



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 convened as a result of a Tenant's Application for Dispute Resolution in which they sought a Monetary Order for double the security deposit, three month's compensation pursuant to sections 51(1) and 51(2) of the *Residential Tenancy Act* and to recover the filing fee.

Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security deposit paid to the Landlord and for the return of the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issues to be Decided

1. Has there been a breach of Section 38 of the Act by the Landlord?

2. Are the Tenants entitled to one month's compensation pursuant to section 51(1) of the Act?
3. Are the Tenants entitled to two month's compensation pursuant to section 51(2) of the Act?
4. Should the Tenants recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement. The fixed term tenancy began on June 1, 2014 and was to continue for one year until June 1, 2015. Monthly rent was payable in the amount of \$1,500.00 and the Tenants paid the Landlord a security deposit of \$750.00.

On September 15, 2014 the Landlords issued a 2 Month Notice to End Tenancy for Landlord's Use and indicating an effective date of November 30, 2014 (the "Notice").

Upon receipt of the Notice, the Tenants sent the Landlord a letter, dated October 1, 2014, in which they wrote that they would be vacating the rental unit in 10 days, and asked to prorate the rent at \$500.00 for the 10 days they would be in occupation in October 2014. In this letter, the Tenants also provided written notice of the forwarding address to return the security deposit to.

The Tenants confirmed that they did not sign over a portion of the security deposit.

The Tenant also testified that the Landlord did not perform an incoming condition inspection report although an outgoing condition inspection report was done.

During this testimony, the Landlord confirmed he did a "walk through" at the start of the tenancy but did not perform a move in condition inspection as required under the *Act*.

Initially the Landlord denied having the Tenants' forwarding address. He also claimed that in the communication he received from the Tenants their address was not noted and as such he was not able to provide them with the security deposit or to serve them with his application to retain the security deposit.

When the October 2014 letter was brought to his attention, he confirmed receipt of it at the time. When I asked why he did not provide the Tenants with their security deposit,

or make an application for dispute resolution upon receipt of the October 2014 letter, he stated that he did not provide the Tenants with their security deposit for two reasons:

1. He did not believe that a post office box was a forwarding address and did not believe it was safe to send money to a PO box; and
2. The Tenants did not pay their utilities and left the rental unit damaged.

When I asked if the landlord paid the Tenants one month's rent pursuant to section 51, he stated that he did not pay the Tenants as he had planned to give them the month of October 2014 free as the one months' compensation. He further stated that after issuing the Notice, the Tenants informed him that they were moving out in ten days which he believed meant the Tenants were ending the Tenancy. He then stated: "we were going to credit them one month and then we slapped them with another 10 Day Notice as they didn't pay the full amount of rent for October 2014.

The Landlord claimed the Tenant had left the rental unit unclean or damaged. He testified that he made an application, set to be heard December 29, 2015. I confirmed that I was not dealing with the merits of his application, and only that of the Tenants'.

At the conclusion of the Landlord's testimony I summarized his submissions and he agreed that I had accurately articulated his position with respect to the Tenants' application.

C.P. also testified on behalf of the Landlord. She testified that they accepted an offer on the rental home on February 19, 2015 and that the completion date was March 5, 2015.

C.P. further stated that she and N.G. lived in her father's home prior to moving into the rental unit on October 12, 2014. She stated that they moved into the rental for four months as they did not wish to pay the Tenant two month's compensation pursuant to section 51(2) in addition to the fact they needed to make repairs to the rental unit to prepare it for sale. She stated that the rental home was off the market for a period of time, but re-listed in December 2014.

At the conclusion of the hearing the Tenant confirmed that her address for delivery and service of documents as the postal box noted in her October 2014 letter to the Landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38.

By failing to perform incoming inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) of the Act.

The security deposit is held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

I note that the Landlord submitted evidence about the condition of the rental unit after the Tenant left; however, the Landlord is unable to make a monetary claim through the Tenants' Application. The merits of the Landlord's application will be heard at the date set for hearing.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,500.00**, comprised of double the security deposit (2 x \$750.00).

The Notice provided that the Landlord, or a close family member, intended to reside in the rental unit. The evidence establishes that although the Landlord moved into the rental unit for a period of time, the rental unit was listed for sale during the tenancy.

Section 50 permits a tenant to end a tenancy early upon receipt of 2 month notice to end tenancy and provides as follows:

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*].

In this case the Tenants gave the Landlord notice on October 1, 2014 that they intended to vacate the rental unit on October 10, 2014. C.P. confirmed that the Landlords moved into the rental unit on October 12, 2014.

Section 50(3) specifically provides that a notice under this section does not affect the tenant's right to compensation under section 51.

Section 51 provides as follows:

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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

The Landlord failed to pay the Tenant's the one month compensation provided for in section 51(1). As they issued a 2 Month Notice pursuant to section 49, they must provide the one month as mandated in section 51(1). There is no discretion afforded to me and as such the Tenants are entitled to the sum of **\$1,500.00**.

Section 51 continues as follows:

(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.

The effective date of the Notice was November 30, 2014. Six months from that date is May 30, 2014. As new owners took possession on March 6, 2014, the rental unit was not used for the stated purpose (of the Landlord occupying the rental unit as claimed on the 2 Month Notice). As such, the Tenants are entitled to **\$3,000.00** representing 2 Month's compensation pursuant to section 51(2).

The Tenants, having been substantially successful are also entitled to recovery of the **\$100.00** filing fee.

I grant the Tenants an Order under section 67 for the sum of **\$6,100.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: July 28, 2015

Residential Tenancy Branch

