



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- a monetary order for the return of double the amount of their security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application from the landlord, pursuant to section 72.

The tenant BY ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant confirmed that he is the son of the other "tenant OY" named in this application and that he had authority to speak on her behalf as an agent at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' Application.

Issues to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties agreed that this tenancy began on May 1, 2013 and ended on December 22, 2014. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A written tenancy agreement was provided by the tenants with their Application. The tenant confirmed that although he is not listed as a tenant on the tenancy agreement, he was a tenant living in the rental unit and paying a portion of rent of \$400.00 per month. Both parties agreed that the tenant had interactions with the landlord regarding tenancy matters, including paying rent and providing a tenancy letter, dated November 28, 2014, to the landlord.

Both parties agreed that a security deposit of \$700.00 was paid by the tenants on April 10, 2013 and that the landlord returned \$597.46 from the deposit to the tenants on December 26, 2014. Both parties agreed that the landlord continues to retain \$102.54 from the tenants' security deposit. The landlord provided a copy of a letter, dated December 26, 2014, stating that she was retaining the above portion from the tenants' security deposit, for damage, cleaning and labour costs.

The landlord confirmed that the tenants provided her with a forwarding address in writing on November 28, 2014, by way of a letter. The tenants provided a copy of this letter with their Application. The landlord confirmed that the tenants did not provide her with written permission to retain any amount from their security deposit. The landlord stated that she did not make an application for dispute resolution to retain any amount from the tenants' security deposit.

The tenant stated that the tenants received a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 1, 2014 ("2 Month Notice"), on the same date from the landlord's son. The tenants provided a copy of the 2 Month Notice with their Application. The 2 Month Notice identifies an effective move-out date of January 1, 2014. The landlord testified that her son did not have authority to issue the 2 Month Notice to the tenants, as he is not a landlord for this rental unit. The landlord relies on a letter, dated October 22, 2014, in which she provides notice to the tenants to vacate the rental unit by December 21, 2014, because her family wishes to occupy the rental unit. The landlord stated that this letter is a valid document that provided two months' notice to the tenants to vacate the rental unit. The tenant indicated that the landlord is aware of the proper Residential Tenancy Branch ("RTB") forms to use to end this tenancy, as she used an RTB form for the tenancy agreement. The landlord stated that while she was out of town, the tenants forced her son to issue the 2 Month Notice. The tenant

disputed this allegation, confirming that the landlord advised the tenants to pay rent and deal with any tenancy matters with her son while she was out of town. The landlord stated that she only told the tenants to pay rent to her son, not to deal with any other tenancy matters. The landlord indicated that her son is a student and at 25 years of age, is too young to deal with tenancy matters.

The tenant stated that he spoke with the RTB and was advised that the landlord should have issued a 2 Month Notice on the proper form. The tenant testified that he advised the landlord's son that he required a valid 2 Month Notice before the tenants could vacate the rental unit and to have the landlord provide the form to the tenants when she returned from vacation. The tenant indicated that the landlord's son completed and signed the 2 Month Notice on his own accord and provided it to the tenants when they paid rent to him on November 1, 2014. The landlord indicated that the 2 Month Notice is invalid, as her son was not authorized to issue or sign any tenancy documents on her behalf because he did not have a power of attorney. The tenants provided a copy of a rent receipt, dated November 1, 2014, in which the landlord's son indicated the rental unit address and signed the receipt for rent being paid. The landlord testified that her son's signature on the rent receipt was valid, but not on the 2 Month Notice. The tenants state that they believed that the landlord's son was an agent for the landlord, based on the above actions. The landlord confirmed that her son was unavailable to testify at this hearing.

The tenant also stated that a letter, dated November 28, 2014, in which the tenants provided their forwarding address in writing and advised that they are entitled to one month's free rent compensation pursuant to section 51 of the *Act*, was provided to the landlord. The landlord acknowledged receipt of this letter. The above letter notes that pursuant to section 50(1)(a) of the *Act*, the tenants wished to end their tenancy earlier than the effective date on the 2 Month Notice. The tenants indicated that they would vacate the rental unit by December 22, 2014, rather than January 1, 2015. The landlord confirmed that the tenants paid rent of \$950.00 for the period from December 1 to 21, 2014, inclusive. Both parties confirmed that no rent was paid by the tenants for January 2015. The tenants seek compensation under section 51(1) of the *Act*, stating that they are entitled to one month's rent compensation of \$1,400.00, pursuant to the landlords' 2 Month Notice. Both parties confirmed that no refunds for rent were issued to the tenants and that the tenants did not receive one month's free rent before vacating the rental unit.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced

here. The principal aspects of the tenants' claims and my findings around each are set out below.

Landlord's Agent

In accordance with section 1 of the *Act*, a landlord is defined as:

"landlord", in relation to a rental unit, includes any of the following:

*(a) the owner of the rental unit, **the owner's agent** or another person who, on behalf of the landlord,*

(i) permits occupation of the rental unit under a tenancy agreement, or

*(ii) **exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;***

(bold emphasis added)

I find that the landlord's son is acting as an agent for the landlord of this rental unit. The tenants were advised by the landlord herself to deal with her son for rent matters for this tenancy, while she was away. The landlord's son issued a rent receipt for this tenancy that he signed on behalf of the landlord. The landlord's son did not have to issue the 2 Month Notice on behalf of the landlord while she was out of town. The tenants merely asked that the landlord provide this notice when she returned from vacation, but the landlord's son chose to issue the notice immediately. The landlord chose not to produce her son as a witness to testify at this hearing. I find that the landlord's son has held himself out as an agent of the landlord and has acted on the landlord's behalf during this tenancy. Accordingly, I find that the landlord's son falls under the definition of a "landlord" under the *Act*. I do not find it necessary to add the landlord's son as a landlord-respondent party to this Application. The landlord's son is merely an agent of the landlord. The landlord named in this Application is a properly named landlord-respondent.

I also find that the 2 Month Notice, dated November 1, 2014, is a valid notice pursuant to the *Act* and that the landlord, through her agent son, issued the notice to the tenants, which ended this tenancy.

Security Deposit

Section 38 of the *Act* requires the landlord to either return all of the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days of the end of a tenancy and a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses

arising out of the tenancy (section 38(4)(a)) or if an amount at the end of the tenancy remains unpaid (section 38(3)(b)).

The tenants seek the return of double the value of their security deposit of \$700.00 from the landlord. The tenants provided their forwarding address to the landlord, who acknowledged receipt on November 28, 2014. The tenancy ended on December 22, 2014. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the full security deposit to the tenants or make an application for dispute resolution to claim against this deposit, within 15 days of the end of this tenancy.

The landlord continues to hold a portion of the tenants' security deposit. Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenants are entitled to double the value of their security deposit of \$700.00, totalling \$1,400.00, minus the \$597.46 portion that was already returned to them.

Section 51 Compensation

Pursuant to section 53 of the *Act*, incorrect effective dates on a 2 Month Notice can be automatically changed. For this tenancy, rent is due on the first day of the month and the effective date must be the day before this rental due date. The tenants were served with the 2 Month Notice on November 1, 2014 and two clear months' notice would move the effective date of the notice to the end of January, rather than January 1, 2015. Accordingly, the effective move-out date on the 2 Month Notice is automatically corrected to January 31, 2015.

Section 51 of the *Act* entitles the tenants to compensation of one month's free rent pursuant to a 2 Month Notice. It states in part:

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.

In this case, the tenants did not receive compensation from the landlord, as they paid rent up to and including December 21, 2014. Accordingly, I find that the tenants are entitled to one month's rent compensation of \$1,400.00 as per section 51 of the *Act*.

As the tenants were successful in their Application, they are entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$2,252.54 against the landlord under the following terms:

Item	Amount
One Month's Rent Compensation under section 51 of the <i>Act</i>	\$1,400.00
Return of Double Security Deposit as per section 38 of the <i>Act</i> (\$700.00 x 2 = \$1,400.00)	1,400.00
Less returned portion of security deposit	-597.46
Recovery of Filing Fee for Application	50.00
Total Monetary Order	\$2,252.54

The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: May 27, 2015

Residential Tenancy Branch