



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing concerns the tenants' application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit and pet damage deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Further to the tenants' application, there is no documentary evidence before me from either party. Accordingly, the details which are set out below arise from the application itself, but principally from the affirmed testimony of both parties during the hearing. In their application, the tenants claim as follows:

Landlord has refused to return security & pet deposit. Request compensation of double the amount, as per the Act. Landlord has failed to occupy residen[ce] as per reason for eviction. Request 2 months' rent as compensation for wrongful eviction.

It is understood that the unit which is the subject of this dispute comprises the upstairs portion of a house, and that it is separate and distinct from the downstairs portion of the house. Pursuant to a written tenancy agreement, the fixed term of tenancy was from January 15, 2011 to January 15, 2012. The agreement provides that tenancy will continue on a month-to-month basis following the end of the fixed term. Monthly rent of \$1,000.00 was due and payable in advance on the 15th day of each month. A security deposit of \$500.00 was collected on January 15, 2011, and a pet damage deposit of \$500.00 was collected on February 01, 2011. A move-in condition inspection report was completed with the participation of both parties. Pursuant to section 49 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 2 month notice to end tenancy dated June 15, 2015. The notice was personally served on that same date. The date shown on the notice by when the tenants must vacate the unit is August 15, 2015. The reason identified on the notice in support of its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

Thereafter, the tenants vacated the unit on August 15, 2015, a move-out condition inspection report was completed with the participation of both parties on that same date, and the tenants provided a forwarding address on the report. At the end of tenancy, the parties were unable to reach agreement around the disposition of the security deposit and the pet damage deposit. In short, the landlord considered that she was entitled to retain all or part of both deposits as a result of certain cleaning and repairs required in the unit, the cost of which she felt ought to be borne by the tenants. The tenants disagreed and no portion of either deposit has presently been repaid to them. While the landlord did not subsequently file an application for dispute resolution, the tenants filed their application on November 16, 2015.

The landlord testified that it was her intention to move into the unit following the end of this tenancy. However, she also testified that as the unit required considerable cleaning and repairs as a result of the tenancy, and as she had a hip operation in November 2015, she has thus far been unable to move into the unit. During the hearing the landlord also raised her concerns around the tenants' inability to consistently pay the full amount of rent due on the 15th day of each month, and about smoking within the unit which was contrary to the terms of the agreement reached between the parties.

Analysis

Based on information set out on the tenants' application for dispute resolution, in addition to the affirmed testimony of both parties during the hearing, the various aspects of the tenants' application and my related findings are set out below.

\$2,000.00: *[(2 x \$500.00) + (2 x \$500.00)] the double return of the security deposit and pet damage deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenants' forwarding address in writing, the landlord must either repay the security deposit / pet damage deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit / pet damage deposit, and must pay the tenants' the double amount of the security deposit / pet damage deposit.

I find that the subject tenancy ended on August 15, 2015, at which time the tenants provided the landlord with their forwarding address. I also find that the tenants did not consent to the landlord's retention of all or part of either deposit. Further, I find that the landlord has neither repaid all or part of either deposit to the tenants, nor filed an application for dispute resolution within the requisite 15 days, or indeed, within the 10 month period that has since elapsed. In

the result, I find that the tenants have established entitlement to the double return of both deposits as claimed.

\$2,000.00: *(2 x \$1,000.00) 2 months' rent under the tenancy agreement*

Section 51 of the Act addresses **Tenant's compensation: section 49 notice**, in part:

51(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Further, Residential Tenancy Policy Guideline # 2 speaks to the "Good Faith Requirement When Ending a Tenancy," in part:

If evidence shows that the landlord's purpose in issuing a Notice to End Tenancy is for a reason other than the one stated on the Notice to End Tenancy, then that evidence raises a question as to whether the landlord had a dishonest purpose. The Residential Tenancy Branch may find that the landlord had a dishonest purpose even if that dishonest purpose was not the primary motive for ending the tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intended to do what they said on the Notice to End Tenancy, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy.

As previously noted, the tenancy ended August 15, 2015, and the landlord has not moved into the unit within the 10 months that have subsequently elapsed. There are no comparative results of move-in and move-out condition inspection reports or unit photographs before me in evidence; neither is there any documentary evidence before me (estimates or receipts, for example) related to cleaning and repairs in the unit since the end of tenancy, or documentary evidence in support of the landlord's claim that a hip operation in November 2015 has significantly contributed to her inability to yet move into the unit. Following from all of the foregoing, I find that "steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period of time after the effective date of the

notice.” I also find that the landlord’s good faith intent has been called into question, and the landlord has failed to meet the burden of proving that she truly intended to do what she claimed on the 2 month notice. In the result, I find that the tenants have established entitlement to compensation which is the “equivalent of double the monthly rent payable under the tenancy agreement,” as claimed.

\$50.00: filing fee

As the tenants have succeeded with the 2 principal aspects of their application, I find that they have also established entitlement to recovery of the full filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$4,050.00** (\$2,000.00 + \$2,000.00 + \$50.00). This order may be served on the landlord, 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: June 21, 2016

Residential Tenancy Branch