



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of double the security deposit, for compensation pursuant to a s49 notice to end tenancy, for mailing costs and for the recovery of the filing fee.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via registered mail on June 06, 2015, to the address provided by the landlord. The tenant filed a receipt with a copy of the tracking history. The history indicates that on June 12, 2015, the landlord signed in acknowledgement of having received the parcel.

On June 22, 2015, the tenant amended her application and sent a copy of the amended application to the landlord by registered mail on July 09, 2015. The tenant filed a copy of the tracking slip.

Despite having been served the notice of hearing package and the amended application, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be Decided

Is the tenant entitled to the return of double the security deposit, compensation pursuant to a s49 notice and the filing fee?

Background and Evidence

The tenancy began in September 2012 and ended on May 15, 2015. The monthly rent at the end of the tenancy was \$1,350.00. Prior to moving in the tenant paid a security deposit of \$700.00. The tenant rented main floor of the landlord's home and the landlord occupied the basement.

On April 09, 2015, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The effective date of the notice as stated on the notice was June 10, 2015. The reason for the notice was that the landlord or the landlord's family intended to move into the rental unit.

On May 01, 2015, the tenant attempted to pay rent and the landlord informed the tenant that he would collect rent after he spoke with the Residential Tenancy Branch Office. The tenant filed copies of text messages between the two parties. Also on May 01, 2015, the tenant gave the landlord notice to end the tenancy effective May 15, 2015. The tenant testified that the landlord did not get back to him regarding rent for May and therefore rent for May was not paid.

On May 15, 2015, the tenant moved out and provided the landlord with a written request to return the security deposit to his forwarding address as provided in the request. The tenant stated that apart from the first half of May, the landlord had not provided a full month's compensation pursuant to a notice to end tenancy for landlord's use.

The landlord did not respond to the text messages from the tenant after May 15, 2015. On June 04, 2015 the tenant made this application. On June 16, 2015, the tenant visited the rental unit to pick up mail and found people moving into the rental unit. The tenant struck up a conversation with the person moving in and learnt that the landlord had re-rented the unit to a family. The tenant stated that the family moving in did not appear to be relatives of the landlord as it was clearly visible that they were of a different race.

The tenant testified that she contacted the Residential Tenancy Branch and learnt that she could be entitled to compensation because the landlord had not used the unit for the purpose stated on the notice to end tenancy. The tenant amended her application on June 22, 2015 to include additional compensation.

The tenant is also applying for the cost of registered mail and for the recovery of the filing fee.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. Based on the sworn testimony of the tenant and in the absence of any contradictory evidence, I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address.

Therefore, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit. The landlord currently holds a security deposit of \$700.00 and is obligated under section 38 to return double this amount (\$1,400.00) plus interest on the base deposit (\$0.00).

The tenant received the notice on April 09, 2015 with an effective date of June 10, 2015. On May 01, 2015 the tenant gave notice to end the tenancy effective May 15, 2015. Pursuant to s50(1) of the *Residential Tenancy Act*, if a landlord serves a tenant with a section 49 notice (for landlord's use of property), the tenant may end the tenancy early by 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. Section 50(3) states that a notice to end tenancy under section 50(1) does not affect the tenant's right to compensation.

Therefore by providing notice on May 01, 2015, the tenant gave adequate notice to end the tenancy effective May 15, 2015 and is still entitled to compensation in the amount of one month's rent.

The last month of tenancy was April 15 to May 15, 2015. The tenant had paid rent for the entire month of April but did not pay rent for May 2015. Therefore the tenant is entitled to a half month's rent in the amount of \$675.00.

When a 2 month notice is given for "landlord use of the premises", as occurred in this case, section 51(2)(b) of the *Residential Tenancy Act* provides that in addition to compensation from the landlord that is equivalent of one month's rent, if the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, I note that:

1. The stated purpose provided in the 2 month Notice was that the landlord or a close family member would occupy the premises.
2. The premises were re-rented one month after the tenant moved out.

These facts suggest that the tenant is indeed entitled to the subject compensation, as based on the tenant's testimony and a balance of probabilities; it is more likely than not that the landlord or his family did not move into the rental unit.

The legislation does not permit me to award any litigation related costs other than the filing fee and therefore the tenant's claim for mailing costs is dismissed

Since the tenant has proven her claim, she is also entitled to the recovery of the filing fee (\$50.00).

Overall the tenant has established a claim for the following:

Compensation pursuant to s.50(1) - \$675

Double the security deposit - \$1,400.00

Compensation pursuant to s.51(2)(b) - \$2,700.00

Filing fee - \$50.00

The tenant has established a claim for \$4,825.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims 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: November 05, 2015

Residential Tenancy Branch

