



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This review hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for return of all or part of the pet damage deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the hearing, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord attended. The Decision of the director ordered the tenants to serve the landlord with a copy of the Review Consideration Decision and notice of this hearing within 3 days of receipt of the Review Consideration Decision. One of the tenants testified that the Review Consideration Decision was received by the tenants from the Residential Tenancy Branch on February 17, 2016 by regular mail. The tenant served the documentation ordered to the landlord by registered mail on February 19, 2016. The tenant provided a tracking number assigned by Canada Post and testified that the cash register receipt issued by Canada Post is dated February 19, 2016. I accept the affirmed testimony of the tenant and I find that the landlord has been served in accordance with the *Residential Tenancy Act* and the order of the director.

Both tenants gave affirmed testimony and the tenants called one witness who gave affirmed testimony.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more specifically for recovery of an overpayment of rent and compensation for the landlord's breach of the *Act* by failing to use the rental property for the purpose set out in the landlord's notice to end the tenancy?

Background and Evidence

The first tenant testified that this 1 year fixed term tenancy began on July 1, 2014 and the tenants moved out of the rental unit on June 30, 2015. Rent in the amount of \$1,900.00 per month was payable on the 1st day of each month and there are no rental arrears. On May 14, 2014 the tenants paid a security deposit to the landlord in the amount of \$950.00, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The tenant further testified that the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the notice) effective June 30, 2015. The tenants had pre-paid rent, and the landlord still had \$500.00 of rent for June, 2015. The tenants claim back the \$500.00 because the landlord didn't provide the tenants with compensation in the equivalent of one months' rent as required. A copy of the notice has been provided and it is dated April 24, 2015 and contains an effective date of vacancy of June 30, 2015. The reason for issuing the notice states: "The rental unit will be occupied by the landlord or a close family member (father, mother or child) of the landlord or the landlord's spouse." The landlord had told the tenants that he and his spouse were separating and one of them would be living in the rental unit. However, the landlord's wife attended at the rental unit and moved belongings out and the house sold. The tenants have 4 children and had to find a place big enough within the 2 month time frame.

The tenant sent a letter to the landlord on June 2, 2015 by regular mail requesting return of the security deposit to the address of the landlord contained in the 2 Month Notice to End Tenancy for Landlord's Use of Property and on the tenancy agreement. The letter contained the tenants' forwarding address. The landlord stopped communicating with the tenants and won't return calls or text messages.

The second tenant testified that he communicated with the landlord by text message, and on June 19, 2015 the tenant provided the landlord with the tenants' forwarding address and asking for June's rent and the security deposit. The tenant called the landlord later the same day and the landlord said he received the text message and said he'd send the money. On July 12, 2015 the tenant called and left a message for the landlord, and again on July 16. The landlord has not responded.

The landlord did not move into the rental unit. The tenants still go there to get mail and the house has sold.

The tenant's witness testified that she is the current owner of the rental unit, having purchased it in the spring of 2015 and took possession on July 15, 2015. The witness still resides there. The witness gave the landlord written notice that the witness intended to move in and the possession date was set far enough in advance to allow for notice to the tenants within the law.

Analysis

The *Residential Tenancy Act* states that a landlord must return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit within that 15 day period. If the landlord does neither, the landlord must repay the tenant double the amount. In this case, the landlord ended the tenancy and the tenant testified that a letter was sent to the landlord to the address contained in the notice on June 2, 2015, which is deemed to have been received by the landlord 5 days later. The tenancy ended on June 30, 2015. The landlord did not return the security deposit to the tenants and I have no application before me by the landlord claiming against it. Therefore, I find that the tenants are entitled to double the amount, or \$1,900.00.

Where a landlord ends a tenancy for landlord's use of property, the landlord is required to provide the tenant with the equivalent of one month's rent as compensation. That is often accomplished by a landlord collecting no rent for the final month of the tenancy. I accept the undisputed testimony of the tenants that they had partially pre-paid rent for June, 2015 in the amount of \$500.00 and the tenants are entitled to recovery of that amount.

The *Act* also states that where a landlord gives a notice to end a tenancy for landlord's use of property and does not use the property for the purpose set out in the notice, the landlord is liable to the tenants for double the amount of rent. Considering the testimony of the tenants and of the tenant's witness who purchased the rental unit, I am satisfied that the tenants have established a claim in the amount of \$3,800.00.

The *Residential Tenancy Act* states that following a review hearing, I may confirm, vary or set aside the original order. Considering the evidence before me, I set aside the order made by the director on January 26, 2016.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee.

I hereby grant a monetary order in favour of the tenants in the amount of \$6,250.00.

Conclusion

For the reasons set out above, I hereby set aside the Decision of the director dated January 26, 2016.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential tenancy Act* in the amount of \$6,250.00.

This order is final and binding and may be enforced.

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: March 31, 2016

Residential Tenancy Branch