



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on April 5, 2016. The Tenants filed seeking a \$1,200.00 Monetary Order for compensation or other money owed and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the female Tenant. Each person gave affirmed testimony. The application for Dispute Resolution listed two applicant Tenants; however, only one Tenant was in attendance at the hearing. The female Tenant affirmed she was representing both Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord confirmed receipt of the following documents: the application for Dispute Resolution; the Notice of Hearing Documents; and copies of the Tenants' documentary evidence. No issues regarding service or receipt of the aforementioned documents were raised. As such, I accepted the Tenants' submissions as evidence for these proceedings. The Landlord did not submit documentary evidence in response to the Tenants' application.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 59(2) of the *Act* stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

In the Details of Dispute section of the Tenants' application for Dispute Resolution the last sentence states "*If applicable I request double the damage amount t*". No oral submissions were presented during the hearing regarding such a request. As stated above the Tenants filed their application for Dispute Resolution listing an amount

claimed of \$1,200.00 (an amount equal to one month's rent). In their evidence submission the Tenants included a Monetary Order Worksheet which indicated they were seeking \$1,200.00 for compensation for the 2 Month Notice and to recover the \$100.00 filing fee.

Based on the above, I find pursuant to section 62 of the *Act*, the Tenants had not include a request for doubling their security and or pet deposit in the full particulars of the dispute that was to be the subject of the dispute resolution proceedings, as required in accordance with section 59 of the *Act*. As no evidence was heard regarding that request I conclude pursuant to section 62 of the *Act*, the Tenants are at liberty to file another application for Dispute Resolution if they wish to proceed with a claim for the return of double their security and/or pet deposit amounts.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants proven entitlement to a Monetary Order?

Background and Evidence

The parties entered into a written month to month tenancy agreement which began on September 1, 2015. Rent of \$1,200.00 was payable on the first of each month. On August 28, 2015 the Tenants paid \$600.00 as the security deposit plus \$600.00 as the pet deposit.

On January 29, 2016 the Landlord's agent personally served the Tenants with a 2 Month Notice to end tenancy for landlord's use.

On February 19, 2016 the Tenants personally served the Landlord's agent with written 10 days' notice to end their tenancy effective February 29, 2016. The Tenants' notice to end tenancy included the Tenants' forwarding address. On March 4, 2016 the Tenants served the Landlord's agent with a separate document listing their forwarding address.

The Tenant testified they had paid their February 2016 rent in full and they now seek to be paid the compensation equal to one month's rent for having their tenancy ended for landlord's use of the property. She stated that despite them informing the Landlord that they were entitled to the aforementioned compensation he has not paid them the compensation.

The Landlord testified and confirmed he has not paid the Tenants compensation equal to one month's rent. The Landlord asserted that he did not have to pay the Tenants compensation because the Tenants moved out of the rental unit before the effective

date of the 2 Month Notice. The Landlord stated he was of the opinion that he was entitled to do what he wanted to with the rental unit once the Tenants moved out.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 50(1)(a) of the *Act* provides that if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], 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.

In this case the Tenants received the 2 Month Notice to end tenancy on January 29, 2016 which made the effective date March 31, 2016. The undisputed evidence was on February 19, 2016, the Tenants served the Landlord's agent with 10 days written notice to end the tenancy effective February 29, 2016. Upon review of the foregoing, I find the Tenants ended the tenancy **February 29, 2016**, prior to the effective date of the 2 Month Notice, in accordance with section 50(1)(a) of the *Act*.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 [*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.

Section 50(3) of the *Act* stipulates that a notice under this section [10 day notice from a tenant to end the tenancy prior to the effective date of the 2 month notice] does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

Notwithstanding the Landlord's opinion that he does not have to pay the Tenants compensation and he can do as he wishes with the rental property once the Tenants moved out, I find, pursuant to section 62 of the *Act*, this tenancy falls within the jurisdiction of the *Act*.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

As per the above, I find pursuant to section 62 of the *Act*, the Tenants are entitled to compensation equal to one month's rent (\$1,200.00) as provided for by section 51(1) of the *Act*. I make this finding in part, as the undisputed evidence was the Tenants were served a 2 Month Notice to end tenancy for landlord's use of the property. Accordingly, I grant the application in the amount of **\$1,200.00** pursuant to section 67 of the *Act*.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenants succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$100.00**, pursuant to section 72(1) of the Act.

As such, the Landlord is hereby ordered to pay the Tenants the sum of **\$1,300.00** (\$1,200.00 + \$100.00) forthwith.

In the event the Landlord does not comply with the above Order, the Tenants have been issued a Monetary Order for **\$1,300.00**. This Order may be enforced through Small Claims Court after service upon the Landlord.

Conclusion

The Tenants were successful with their application and were granted a Monetary Order in the amount of \$1,300.00.

This decision is final, legally binding, and 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: August 31, 2016

Residential Tenancy Branch