



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This is an application brought by the tenant(s) requesting a monetary Order be issued against the landlords.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established a monetary order against the respondents, and if so in what amount.

Background and Evidence

This tenancy began on April 26, 2014 and a security deposit of \$1375.00, and a pet deposit of \$250.00 were paid at the beginning of the tenancy.

The tenant vacated on April 30, 2016 after receiving a two month Notice to End Tenancy for landlord use, which stated that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

A forwarding address in writing was given to the landlord by registered mail that was mailed on April 8, 2016.

The tenant is claiming that the landlord failed to return the security deposit and pet deposit, and therefore she is requesting an order for the return of those deposits.

The tenant is also claiming that the landlord failed to comply with the reasons given for ending the tenancy, and therefore she is requesting an order for the equivalent of two months' rent, as compensation required under section 51 of the Residential Tenancy Act.

The landlord testified that she did not return the deposit but had notified the tenant that she would be retaining the deposit due to damages in the rental unit. The landlord further stated that she did not apply for dispute resolution to keep any of the deposit.

The landlord further testified that, after the tenant vacated the rental unit, she and her husband and son did move into a portion of the rental unit that the tenant had been renting, and used that portion of the rental property throughout the months of June 2016, July 2016, August 2016, September 2016, and October 2016, until the rental unit sold and the purchaser took possession on November 4, 2016.

The landlord therefore states that she believes they complied with the reasons given for ending the tenancy.

In response to the landlord's testimony the tenant testified that she does not believe that the tenants lived in the rental unit, and that the notice was given in bad faith simply to get her to move out of the rental unit.

Analysis

Security/Pet Deposit

section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security/pet deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security/pet deposit.

The landlord has not returned the tenants security/pet deposit or applied for dispute resolution to keep any or all of tenant's security/pet deposit and the time limit in which to apply is now past.

This tenancy ended on April 30, 2016 and the landlord had a forwarding address in writing by prior to the end of the tenancy, and there is no evidence to show that the tenant's right to return of the deposits has been extinguished.

Therefore even though the tenant has not applied for double the security/pet deposit, I am required to order that the landlord must pay double the amount of the security/pet deposits to the tenant.

The tenant paid a combined security/pet deposit of \$1625.00, and therefore the landlords must pay \$3250.00 to the tenant.

Two month Notice to End Tenancy

Section 51(2) of the Residential Tenancy Act states:

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.

I

In this case, the landlord has testified that the rental unit was only used for the stated purpose for approximately 5 months, as they chose to sell the rental unit, and therefore pursuant to section 51(2)(b) the landlord's are required to pay the tenant the equivalent of two months' rent. The monthly rent for this unit was \$2750.00 and therefore the landlords must pay \$5500.00.

Having allowed the tenants full claim I also allow the request for recovery of the \$100.00 filing fee.

Therefore the total amount ordered is as follows:

Double security/pet deposits	\$3250.00
Section 51 compensation	\$5500.00

Filing fee	\$100.00
Total	\$8850.00

Conclusion

Pursuant to sections 38 67 and 72 of the Residential Tenancy Act I have issued an order for the respondents to pay \$8850.00 to the applicant.

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 08, 2016

Residential Tenancy Branch