



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on February 7, 2014 in accordance with Section 89. The tenant submitted a copy of the envelope for this package that indicates that the service was refused by the recipient.

The tenant testified that he also served the landlord with his original Application for Dispute Resolution; hearing documents; and evidence via email on February 7, 2014 and that the landlord responded by email on February 14, 2014 wishing the tenant luck with his claim.

In addition the tenant submits that he served the landlord with his amended Application for Dispute Resolution on May 15, 2014 by registered mail. The tenant further testified that he had just received this back from the post office in the last day or two showing the package was again refused by the landlord.

Based on the undisputed testimony of the tenant, I find that the landlord has deliberately avoided service of any documents related to the tenant's claim as such I find that he has been sufficiently served with the documents pursuant to Section 71 of the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for receiving a notice to end tenancy under Section 49; for compensation for the landlord failing to use the unit for the stated purpose after a notice under Section 49 was issued; for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant provided a copy of a tenancy agreement signed by the parties on July 10, 2012 for an 18 month fixed term tenancy beginning on August 1, 2012 for a monthly rent of \$2,275.00 due on the 1st of each month with a security deposit of \$1,137.50 paid. The tenancy ended on January 31, 2014.

The tenant submitted substantial documentation, including several emails between himself and the landlord. Included in this documentation is an email from the landlord dated January 3, 2014 that states that landlord will let the email be his two month notice to end the tenancy on March 31, 2014. The tenant confirmed that he never received a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenant also submitted that he had provided his forwarding address to the landlord on several occasions both in writing and by email. Upon review of the tenant's evidence I note that he has provided a copy of an email dated January 29, 2014 that provided the landlord with the tenant's forwarding address.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the large volume of email correspondence I find that the parties regularly communicated by email and I find it acceptable that the tenant provided the landlord with his forwarding address via email. I also accept that the tenant's undisputed testimony that he provided the landlord with his forwarding address in writing in a separate letter.

As a result, I find the landlord had the tenant's forwarding address prior to the end date of the tenancy (January 31, 2014) and as such had until February 15, 2014 to file an Application for Dispute Resolution seeking to claim against the deposit. As the landlord has not, to date, filed any Application against the tenant I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to double the amount of the security deposit.

Section 51 of the *Act* states a tenant who receives a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement. The section goes on to state that should the landlord not use the rental unit for the stated purpose in the Notice the tenant is entitled to compensation equivalent to two month's rent.

In the case before me I accept that the landlord had given the tenant an email notification that he wanted the tenancy to end by March 31, 2014. However, I also find that a 2 Month Notice to End Tenancy for Landlord's Use of Property under Section 49 was never issued to the tenant.

As a result, I find the tenant is not entitled to either the compensation of 1 month's rent for receiving such a Notice or the 2 month's rent for the landlord failing to use the rental unit for the stated purpose

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,325.00** comprised of \$2,275.00 for double the security deposit and the \$50.00 fee paid by the landlord 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: May 27, 2014

Residential Tenancy Branch

