



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This was a hearing with respect to the tenants' application for payment of compensation pursuant to section 51 of the *Residential Tenancy Act* and for the return of the tenants' security deposit, including double the amount of the deposit. The hearing was conducted by conference call. The named tenant called in and participated in the hearing. The tenant's father was present with her during the hearing. The landlord called in and participated in the hearing.

The tenant acknowledged having received documentary evidence from the landlord. The landlord denied having received the tenants' documents. The tenant sent them to the landlord by ordinary mail on or about January 12, 2015. Certain of the tenants' documents, such as the original tenancy agreement were submitted as evidence by the landlord. I have relied on the oral testimony of the parties and the documents submitted by the landlord in arriving at a decision on this application and I have not considered the tenant's documentary evidence, save for communications that were referred to in the tenant's oral testimony and acknowledged by the landlord to have been received by him, or sent by him to the tenants.

Issue(s) to be Decided

Are the tenants entitled to compensation pursuant to section 51 of the *Residential Tenancy Act* equivalent to one month's rent, pursuant to a notice to end tenancy given by the landlord?

Are the tenants entitled to the return of their security deposit, including double the amount?

Background and Evidence

The rental unit is a residence in Burnaby. The tenancy began on June 1, 2013 for a fixed term ending May 31, 2014 and thereafter on a month to month basis. The monthly

rent was \$2,200.00, payable on the first day of each month. The tenants paid a security deposit of \$1,100.00 on May 15, 2013. The tenant testified that she received a typed letter from the landlord dated May 1, 2014 providing 2 months' notice, ending the tenancy effective June 30, 2014. The tenant said that she and her co-tenant moved out pursuant to the landlord's notice. The tenants paid rent for June and they were not given compensation by the landlord. The tenant testified that she gave the landlord her forwarding address in writing at the end of the tenancy. She said that on July 4, 2014 she also sent her forwarding address to the landlord by registered mail. The tenant testified that she obtained confirmation from Canada Post that the landlord received the registered mail. At the hearing the landlord acknowledged that he received the tenant's forwarding address by registered mail, but he said he received the forwarding address for only one of the tenants; he did not receive any confirmation of a forwarding address for the co-tenant.

The tenant said she received the landlord's notice and the landlord told her that the landlord and his family would be moving into the house. The tenant testified that she moved out of the rental unit because the landlord gave written notice that he and his family would be moving in. She submitted that because she moved out after the landlord's notice for his own use, that she should receive the amount of one month's rent as compensation pursuant to section 51.

The tenant testified that she gave the landlord her forwarding address in writing and her deposit was not returned within 15 days. The landlord has not made a claim against the deposit and she submitted that the tenants should be entitled to the return of the deposit, including double the amount.

The landlord testified that the tenants agreed to move out of the rental unit at the end of June so no compensation should be awarded to them since the tenancy did not end pursuant to an official two month Notice to End Tenancy. The landlord said the tenants signed a document agreeing to move out on June 30, 2014. The landlord did not provide a copy of any such document or agreement, signed by either tenant. The landlord agreed that the May 1, 2014 letter provided that:

I hereby give the agreed upon notice of 2 months to end our tenancy agreement at (address of rental unit). The duration of the notice is in accordance with our rental agreement.

The last day of tenancy will be June 30, 2014, which covers the duration of our initial agreement of 12 months.

The tenant said that there was no agreement to end the tenancy. Before the notice was given the landlord verbally informed the tenants that his parents intended to move into the rental unit and later said his parents and the landlord himself would move in.

The tenant noted that the notice did not coincide with the term of the tenancy agreement; the fixed term of the tenancy expired on May 31, 2014 and the notice required the tenants to move out on June 30, 2014.

With respect to the security deposit, the landlord acknowledged that he has not returned the security deposit and has not applied for dispute resolution to claim the deposit. He said that he received a text message from the tenant with her forwarding address and he acknowledged that he received the tenant's forwarding address by registered mail sent in July, 2014. The landlord submitted that he was not obliged to return the security deposit because he received a forwarding address from only one of the tenants, but the security deposit was paid on behalf of both. The landlord submitted that he was not obliged to return the deposit unless he received the forwarding address from both tenants.

The tenant testified that the tenants are living together at the new address and the forwarding address was and continues to be the address for both tenants.

The landlord submitted documents and photographs concerning claimed damage to the rental unit, but he has not made a monetary claim against the tenants for damage to the rental unit.

Analysis

The claim for section 51 compensation

Section 51(1) of the *Residential Tenancy Act* provides that 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.

The tenant testified that the landlord's May 1, 2014 letter served as a two month Notice to End Tenancy for landlord's use and despite the fact that the notice was not given in the correct form, the tenants should still be entitled to the compensation provided by the *Residential Tenancy Act*. The landlord's position is that the tenants agreed to move out; the landlord did not give the tenants a two month Notice to End Tenancy and the tenants are therefore not entitled to receive one month's rent as compensation.

Section 52 of the *Act* sets out the law governing notices to end a tenancy. It provides that to be effective a notice given by a landlord must be in the approved form. The landlord's May 1st notice was not in the approved form, however the landlord intended that the tenants comply with the notice and the tenants accepted the notice and moved

out in accordance with it. In the absence of any documentary evidence from the landlord I do not accept his testimony that the tenants signed an agreement in writing to move out on June 30th; I find that they moved out in response to the landlord's May 1st Notice.

The Residential Tenancy Policy Guideline #18 "Use of Forms," provides:

A form not approved by the Director is not invalid if the form used still contains the required information and is not constructed with the intention of misleading anyone. As a result, it is advisable to apply to an arbitrator to dispute the notice, so that the validity of the notice can be determined. Where a tenant accepts a Notice To End A Tenancy that is in the old form or is not in the required form and the tenant vacates in response to the notice, the landlord cannot rely upon the failure to give notice in the required form and allege that the tenant owes the landlord rent as a result of the improper ending of the tenancy.

In the same spirit as the quoted statement from the Policy Guideline, I find that a landlord should not be able to give an incorrect form of notice as a means to avoid paying tenants the compensation provided for by the *Residential Tenancy Act*. I find that the tenants did move out in response to the landlord's two month notice and it would be unconscionable to allow the landlord to avoid his obligations under the Act due to his own failure to follow the requirements of the legislation. I find that the tenants are entitled to compensation pursuant to section 51(1) of the *Residential Tenancy Act* in the amount of \$2,200.00, being the equivalent of one month's rent under the tenancy agreement.

The claim for return of the security deposit

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenant testified that she gave the landlord the forwarding address in writing when the tenancy ended on June 30th. The landlord disputed this testimony and said that he received a forwarding address by text message. The landlord did acknowledge that he received a forwarding address by registered mail in July. I find that the forwarding

address sent by the tenant by registered mail was effective to trigger the landlord's obligation to deal with the deposit within 15 days thereafter, by either returning it or making an application for dispute resolution to retain all or part of it. The landlord did neither of these things and I do not accept his argument that he was not required to act until he received written notice from both tenants. I accept the tenant's evidence that she gave the forwarding address on behalf of herself and her co-tenant. Based upon the acknowledgement of the landlord at the hearing I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$2,200.00, being double the amount of the deposit paid prior to the commencement of the tenancy.

Conclusion

The tenants have been awarded section 51 compensation in the amount of \$2,200.00. They have been awarded a further \$2,200.00 being double their security deposit, for a total of \$4,400.00. The tenants did not pay a filing fee for their application and I therefore do not award a filing fee. I grant the tenants an order under section 67 in the amount of \$4,400.00. this order may be registered 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: January 21, 2015

Residential Tenancy Branch

