



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on August 14, 2014 for return of the her security deposit, for monetary compensation for loss under *Residential Tenancy Act* (the “Act”), and to recover the filing fee.

The Tenant appeared for the hearing with her mother who both provided affirmed testimony. The Tenant also provided written evidence prior to the hearing. There was no appearance by the Landlord for the 38 minute duration of the hearing. Therefore, I turned my mind to the service of the Tenant’s Application and the Notice for Hearing documents.

The Tenant testified that she sent the Landlord the documents by both registered mail and by regular mail. The Tenant provided the Canada Post tracking number into written evidence. The Tenant testified that the documents were returned back to her as unclaimed. The Tenant’s mother testified that she informed the Landlord by text message that she had sent the documents to the Landlord and testified that the Landlord responded stating that she was preparing a response.

Based on the undisputed testimony, I find that the Tenant completed service of the required documents by mail, pursuant to Section 89(1) (c) of the Act. A party cannot avoid service by neglecting to or failing to pick up mail. Based on the Tenant’s mother’s undisputed testimony that the Landlord responded to her text message, I find the Landlord was put on notice of this hearing and was aware it was taking place.

Issue(s) to be Decided

- Is the Tenant entitled to monetary compensation as a result of the Landlord not using the property for the purposes the tenancy was ended for?
- Is the Tenant entitled to return of double her security deposit?

Background and Evidence

The Tenant testified that this tenancy for a one bedroom nanny suite located above the Landlord's garage and in a separate building, started on October 15, 2012 on a month to month basis. A written tenancy agreement was completed and this required the Tenant and the Tenant's then boyfriend (the "Co-Tenant") also named on the tenancy agreement, to pay the Landlord \$1,300.00 for rent on the first day of each month.

The Tenant testified that shortly after the tenancy started, it was agreed that half the rent was payable on the first day of each month and the other half was payable on the 15th day of each month. The Tenant also explained that her rent included boarding for her horses at a value of \$400.00. The Tenant paid the Landlord a security deposit at the start of the tenancy in the amount of \$650.00 which the Landlord still retains.

The Tenant testified that after a year into the tenancy, the Co-Tenant moved out, and the Landlord suggested that the Tenant get a roommate to ensure the full amount of rent could be paid. Shortly after the Tenant found a roommate, a room in the basement of the garage building was converted so that the roommate could reside in it. The Tenant explained that at this point she was responsible to pay to the Landlord \$650.00 separately from the roommate and that this amount included \$450.00 for rent and \$200.00 for horse board.

The Tenant explained that by May 2014, her relationship with the Landlord and her roommate had deteriorated for reasons unknown. The Tenant testified that on May 28, 2014 the Landlord verbally asked the Tenant to vacate the rental suite because her mother was planning to move into the suite. The Tenant informed the Landlord of her requirement to give written notice to end the tenancy and of the two month period with compensation that she was required to provide to the Tenant.

The Tenant testified the Landlord wanted her out by the end of June 2014 and agreed that she could have her one month's rent free under the two month notice provision of the Act by not paying for her June 2014 rent. The Tenant testified that she requested written notice from the Landlord who provided her with a signed letter dated June 19, 2014 to vacate the rental suite. The letter was provided into written evidence and states:

"This letter is confirm notification of End of Tenancy effective June 30, 2014 in reference to our conversation on May 28th, 2014. Due to health concerns within my immediate family I will require use of the suite for an undermined duration of time beginning July 1st, 2014."

[Reproduced as written]

The Tenant testified that she received her compensation by not paying June 2014 rent. However, on the day that she was moving out, June 30, 2014, the roommate began to move his personal belongings from his basement suite into her rental suite and informed her that he had bought a new dishwasher and furniture to fill the suite.

The Tenant's mother, who was also present at the time the Tenant was moving out, testified that she asked the roommate why the Landlord's mother was not moving in. The Tenant's mother testified that the roommate responded by stating the Landlord's mother was only coming to visit for four days. The Tenant submitted that this was clear evidence that the Landlord had used the two month notice to end her tenancy illegally.

The Tenant now claims for two months rent in the amount of \$450.00 for each month as compensation for this breach of the Act by the Landlord.

When the Tenant was asked about providing the Landlord with a forwarding address for the return of her security deposit, the Tenant pointed to a letter which she personally gave to the Landlord on June 19, 2014. This letter was provided into written evidence and shows the Tenant's forwarding address which was the same one as that appearing on the Tenant's Application.

The Tenant testified that despite asking the Landlord on several occasions about the return of her security deposit and her compensation under the two month notice, the Landlord has not returned any money to date.

The Tenant also pointed to another letter she had submitted into written evidence which she sent to the Landlord after she vacated the rental suite. The letter warned the Landlord that she had until July 15, 2014 to return her security deposit and again provided the Tenant's forwarding address. As a result, the Tenant now claims \$2,200.00 in total compensation $((\$450.00 \times 2) + (\$650.00 \times 2))$.

Analysis

I first turn my mind to the Tenant's Application for double the return of her security deposit. Section 38(1) of the Act states that, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it.

Based on the undisputed testimony and evidence of the Tenant, I find the Tenant served her forwarding address in writing to the Landlord in accordance with the Act on

June 19, 2014, before the tenancy had ended. I also find the Tenant had again informed the Landlord of her obligation to return the security deposit after the tenancy had ended and cautioned the Landlord of the time limit set out by the Act to meet this obligation. Therefore, I find that as the Tenant provided the Landlord with her forwarding address on June 19, 2014 and the tenancy ended on June 30, 2014, the Landlord had until July 15, 2014 to repay the security deposit or make an Application to claim against; neither of which the Landlord did.

Section 38(6) of the Act provides that if the landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit. Therefore, I find the Tenant is entitled to double the return of the security deposit she paid at the start of the tenancy in the amount of \$1,300.00 (\$650.00 x 2).

I now turn my mind to the Tenant's Application for monetary compensation as a result of the Landlord not using the property for the use indicated on her notice to end tenancy. Section 49(7) of the Act states that if a landlord wants to end a tenancy for the landlord's use of the property, the landlord must issue the Tenant with a notice in the approved form. The notice must also be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, and state the grounds for ending the tenancy.

While the Landlord did not use the approved form as required by the Act, the Landlord confirmed the intention to end the tenancy by writing in her written notice to the Tenant dated June 19, 2014 that the suite was required for the Landlord's immediate family and was required for an undetermined duration of time beginning July 1, 2014. The notice was signed and dated by the Landlord, contained the address of the rental unit and stated that the effective date of the notice.

While the Landlord did not use the approved form, this does not allow the landlord and tenant to contract outside of the notice or the Landlord to benefit by not following the Act and neglecting to provide the notice to end tenancy in the approved form. Therefore, I accept that the Tenant was provided with a notice to end tenancy by the Landlord for the Landlord's use of the property for a close family member as defined by Section 49(1) (a) of the Act.

A notice to end tenancy for landlord's use of the property is intended to be given to a tenant in good faith. In this case, based on the undisputed evidence provided by the Tenant, I find the Tenant accepted the Landlord's notice to end the tenancy in good faith on the understanding that the Landlord was to have her mother move into the rental suite.

I accept the Tenant's oral testimony that she obtained her compensation for the one month of rent payable under the provisions of the written notice and that required by Section 51(1) of the Act. Section 51 (2) of the Act states:

51 (2) *In addition to the amount payable under subsection (1), if*

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[Reproduced as written]

In considering the Tenant's undisputed evidence that she witnessed the roommate moving personal belongings into the rental suite I find this is sufficient evidence to show that the Landlord had no intention of having her mother live in the rental suite. The Tenant's mother confirmed and corroborated the Tenant's testimony regarding evidence that the roommate stated the Landlord's mother was only staying in the rental suite for four days and the roommate had purchased furniture and appliances for the rental suite. In the absence of any evidence from the Landlord to dispute this, I find this is sufficient evidence for me to determine that the Landlord did not end the Tenant's tenancy in good faith. I also find that the evidence shows the Landlord did not follow through with the reason provided by the Landlord on the written notice to end the tenancy.

Therefore, pursuant to Section 51(2) of the Act, the Landlord must pay double the monthly rent payable under the tenancy agreement. I accept the Tenant's oral testimony that she was paying to the Landlord \$450.00 in rent under her tenancy and I award the Tenant the \$900.00 claimed in her Application due to the breach of the Act by the Landlord. Therefore, the total amount awarded to the Tenant is 2,200.00 (\$1,300.00 + \$900.00).

As the Tenant has been successful in this matter, I also award the Tenant the filing fee of \$50.00 for the cost of having to make this Application, pursuant to Section 72(1) of the Act. Therefore the total amount awarded to the Tenant is \$2,250.00.

Conclusion

The Landlord has breached the Act by not dealing properly with the Tenant's security deposit and illegally ending the Tenant's tenancy. Therefore, I grant a Monetary Order in the amount of **\$2,250.00** in favor of the Tenant pursuant to Section 67 of the Act. This order must be served on the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if payment is not made.

Copies of this order are attached to the Tenant's copy of this decision.

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 04, 2015

Residential Tenancy Branch

