



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order for compensation for damage or loss under the Act, Regulation, or tenancy agreement; the return of their security deposit; and to recover their RTB filing fee.

The tenants participated in the teleconference hearing and gave affirmed evidence. The landlord was represented in the hearing by an articulated student.

Issue(s) to be Decided

Are the tenants entitled to a monetary order and, if so, for what amount?
Are the tenants entitled to a return of all or part of their security deposit?

Background and Evidence

The tenants gave evidence that they entered into a month-to-month tenancy agreement starting August 15, 2013. The tenancy agreement obligated the tenants to pay \$950.00 rent in advance on the first of the month. The tenants also paid a security deposit of \$500.00.

The tenants gave evidence that the landlord gave them verbal notice on October 21, 2013. The tenants' evidence is that the landlord told them his sister was not doing well and the landlord needed the tenants to move out by January 31, 2014 so that the landlord's sister could move into the rental unit.

The tenants' evidence is that they gave the landlord notice on December 1, 2013 that they would be moving out of the rental unit on December 15, 2013 and suggested they give the landlord half a month's rent for December 2013. The tenants say that the

landlord agreed. The tenants paid \$475.00 rent for the first half of December 2013 and moved out of the rental unit on December 15, 2013.

The tenants' position is that the landlord gave them notice pursuant to Section 49 of the Act and they are entitled to receive payment of the equivalent of one month's rent pursuant to Section 51(1). The tenants' position is that the landlord's sister is not a "close family member" as defined in Section 49(1), and the tenants are therefore entitled to the equivalent of two months' rent pursuant to Section 51(2).

The landlord's evidence is that in October 2013, he asked the tenants if they would be willing to voluntarily move out at the end of January 2014 so that his sister could move in. The landlord's evidence is that he was just exploring options for his sister, and not giving the tenants notice. His position is that the tenants were not obligated to move out but chose to. The landlord says that the tenants did not provide him with written notice, and they moved out on December 15, 2013.

The tenant who spoke to the landlord in October 2013 gave evidence that he did not get the impression from the conversation that moving out was optional. He said the tenants were not looking to move at that time.

The landlord's evidence is that the landlord's sister moved into the rental unit on approximately February 1, 2014.

The tenants gave evidence that they finished cleaning the rental unit at about 8 or 9 p.m. on December 15, 2013. They called the landlord and asked him if he wished to inspect the rental unit but the landlord was not at home. The parties did not complete a move-out inspection together.

The parties agree there were two areas of damage to the rental unit. The weather-stripping on the door was torn, and there was a small area (the tenants estimate the area was 4" by 2") where a dog had scratched the inside of the bathroom wall and door frame. The landlord deducted \$60.00 for these two areas of damage and returned the balance of the security deposit, which amounted to \$440.00, to the tenants.

The tenants' evidence is that they told the landlord they thought \$60.00 was too much to deduct from their security deposit for the damage and that they thought \$20.00 or \$30.00 would be more reasonable.

The landlord's evidence is that the damage was repaired by the landlord's friend. The landlord's representative was unsure whether the landlord's friend charged the landlord

any fee for doing the work. However, she said the \$60.00 represented the value of about two hours work.

Analysis

I accept the tenants' evidence regarding the conversation that took place between the landlord and the tenant on or about October 21, 2013, and particularly the tenant's impression that moving out was not presented to them as an option but as a decision. Accordingly, I find that the landlord gave notice to the tenants on that date (the "Notice").

I agree with the tenants that the landlord's sister is not a "close family member" as defined in Section 49(1). The reason for ending the tenancy does not therefore fall within Section 49 or any other section of the Act that permits a landlord to end a tenancy.

The landlord did not provide a valid notice pursuant to Section 49, both because the Notice was not in writing and because the landlord's sister is not a "close family member" within the meaning of that section. Despite the deficiencies in the Notice, I find that the Notice was an effective Section 49 notice for the purpose of entitling the tenants to compensation pursuant to Section 51. I make this finding because it is not consistent with the intent of the Act that the landlord should benefit at the expense of the tenants by failing to provide a proper notice. This is especially true since the Notice was successful in ending the tenancy.

Had the landlord given a valid written notice pursuant to Section 49, the tenants would have been entitled to give written notice pursuant to Section 50. The tenants gave notice on December 1, 2013 that they would be moving out on December 15, 2013, however the tenants' notice was also not in writing. According to Section 50(3), a notice under Section 50 does not affect the tenant's right to compensation under section 51. The tenants' failure to provide written notice does not therefore impact their right to compensation.

For these reasons, I find that the tenants are entitled to the equivalent of one month's rent pursuant to Section 51(1). I grant the tenants an order under Section 67 for \$950.00.

The landlord's sister moved into the rental unit, and therefore the rental unit was used for the landlord's stated purpose within a reasonable period of time. For that reason, the tenants are not entitled to the equivalent of double the monthly rent payable

pursuant to Section 51(2). The fact that the sister is not a “close family member” within the meaning of Section 49 would have provided the tenants with grounds to dispute the Notice, and that was their only remedy for that defect in the Notice.

Pursuant to Section 38 of the Act, a landlord must within the allotted time repay a security deposit or make an application for dispute resolution claiming against the security deposit. A landlord may retain an amount from the security deposit with the tenants’ written agreement. In this case, the landlord did not apply for dispute resolution to claim against the security deposit. The tenants have indicated their agreement that no more than \$30.00 be withheld from the security deposit. I therefore grant the tenants an order under Section 67 for the return of \$30.00, which is the portion of their security deposit that they did not agree the landlord could retain.

The tenants have been successful in their application, and are entitled to recover their RTB filing fee of \$50.00.

I grant the tenants a monetary order as follows:

Section 51(1) Equivalent one month rent	\$ 950.00
Portion of security deposit to be returned	\$ 30.00
RTB Filing Fee	\$ 50.00
Total monetary order	\$ 1,030.00

Conclusion

I grant the tenants a monetary order for \$1030.00.

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: February 13, 2014

Residential Tenancy Branch

