that the letter given by the landlord was not a legal notice. However, the letter had the effect desired by the landlord in that it made the tenant believe that he was compelled to move out of the rental unit.

I find that because the tenant acted on the illegal notice and vacated the unit as desired by the landlord, he is entitled to the compensation to which he would have been entitled had the landlord followed the law and served on the tenant what is known as a section 49 notice, which ends the tenancy because the landlord or a close family member intends to occupy the rental unit.

Section 51 of the Act provides as follows:

51. 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.*

51(1.1) *A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.*

51(1.2) *If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that section, the landlord must refund that amount.*

51(2) *In addition to the amount payable under subsection (1), if*

51(2)(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

51(2)(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The tenant has not made a claim for compensation under section 51(2), so the only award I can make on this application is an award under section 51(1). I find that the tenant is entitled to recover from the landlord \$650.00, which is the equivalent of one month's rent.

The tenant made an application at this hearing for two month's compensation pursuant to section 51(2)(a) or (b).

Analysis

Section 38(4) states that the landlord may retain an amount from a security deposit or a 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. As I have no evidence before me that the landlord had any written agreement from the tenant at the *end of the tenancy* regarding the retention, I find the landlord had no authority to retain any amount from the security deposit.

Section 38(1) of the *Act* states that the landlord must, within 15 days of the end of the tenancy or receipt of the tenant's forwarding address, return the security deposit to the tenant or file an Application for Dispute Resolution to claim against the security deposit for any damage or loss the landlord may have incurred.

I accept the tenancy ended on May 4, 2013 and that the tenant provided his address in writing to the landlord on July 15, 2013. I find that as the landlord failed to comply with section 38 (1) therefore I award the tenant double the amount of the security deposit held pursuant to section 38(6) amounting to \$ 650.00.

Further I find that I am bound by the findings of fact and conclusions of the Arbitrator in the hearing that occurred on July 4, 2013. I find that the landlord's letter dated April 8, effectively giving the tenant Notice, had the same force and effect as Notice under section 49. I further find that by the landlord's own admission he had not and never had any intention of accomplishing the stated purpose for ending the tenancy. Accordingly the tenant is entitled to additional compensation equivalent to two month's rent or \$1,300.00.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and 51(2)(a) and I grant a monetary order in the amount of **\$ 2,000.00** comprised of double the security deposit; two month's rent and the \$50.00 fee paid by the tenant for this application. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: September 17, 2013

Residential Tenancy Branch