



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

The tenant applies to recover a security deposit, doubled pursuant to s.38 of the *Residential Tenancy Act* (the “*Act*”) and for an amount equivalent to one month’s rent pursuant to a two month Notice to End Tenancy issued by the landlord.

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 relief claimed?

Background and Evidence

The rental unit is a two bedroom basement suite. The tenancy started in October 2013 and ended March 1, 2015. The rent at the end of the tenancy was \$650.00 per month. The tenant paid a \$400.00 security deposit. He has returned \$75.00 of it.

Both sides allege verbal agreements regarding certain aspects of the tenancy, denied by the other.

The landlord acknowledges that he had his realtor issue a two month Notice to End Tenancy pursuant to s.49 of the *Act* on January 31, 2015, effective March 31, but he says the tenant had given verbal notice to terminate the tenancy before that and so he shouldn’t have to pay the one month’s rent equivalent required when such a Notice is given.

He says that by agreement the tenant only paid half of February rent and sacrificed \$325.00 of her security deposit to pay the other half.

The tenant says she didn't give verbal notice but only told the landlord she might have found a place. She denies authorizing the landlord to keep any portion of the deposit but admits that she only paid \$325.00 of the \$650.00 rent for February.

Analysis

The *Act*, s.52 provides:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
 - (e) when given by a landlord, be in the approved form.

Neither the landlord nor the tenant can rely on the tenant's alleged verbal notice. It did not legally end the tenancy.

The tenancy legally ended as a result of the two month Notice, effective March 31, 2015.

Under s.50 of the *Act*, a tenant receiving a two month Notice may end the tenancy earlier. Section 50 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*].

In this case the tenant did not give the landlord "at least 10 days' written notice to end the tenancy..." The tenancy did not end earlier than March 31, 2015.

I find that the money due to the tenant as a result of the two month Notice was offset against the March rent she was legally obliged to pay and I dismiss her claim in that regard.

The landlord did not return the full security deposit to the tenant nor did he have written authorization from her to retain any portion of it.

Section 38 of the *Act* provides:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

(emphasis added)

This provision is specifically intended to prevent a landlord from unilaterally retaining deposit money. He must either have the tenant's written authorization or an arbitrator's order.

In this case the landlord did not have the necessary authorization to keep any portion of the deposit. The tenant is therefore entitled to a doubling of the deposit to \$800.00. From that amount I authorize the landlord to keep the admitted \$325.00 owed for February rent and I deduct the \$75.00 already returned.

Conclusion

The tenant is entitled to recover the remainder of \$400.00. As she did not pay the February rent in full and says she did not agree to the landlord keeping the deposit for the balance, I decline to award her recovery of the filing fee.

The tenant will have a monetary order against the landlord in the amount of \$400.00.

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 18, 2015

Residential Tenancy Branch

