



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD MNDC FF

Introduction

Both parties attended the hearing and the landlord agreed they received the Application from the tenant by personal delivery to their office. The tenant said they served their forwarding address to the landlord by registered mail. The landlord said they never got it until November 7, 2016 but confirmed they have not yet returned the tenants' security deposit. In checking the tracking number, I find the tenant served their forwarding address by registered mail on August 22, 2016. After 3 attempts to deliver it to the landlord's office, the postal service left notice cards and finally, after a final notice on August 29, 2016, they returned the mail to the tenant. The landlord said their office was closed as they were on holiday. However, I find it was sent to the landlord's official address for service given to the tenant so I find the tenant legally served their forwarding address according to section 89 of the Act and according to section 90 of the Act, the registered mail is deemed to be received 5 days after mailing which would be August 27, 2016.

The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to compensate the tenant with double the rent pursuant to sections 49 and 51 as the landlord did not use the unit according to their stated purpose for ending the tenancy;
- b) An Order to recover double the security deposit pursuant to section 38;
- c) An Order to recover utilities owed and an outstanding filing fee awarded at another hearing; and
- d) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord did not use the unit for the stated purpose in the section 49 Notice and they are entitled to double the monthly rent pursuant to section 51 of the Act?

Are they also entitled to double their security deposit refunded?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. It is undisputed the tenancy commenced June 1, 2014 and the rent varied from \$1500 in the summer to \$1950 in the winter. A security deposit of \$975 was paid. The tenant provided evidence that they were served with a two month Notice to End Tenancy pursuant to section 49 of the Act dated May 23, 2016 to be effective July 31, 2016. The Notice stated the rental unit would be occupied by the landlord or a close family member. However, the tenant provided evidence that the property was listed for sale on June 2, 2016 and sold with a closing date of November 7, 2016. They request double the monthly rental as compensation pursuant to section 51 of the Act.

The landlord said she did occupy the suite for a time. Her mother was ill and her mother visited her there and some other family members also. She moved in on August 1, 2016 and did some work on it and had friends and family visiting her there. She said it just sold in the past few days. The tenant disagreed and said they had been up to the unit to obtain a folio that the male tenant left behind in error and found the unit was vacant. They said they also observed this when they went by to collect mail on August 17, 2016. The landlord continued to contend she did live there and continued to press her claim for damages although I advised her that it had to be the subject of her own application.

The tenants also request double the security deposit pursuant to section 38 of the Act. The landlord said they did not receive the tenants' forwarding address until November 7, 2016 and they still have not returned the deposit as of today, November 24, 2016.

The tenants said the landlord had paid the outstanding hydro bill and also the \$100 filing fee from the previous file so they were no longer claiming these items.

In evidence is the section 49 Notice to End Tenancy, the listing agreement with the realtor, the letter with the forwarding address and the copy of the Order on the previous file. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

.

Analysis:

The *Residential Tenancy Act* provides:

Tenant's compensation: section 49 notice

51 (1) *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.*

(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 find the landlord did not use the rental unit for the stated purpose for at least six months. Although she contended that it was her intention to occupy it when she served the section 49 Notice, I find the fact that she listed the property for sale in June 2016, a few days after she served the Notice to End Tenancy, is inconsistent with her statements that she intended to occupy the property. Even if she did move in for a short time to do some repairs and receive visitors, I find the time from the tenants vacating the unit and the close of the sale of the unit was only 3 months and a few days. I find the tenant is entitled to compensation pursuant to section 51(2) of double the monthly rent of \$1500 for a total of \$3,000 awarded.

In respect to the tenant's claim for double their security deposit, I find the tenant legally served their forwarding address to the landlord's address for service on August 22, 2016. They had vacated on July 31, 2016 in response to the section 49 Notice. Although the landlord contended she did not receive it, she acknowledged that she did finally receive it on November 7, 2016.

The Act provides:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
(a) the date the tenancy ends, and
(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:
(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to
the tenant with interest calculated in accordance with the regulations;
(d) make an application for dispute resolution claiming against the security deposit or
pet damage deposit.
(6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit,
or both, as applicable.

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

Even if we ignore the deemed service of the forwarding address in August 2016 and calculate the 15 days from the later date of November 7, 2016 when the landlord says she finally received the forwarding address, I find the landlord is still in violation of section 38 of the Act since she agreed she had not refunded the tenants' security deposit as of today which is November 24, 2016 (17 days after her acknowledged receipt). Pursuant to section 38(6) as noted above, I find the tenants entitled to recover twice their security deposit (\$975x2) for a total of \$1950.

As discussed with the landlord in the hearing, she has the legal right to bring her Application for damages against the tenant within the legislated time limits (currently two years from the end of the tenancy).

Conclusion:

I find the tenants entitled to a monetary order as calculated below and to recover the filing fee for this application. I dismiss the other claims of the tenant as they said they have been reimbursed by the landlord for the hydro and the other filing fee.

Refund 2 months rent (\$1500x2)	3000.00
Refund twice the security deposit (\$975x2)	1950.00

Filing fee	100.00
Total Monetary Order to Tenant.	5050.00

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 24, 2016

Residential Tenancy Branch