



Dispute Resolution Services

Page: 1

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 double recovery of the security deposit and further monetary compensation under the Act. One tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, the landlord confirmed that she had received the tenants' application and evidence, and she had not submitted any documentary or other evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Are the tenants entitled to double recovery of the security deposit?

Are the tenants entitled to further monetary compensation under section 51 of the Act?

Background and Evidence

The tenancy began on April 1, 2012, with rent of \$1400 due in advance on the first day of each month. At the outset of the tenancy the tenants paid the landlord a security deposit of \$700.

On February 12, 2014 the landlord served the tenants with a two-month notice to end tenancy for landlord's use. The effective date of the notice was March 31, 2014. The tenants noted in the hearing that the effective date should have corrected to April 30, 2014.

On February 24, 2014 the tenants gave the landlord written notice that they would vacate the property by March 5, 2014. On March 1, 2014 the landlord took the full rent for March 2014. On March 9, 2014 the tenants were completely vacated from the unit and they requested a move-out inspection. The landlord informed the tenants that the landlord was out of town and not available to do a move-out inspection. On March 26, 2014 the tenants provided the landlord with their written forwarding address. The landlord has not returned the security deposit or applied for dispute resolution to keep the security deposit.

The landlord did not dispute any of these facts, but stated that when she went back into the rental unit on March 31, 2014 the unit was filthy and the upkeep of the property was awful. The landlord stated that it took her a month to clean the house.

The tenants have claimed double recovery of the security deposit and compensation of \$993.56 for the balance of March 2014.

Analysis

Security Deposit

Section 38 of the *Residential Tenancy Act* requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the amount of the security deposit.

In this case, the tenancy ended on March 9, 2014, and the tenants provided their forwarding address in writing on March 26, 2014. The landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenants' forwarding address in writing. I therefore find that the tenants have established a claim for double recovery of the security deposit, in the amount of \$1400.

Compensation Pursuant to Section 51 of the Act

a) Automatic Correction of Effective Date

Under section 49 of the Act, when a landlord issues a notice to end tenancy for landlord's use, the effective date of the notice must not be earlier than two months before the notice was served to the tenant, and on the day before rent is due. Under

section 53, if the effective date of a notice does not comply with the Act, the effective date is automatically changed to the earliest date that the notice could be effective.

In this case, the tenants were served the two-month notice on February 12, 2014, and rent was due on the first day of each month. Therefore, the effective date of the notice is automatically changed to April 30, 2014.

b) Entitlement to Compensation

Section 51 of the Act sets out that a tenant who receives a notice to end tenancy for landlord's use is entitled to compensation equivalent to one month's rent.

Further, under section 50 of the Act, a tenant who has received a notice to end tenancy for landlord's use may end the tenancy early by giving a written 10 day notice to end the tenancy on a date earlier than the effective date of the landlord's notice. Where the tenant has paid full rent for the month and the written 10 day notice to vacate on a date that falls in that month, the tenant is entitled to receive from the landlord return of the prorated rent representing the remaining days of the month after the date the tenant has vacated, as well as compensation equivalent to one month's rent.

In this case the tenants gave the landlord written 10 days' notice to vacate and vacated on March 9, 2014 after having paid full rent for March 2014. The tenants are therefore entitled to return of \$993.56 for the balance of March 2014.

As the effective date of the notice has been automatically corrected to April 30, 2014, the tenants are entitled to further compensation equivalent to one month's rent. I find it expedient to amend the tenants' application, rather than require the tenants to make a further application for this amount. For that reason and under the authority of sections 62 and 64(3)(c) of the Act, I amend the tenants' application to include further monetary compensation of \$1400.

Based on the facts, I find that the tenants are entitled to compensation equivalent to one month's rent, and I grant them a further \$1400.

Filing Fee

As their application was successful, the tenants are also entitled to recover the \$50 filing fee for the cost of this application.

Conclusion

I grant the tenants an order under section 67 for the balance due of **\$3843.56**. This order may be filed in the Small Claims Court and 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: August 18, 2014

Residential Tenancy Branch

