



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 for: the return of his security deposit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”); and, to recover the filing fee from the Landlord.

The Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Landlord during the nine minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenant.

The Tenant testified that the Landlord was served with a copy of the Application and the Notice of Hearing documents on March 23, 2015 by registered mail. This was served to the rental unit address where the Landlord was moving to as per the notice to end tenancy. The Tenant provided the Canada Post tracking number as evidence to verify this method of service and testified that it was returned to him six weeks later.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result of the undisputed evidence of the Tenant, I find the Landlord was deemed served with the required documents on March 28, 2015 pursuant to the Act.

Issue(s) to be Decided

- Is the Tenant entitled to the return of his security deposit?
- If so, should the amount of the security deposit be doubled?
- Is the Tenant entitled to monetary compensation pursuant to Section 51 of the Act as a result of the Landlord ending the tenancy?

Background and Evidence

The Tenant testified that this tenancy began on February 11, 2011. A written tenancy agreement was completed for a fixed term tenancy of one year after which it continued on a month to month basis. However, the tenancy was ended by the Landlord with a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice").

Rent under the agreement was \$900.00 payable on the first day of each month. The Tenant paid the Landlord a \$450.00 security deposit at the start of the tenancy which the Landlord still retains.

The Tenant testified that at the start of September 2014 he provided the Landlord with postdated rent cheques, including one for November 2014. A copy of this was provided into evidence. The Tenant testified that shortly after this, the Landlord served with him the Notice on September 28, 2014. The Notice was provided into written evidence and shows a vacancy date of November 30, 2015. The reason for ending the tenancy was because the Landlord wanted to occupy the rental unit.

The Tenant accepted the Notice and moved out of the rental unit on November 16, 2014. The Tenant provided banking records which showed that the November 2014 rent cheque was cashed by the Landlord on November 4, 2014. The Tenant testified that he provided the Landlord with his forwarding address at the end of November 2014 by personal service. The Tenant provided a copy of the letter into evidence which indicates the forwarding address. The Tenant testified that he also served a copy of the same letter to the Landlord by mail in February 2015.

The Tenant explained that he left repeated text messages and voice mails for the Landlord informing her of the need to return his money as well as the doubling penalty provided by the Act. However, the Landlord has failed to return his security deposit and the one month compensation payable under the Notice. As a result, the Tenant made his Application on March 20, 2015 for this monetary compensation in the amount of \$1,350.00

Analysis

Section 38(1) of the Act states that, within 15 days after the latter 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.

I accept the undisputed evidence that this tenancy ended at the end of November 2014 through the Notice. I also accept the Tenant's undisputed evidence that he provided the Landlord with a forwarding address in writing on two separate occasions, one by personal service in November 2014 and the other by mail in February 2015.

There is no evidence before me that the Landlord made an Application within 15 days of receiving the Tenant's forwarding address by personal service or by mail. Neither is there any evidence before me that the Landlord returned the security deposit back to the Tenant. Therefore, I find that the Landlord has failed to comply with Section 38(1) of the Act.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the deposit. Based on the foregoing, I find that in addition to the return of the security deposit requested by the Tenant on his Application, the Tenant is also to be awarded double the return in the amount of **\$900.00** (\$450.00 x 2).

I now turn my mind to the Tenant's Application for monetary compensation as a result of the Landlord ending the tenancy. Section 49(3) of the Act allows a landlord to end the tenancy for owner occupancy. I accept the Tenant was served with a Notice under Section 49 of the Act and that the Tenant accepted it and moved out of the rental suite in accordance with the Notice.

Section 51(1) of the Act provides that if a tenant has been served with a Notice, a landlord must compensate the tenant with an amount equivalent to one month's rent payable under the tenancy agreement. This is also explained on page two of the Notice. The Act continues to explain that this compensation may be achieved by the Tenant by withholding the last month's rent payable or, if the last month's rent has already been paid, the landlord must return this to the tenant at the end of the tenancy.

I accept the Tenant's undisputed oral evidence that rent under the agreement was payable in the amount of \$900.00. I also accept the undisputed evidence that the Tenant paid November 2014 rent and did not withhold this amount. Therefore, the Landlord must now pay the Tenant **\$900.00** in compensation pursuant to the Act. Therefore, the total amount awarded to the Tenant is **\$1,800.00** (\$900.00 x 2).

As the Tenant has been successful in this matter, I also award the Tenant the filing fee of **\$50.00** pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenant is **\$1,850.00**.

The Tenant is issued with a Monetary Order which must be served on the Landlord. The Tenant may then file and enforce this order in the Provincial Court (Small Claims) as an order of that court if the Landlord fails to make payment in accordance with the Tenant's written instructions. Copies of this order are attached to the Tenant's copy of this decision.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's security deposit and not paying him compensation for ending the tenancy. Therefore, the Landlord is ordered to pay the Tenant \$1,850.00.

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: September 01, 2015

Residential Tenancy Branch

