



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was a hearing with respect to the tenant's application for a monetary award and for the return of his security deposit, including double the amount. The hearing was conducted by conference call. The tenant called in and participated in the hearing. The landlords did not attend although they were each personally served with the application and Notice of Hearing, handed to them at the landlords' residence on December 29, 2015.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for compensation with respect to a two month Notice to End Tenancy pursuant to section 51?

Is the tenant entitled to the return of his security deposit, including double the amount?

Background and Evidence

The rental unit is a house in Burnaby. I was not provided with a copy of the tenancy agreement. The tenant testified that the tenancy began in August 2013 on a month to month basis with rent in the amount of \$1,700.00 payable on the first of each month. The tenant paid a security deposit of \$850.00 at the beginning of the tenancy.

The tenant testified that he received a two month Notice to End Tenancy from the landlord on October 28, 2015. He said the notice was given because the landlord intended to have his son occupy the rental unit.

The Notice given to the tenant was not in the approved form as required by the *Residential Tenancy Act*. It was a typed document prepared by the landlord. When it was presented to the tenant on October 28, 2015, the notice only provided one month's

notice to the tenant and stated that he was to move out of the rental unit on November 30, 2015. The tenant said that he knew at the time that the landlord was required to give him two months' notice and had the landlord amend the notice to provide that the tenant was to receive two months' advance notice. The tenant said that the amended Notice was intended to require him to move out of the rental unit by December 31, 2015. Before he moved out of the rental unit the tenant discovered that the notice given by the landlord was not in the form required under the *Residential Tenancy Act* and that the *Act* required the landlord to pay him compensation in the amount of one month's rent. The tenant testified that the landlord refused to pay him the required compensation.

The tenant gave the landlord a notice dated November 26, 2015. The notice was a 10 day notice that the tenant intended to move out of the rental unit on December 7, 2015. The notice provided the tenant's new home address and phone number. The landlord signed a copy of the notice to acknowledge that he received it. The tenant provided a copy of the signed notice as evidence in support of his application.

The tenant moved out of the rental unit on December 7, 2015. There was no condition inspection of the rental unit at the beginning of the tenancy or on December 7th when he moved out.

The tenant was not paid one month's rent as compensation and his security deposit was not returned to him although he provided the landlord with his forwarding address in the 10 day notice given to the landlord on November 26th. The tenant filed and served his application for dispute resolution on December 29, 2015.

The tenant has claimed compensation pursuant to section 51 in the pro-rated amount of \$1,316.00 to reflect the 7 days that the tenant occupied the rental unit in December plus a further \$1,700.00, being double the amount of the tenant's \$850.00 security deposit.

The landlords have not submitted any documentary evidence in response to the tenant's application for dispute resolution.

Analysis

The Notice to End tenancy given by the landlord was not in the approved form, as required by section 52 of the *Residential Tenancy Act*. The tenant could have elected to ignore the landlord's notice and could have insisted that if the landlord wanted him to move, he must serve him with a notice in the approved form. The tenant chose to accept the landlord's notice and move out of the rental unit.

I note that Residential Tenancy Policy Guideline #18 "Use of Forms," provides:

A form not approved by the Director is not invalid if the form used still contains the required information and is not constructed with the intention of misleading anyone⁵. As a result, it is advisable to apply to an arbitrator to dispute the notice, so that the validity of the notice can be determined. **Where a tenant accepts a Notice To End A Tenancy that is in the old form or is not in the required form and the tenant vacates in response to the notice, the landlord cannot rely upon the failure to give notice in the required form and allege that the tenant owes the landlord rent as a result of the improper ending of the tenancy.**
(my emphasis)

The tenant chose to accept the Notice and he moved out on December 7th after giving his own 10 day notice to the landlord. In these circumstances I consider that to allow the fact of the ineffective notice to stand as a bar to the tenant's statutory right to compensation under section 51 would be equivalent to allowing the landlord to rely on his failure to give an effective notice and thereby benefit from his own failure to comply with the law. This would be contrary to the policy guideline highlighted above.

Section 50 of the *Residential Tenancy Act* permits a tenant who has received a two month Notice to End Tenancy to give the landlord a 10 day notice to end the tenancy earlier than the intended effective date of the landlord's notice and such a notice does not affect the tenant's right to compensation equivalent to one month's rent under the tenancy agreement, as required by section 51 of the Act. The tenant occupied the rental unit for 7 days in December and I find that, as claimed by the tenant, he is entitled to pro-rata rent for December in the amount of \$1,316.00, being payment of 24 days of rent for the month to reflect the seven days that the tenant occupied the unit.

The tenant did not receive the return of his security deposit although he provided the landlord with his forwarding address in writing on November 26, 2015.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenant's security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application for the return of his deposit and award him the sum of \$1,700.00, being double his \$850.00 deposit.

The tenant's claim has been allowed in the total amount of \$3,016.00. The tenant is entitled to recover the \$50.00 filing fee for his application, for a total award of \$3,066.00 and I grant the tenant an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The tenant's application for a monetary award has been allowed in the amount stated.

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: April 06, 2016

Residential Tenancy Branch