



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

The tenant applies to recover a \$600.00 security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”), and for compensation of one month’s rent under a two month Notice to End Tenancy for landlord use of property and for the cost of moving.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant is entitled to any of the items claimed?

Background and Evidence

The rental unit is a three bedroom house. There is a written tenancy agreement between the parties showing that the tenancy started in October 2013. The monthly rent was \$1200.00. The tenant gave a \$600.00 security deposit.

The tenant, represented by her husband at hearing and who gave all the testimony, claims that the term of the tenancy was for two, possibly three years and that as a result the tenant made improvements to the premises, the benefit of which are now lost to her. The tenancy agreement shows that the tenancy is a month to month tenancy and is conclusive on that point. Had the tenants negotiated for a longer term it should have been recorded in the written agreement.

The tenant originally applied for relief in the application referred to on the cover page of this decision. That application, heard November 4, 2014, was dismissed as the documents the tenant claimed she had filed did not appear in the arbitrator’s file nor could he find a record of it. Further, the landlords denied receiving them.

The tenant brought this re-application on November 7, 2014. Once again Mr. P. for the landlords claimed the evidence documents were never received by the landlords. The tenant's husband Mr. V. indicated the entire package, the originating documents and evidence, (all stamped "Nov 7" by the Residential Tenancy Office) were sent to each landlord by registered mail. Canada Post tracking information related at the hearing shows that the landlord Ms. S. claimed and signed for both registered mail packages on November 13, 2014.

I find that the landlords received the tenant's application and her evidence on November 13, 2014.

On May 1, 2014 the landlords gave the tenant a two month Notice to End Tenancy. No box was checked off to indicate the particular reason for the Notice, however, the tenant did not dispute the Notice as she was entitled to do, by making an application for dispute resolution to cancel it.

Instead, on May 17, the parties signed a document referring to the two month Notice and agreeing to terminate the tenancy agreement "with effective date from today May 17th, 2014." The import of this document is far from clear and I can give it no fair interpretation.

The landlords' translator, who also acted as their agent and gave all evidence on their behalf, admits the landlords signed the document. He says the landlords then left for India the following day until the following July.

The tenant produces another letter dated May 17, 2014, which Mr. V. testified was handed to the landlords on May 17, indicating that the tenant would be moving out May 31, 2014 and providing a forwarding address. Mr. P. for the landlords at first said the landlords did receive the letter then said they had not.

The landlords were mistaken about receiving the tenant's evidence package and I find they are mistaken about receiving the May 17 letter as well.

The tenant's husband Mr. V. testified that the tenant and her family vacated the premises on May 31, handing the key to a neighbour acting for the landlords. He says they had the neighbour write his name on paper dated June 1, 2014 acknowledging receipt of the key. Mr. P. for the landlords testified that the neighbour received the key only in July.

I find that the neighbour's insertion of his name on June 1, couple with the landlords' mistaken remembrance of receipt of the tenant's evidence package makes it more likely that the key was handed over June 1 and not in July. I find that the tenant vacated the premises on May 31, 2014 in accord with her letter of May 17, 2014.

The security deposit has not been returned. Mr. P. for the landlord claims that the tenant offset the deposit against cash rent paid for the month of May 2014. The tenant's husband denies it.

Analysis

Section 50 of the *Act* provides:

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*].

I find that the tenant's letter of May 17 was a lawful notice pursuant to s. 50(1)(a), above and ended this tenancy on May 31, 2014.

Section 51 provides:

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.

I find that the tenant is entitled to recover the equivalent of one month's rent pursuant to this section and I award her \$1200.00.

The relevant portions of s. 38 of the Act provide:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
(a) the date the tenancy ends, and
(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:
(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

* * *

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

* * *

(6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenant provided her forwarding address in writing to the landlords on May 17, 2014. The fifteen day period referred to above commenced to run on May 31, 2014. The landlords have not made application to retain any portion of the deposit nor do they have the tenant's written authorization to keep any part of it. As a result, the tenant is entitled to the return of her deposit and is entitled to have it doubled pursuant to s. 38(6), above.

I award the tenant an additional \$1200.00 under this head.

I dismiss the tenant's claim for moving expenses. The landlords were acting lawfully in giving the two month Notice to End Tenancy pursuant to s. 49 of the *Act*. In the absence of a breach of the tenancy agreement or the *Act* there is no basis for such a claim by the tenant.

Conclusion

The tenant is entitled to a monetary award totalling \$2400.00. She paid no filing fee.

There will be a monetary order against the landlords, jointly and severally, in the amount of \$2400.00.

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: March 02, 2015

Residential Tenancy Branch

