



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Singla Homes 2005 Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on November 5 with an amendment dated November 17, 2016 for:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on November 30, 2016 for:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on May 1, 2012 and ended on November 13, 2015. Rent of \$1,500.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$650.00 as a security deposit. On October 31, 2015 the Landlord served the Tenants with a 2 month notice to end tenancy for landlord's use (the "Notice"). The Tenants did not pay the rent

on November 1, 2016 and on November 2, 2015 the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent. On November 3, 2015 the Tenants gave the Landlord notice that the Tenants would move out on November 13, 2015.

In its application the Landlord claims unpaid rent for November 2015. The Landlord states that they considered prior to the hearing that the Tenants were owed compensation and wanted to settle the dispute but as they did not have the Tenant's phone number they were not able to do so. The Landlord states that the application claiming a month's rent was made in error and before they understood the provisions of the Act. The Landlord states that its application was not frivolous as the Landlord had lost one month's rent. The Landlord claims a reduced rental amount of \$666.25 for the period November 1 to 13, 2015 inclusive.

The Tenants state that the amounts claimed in its application are either for costs associated with their move from the unit or costs associated with the dispute proceedings. The Tenants also claim the cost of cleaning the carpet and indicate this was claimed to establish that the Tenants carried out their obligations to leave the unit clean.

The Tenants states that they believe the Landlord's action to hold the security deposit back and to make its application to be frivolous as this is just an extension of the Landlord's behavior in ending the tenancy that the Tenants felt was malicious.

Analysis

Section 50 of the Act provides as follows:

- (1) If a landlord gives a tenant notice to end a periodic tenancy for landlord's use of property, 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 for the landlord's end of the tenancy.

As the Tenants gave notice to end the tenancy after receiving the Notice from the Landlord I find that the Tenants are only obliged to pay rent for the period November 1 to 13, 2015 inclusive. As a result I find that the Landlord is only entitled to **\$666.25** in unpaid rent.

Section 51(1) provides that a tenant who receives a notice to end a tenancy for landlord's use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Tenants received the Notice from the Landlord the Tenants are entitled to the equivalent of one month's compensation. As the Landlord did not give the Tenants the compensation required for ending the tenancy with the Notice I find that the Landlord must now pay the Tenant the amount of **\$1,537.50**.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. As the moving expenses claimed by the Tenant are covered by the compensation required to be paid to the Tenant as a result of the Landlord ending the tenancy, I dismiss the claims for moving costs. As the Act does not provide for costs associated with the dispute resolution process other than the filing fee I dismiss the Tenants' claims for the costs of processing evidence and mail costs for service requirements.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. The Landlord withheld the security deposit and made an application that was mostly without merit. The Landlord in fact owed the Tenant more than the amount the Tenant owed the Landlord. While the Tenants see the withholding of the security deposit as a further malicious act by the Landlord, I cannot accept that the Landlord was malicious in acting on its rights to end the tenancy as it did. I also accept the Landlord's persuasive evidence that they made an unintended error in failing to return the security deposit

to the Tenants. I caution the Landlord in the future to be more diligent about informing itself of the provisions of the Act and the handling of a security deposit. I order the Landlord to return the security deposit plus zero interest in the amount of **\$650.00** to the Tenants.

As the Landlord owed the Tenant more than the Tenant owed the Landlord I decline to order recovery of the filing fee for the Landlord. As the Tenant's were successful in obtaining the compensation that was owed to them despite the lack of merit in their claim for moving and other expenses, I find that the Tenants are entitled to recovery of their **\$50.00** filing fee for a total entitlement of **\$2,237.50**. Deducting the Landlord's entitlement of **\$650.00** from this amount leaves **\$1,587.50** owed to the Tenants.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,587.50**. If necessary, 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: June 10, 2016

Residential Tenancy Branch