



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD RR O FF

Introduction:

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- (a) A monetary order pursuant to sections 49, 50 and 51 for a rent refund as the landlord served a notice under section 49 for landlord's use of the property and did not provide a free month's rent contrary to section 51;
- (b) A monetary order pursuant to section 51(2) as the landlord did not use the rental unit for the stated purpose of the section 49 Notice;
- (c) Compensation for lack of use of a dishwasher for 12 months;
- (d) To return the security deposit; and
- (e) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to a refund of one month's rent, compensation for double the monthly rent and compensation for loss of use of a washing machine? Are they entitled to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The tenants had made their application and expected it to be heard at the same time as the landlord's under file # 825755. However, due to an administrative error, the file was misplaced so a separate hearing was scheduled for today and the Decision and Monetary award on the landlord's Application was delayed until the resolution of the whole case.

It is undisputed that the tenancy commenced on December 1, 2011, that monthly rent was \$1200 and a security deposit of \$600 was paid November 20, 2011 which has not been returned. It is undisputed that the tenants vacated on August 1, 2014. It is undisputed that the tenants lost use of the dishwasher on August 11, 2013 after

a plumber fixed a pipe in the sink and it was not repaired during their tenancy. The tenant claims \$50 a month for 12 months for the loss of its use; they described how onerous it was to have to wash all the family dishes by hand.

There was much dispute about Notices to End Tenancy that the landlord said were served on the tenant. The first Notice to End Tenancy was said to be for landlord's use of the property but it did not have the second page attached with the reason. The tenants said they received this but negotiated further extensions from November 1, 2013 until they moved out on August 1, 2013. They claim they never got a month's free rent as required under section 50 of the Act. Furthermore, they claim the landlord did not move in but re-rented the unit. They provided advertisements to show the unit was for rent for \$200 more a month as of August 2014 when they vacated.

The landlord said they had changed their mind about moving after serving the Notice to End Tenancy for landlord's use of the property and later, when the tenants had three late payments of rent, they decided to serve a Notice to End Tenancy for cause dated March 31, 2014 effective June 1, 2014 which was served by their daughter who gave evidence. The tenants questioned the daughter who could not identify the tenant to whom she allegedly served it and said she did not sign anything although her signature is on the Notice. The file appears to have an original copy which the landlords said was mailed back to them by the tenants. The tenants deny ever receiving this Notice. They also deny signing a Mutual Agreement to End Tenancy effective August 1, 2014. The Agreement is signed and dated by the daughter on March 31, 2014, the same day she allegedly served the Notice to End Tenancy for cause.

In evidence are two Notices to End Tenancy, an incomplete one allegedly for landlord's use of the property and a complete one for the cause of repeated late payment of rent. In evidence is also a Mutual Agreement to End Tenancy, condition inspection reports (not completed), the tenancy agreement and many photographs and statements of the parties.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. The tenant has claimed the return of their security deposit of \$600. I find the landlord filed an Application to claim against it on August 14, 2014 which is within the 15 day limit in section 38 to avoid the doubling of the deposit. The security deposit will be part of the monetary order calculations at the end of the Decision.

I find the undisputed evidence is that this family was without a dishwasher for 12 months although they had informed the landlord who was aware of the problem. I

find this caused great inconvenience and extra work for the family so I find the tenants entitled to a rent rebate of \$50 a month for the loss of use of the dishwasher.

I find there were significant issues of credibility regarding the Notices to End Tenancy. However, I find the first Notice to End Tenancy was incomplete and was ineffective according to section 52 of the Act. Furthermore, I find there was an express or implied waiver of this notice by the conduct of the parties. The Residential Tenancy Policy Guideline 11 states in part:

Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such to amount to an estoppel...

In order to be effective, a notice ending a tenancy must be clear, unambiguous and unconditional. A Notice to End Tenancy given by the landlord must also be in the form approved by the Director of the Residential Tenancy Office.

Although the tenant claimed there were 'extensions' to it, there was nothing provided in writing to verify the intention of the parties, the tenants never moved out until after a year after the effective date of the Notice, they never brought an Application to dispute the Notice and the landlord never tried to enforce it. I find their conduct implies a waiver of the Notice. I find the tenants not entitled to compensation pursuant to section 51 for an ineffective and/or waived Notice to End Tenancy for landlord's use of the property. As I find the Notice ineffective and/or waived, I find the tenants not entitled to further compensation under section 51(2) for the landlord deciding to re-rent the property. I find insufficient evidence that the tenants vacated because of the incomplete Notice that was served over a year prior to their move out. For these reasons, I dismiss the application of the tenants for a refund of rent and double rent pursuant to sections 49 and 51.

In respect to the contentions concerning the Notice to End Tenancy for repeated late payment of rent and the Mutual Agreement to End Tenancy, I find this issue is moot as I found the Notice to End Tenancy for landlord's use of property was of no effect. However, as promised to the parties, I comment on the credibility. I find insufficient evidence to support the landlord's assertion that these documents were received by the tenant or signed by them. On examining and comparing documents, I find the signatures of the tenants on the Agreement to End Tenancy do not appear like their signatures on the tenancy agreement, the daughter who stated she served the Notice to End Tenancy for unpaid rent said she handed the Notice to a person she could not describe, she said she signed nothing and there was no conversation; yet I find that the Mutual Agreement to End Tenancy was

signed by her and allegedly by the tenants on the same date she allegedly signed the Notice to End Tenancy for unpaid rent. I find this evidence inconsistent and not credible.

Conclusion:

I find the tenant is entitled to a monetary order of \$650 (\$600 for loss of use of the dryer and \$50 for the filing fee). In addition they are entitled to a refund of their security deposit. For ease of reference, the joint claims of the landlord and tenant are calculated below and duplicated in the landlord's decision under file #825755

Calculation of Monetary Award:

Landlord: carpet replacement allowance	484.36
Patio set allowance	98.00
Cleaning (195+79.51)	274.51
Battery replacement	12.47
Filing fee to landlord	50.00
Less security deposit of tenant (no interest 2011-14)	-600.00
Less award to tenant for loss of use of dryer	-600.00
Less filing fee to tenant	-50.00
Balance is Total Monetary Award to tenant	-330.66

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: October 21, 2014

Residential Tenancy Branch

