



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit, including double the amount, pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 11:25 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that on September 14, 2016, he served the landlord with a copy of the Application for Dispute Resolution and Notice of Hearing by sending a copy by xpresspost to the landlord's address for service as provided on the 2 Month Notice to End Tenancy. The tenant provided an xpresspost tracking number in support of service. The item was returned to the sender and the tracking history indicates "recipient not located at the address provided".

Section 71(2)(c) of the Act provides the Director the authority to order that a document is sufficiently given or served for the purposes of the Act, in cases where it has not been served in strict accordance with section 88 or 89 of the Act. Although the landlord was served by xpresspost versus registered mail as required by section 89, I am satisfied that the landlord was sufficiently served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing. I make this finding as the tenant was still able to

provide a tracking number supporting that delivery to the landlord was attempted. The hearing proceeded in the absence of the landlord.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled a monetary order for compensation for damage or loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background

The tenancy began approximately in or around April 2015 with a monthly rent of \$2,000.00 payable on the 1st day of each month. The tenancy was for a one year fixed term which continued on a month to month term after the expiry of the initial term. The tenants paid a security deposit of \$1000.00 at the start of the tenancy which the landlord continues to retain.

On June 15, 2016 the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of August 31, 2016. The tenants vacated the rental unit on August 14, 2016.

Evidence & Analysis

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

The tenant is claiming double the \$1000.00 security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address.

The tenant testified that he provided the landlord with his forwarding address by way of a text message and that he had a copy of the text message on his phone.

Section 38 of the 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. 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.

I find the tenant did not provide sufficient evidence that he provided a forwarding address in writing to the landlord. A text message is not an approved method of service under the Act. Further, the application for dispute resolution does not meet the requirement of a separate written notice of providing a forwarding address for the purposes of return of the security deposit.

I dismiss the tenants claim for return of the security deposit, including double the amount, **with leave to reapply**. The tenant must serve the landlord with a forwarding address, in writing, in a manner permitted under section 88 of the Act.

Is the tenant entitled a monetary order for compensation for damage or loss?

The tenant is claiming an amount equivalent to double the monthly rent as compensation for the landlord not using the rental property for his own use after issuing the 2 Month Notice to End Tenancy effective August 31, 2016.

The tenant testified that prior to issuing the 2 Month Notice to End Tenancy, the landlord was attempting to negotiate a new rent of \$2300.00 which they refused. The tenant provided a copy of a Craigslist Ad which he claims was posted by the landlord 10 days after the tenants vacated the rental unit. The ad lists the rental unit as being available for rent at \$2300.00 per month.

Section 51 (2) of the Act provides that if 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 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.

Based on the undisputed testimony and supporting evidence provided by the tenant, I find that on a balance of probabilities the rental unit has not been occupied by the landlord or the landlord's close family member as indicated on the Notice.

I allow the tenants claim for an amount equivalent to double the monthly rent and award an amount of \$4,000.00, which is double the monthly rent of \$2000.00.

Is the tenant entitled to recover the filing fee for this application from the landlord?

As the tenant was for the most part successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$4,100.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$4,100.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 02, 2016

Residential Tenancy Branch