



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 was convened by way of conference call concerning an application made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit. The details of the claim specify double the amount of the security deposit and for money owed or compensation for damage or loss under the *Act*, being compensation for landlord's use of property.

Both parties attended the hearing and gave affirmed testimony and the landlord was represented by an agent. The parties were given the opportunity to cross examine each other on the evidence given, all of which is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for all or part or double the amount of the security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, and specifically for compensation for ending the tenancy for landlord's use of the property?

Background and Evidence

The tenant testified that this month-to-month tenancy began on July 1, 2013 and ended on November 15, 2013. Rent in the amount of \$1,100.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. Prior to the commencement of the tenancy the landlord collected a security deposit from the tenant in the amount of \$550.00.

The landlord served the tenant with the first page only of a 2 Month Notice to End Tenancy for Landlord's Use of Property which is dated October 21, 2013 and contains

an expected date of vacancy of January 2, 2014. The tenant did not receive page 2 of the 2-page form, and did not receive any compensation from the landlord.

On November 12, 2013 the tenant sent a letter to the landlord requesting compensation and return of the security deposit, and the letter also contains a forwarding address of the tenant. The tenant did not hear back from the landlord and sent another dated December 17, 2013. The landlord has not returned the security deposit and did not provide any compensation. The tenant testified that copies of the notice to end tenancy and the letters were provided to the Residential Tenancy Branch but copies were not received by me prior to the hearing. The tenant read the letters to me, however not entirely verbatim.

The landlord agrees that at least one of the letters was received, but the tenant left damages in the rental unit and unpaid utilities.

The landlord also testified that the landlord needed the rental unit due to health issues, and originally gave the tenant a notice to end tenancy in September, 2013 but the tenant told the landlord that it wasn't enough time. The landlord then issued another notice to end tenancy giving the tenant more than sufficient time to find another rental unit, but the tenant moved out early causing the landlord to incur expenses or lose revenue.

Analysis

Firstly, dealing with the security deposit, the *Residential Tenancy Act* states that a landlord must return a security deposit or pet damage deposit in full to the tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Or, if the landlord claims damages, unpaid rent or utilities from the tenant, the landlord must make an application for dispute resolution claiming against the security deposit within that 15 day period. If the landlord does neither, the landlord must be ordered to pay the tenant double the amount. In other words, the landlord cannot arbitrarily decide to keep the security deposit. The landlord must make a claim by filing an application for dispute resolution with the Residential Tenancy Branch within that 15 day period unless the tenant agrees in writing that the landlord may keep a portion or all of it.

In this case, the tenant testified that the tenancy ended on November 15, 2013 and the letters containing the forwarding address in writing are dated November 12, 2013 and December 17, 2013 but did not recall the dates they were sent. However, the landlord agreed that at least one of them was received, and being that it is now May, 2014, I find that 15 days have expired since the landlord received the tenant's forwarding address in

writing. The landlord did not make a claim against the tenant and did not return the security deposit, and I find that the tenant has established a claim for double the amount, or \$1,100.00.

With respect to the compensation for ending the tenancy, the *Residential Tenancy Act* states:

Tenant may end tenancy early following notice under certain sections

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*].

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.

(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.

(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.

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

(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

(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.

In this case, I find that the landlord issued a notice to end tenancy for landlord's use of property and the tenant is entitled to compensation in the amount of one month's rent, or \$1,100.00. I also accept that the tenant paid half a month's rent, but I have no evidence before me that the tenant gave the landlord written notice. Therefore, I find that the tenant has established \$1,100.00, but not \$550.00 for recovery of half a month's rent.

Since the tenant has been partially successful, the tenant is also entitled to recovery of the \$50.00 filing fee or the cost of the application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,250.00.

This order is final and binding and may be enforced.

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 20, 2014

Residential Tenancy Branch

