



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenants seeking a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the hearing, one of whom gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord attended the call. The tenant testified that the landlord was served with the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on September 14, 2016 and the tenants have provided a copy of a Canada Post cash register receipt bearing that date and a Registered Domestic Customer receipt addressed to the landlord. Also provided is a print-out from Canada Post indicating that the landlord had refused the registered mail on October 14, 2016.

The tenant also testified that the Amendment to an Application for Dispute Resolution was served by registered mail on December 1, 2016 and the tenants have provided a copy of a Canada Post cash register receipt bearing that date and a Registered Domestic Customer Receipt addressed to the landlord. The tenant testified that the landlord has also refused that registered mail and Canada Post has confirmed that it is still awaiting pick-up by the landlord.

I have reviewed the evidentiary material of the tenants and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing the tenant referred to a notice to end the tenancy given by the landlord and a Decision of the director from a previous hearing, and assumed that I would be able to access those documents. It would not be proper for me to

search for evidence from a party, and I permitted the tenants to send those documents to me by facsimile after the hearing had concluded. I have now received those documents, which are considered in this Decision, as well as all other evidentiary material of the tenants.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the pet damage deposit or security deposit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this month-to-month tenancy began on September 1, 2015 and ended on July 31, 2016. Rent in the amount of \$3,000.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,500.00 as well as a pet damage deposit in the amount of \$1,500.00. The rental unit is a single family dwelling, and no written tenancy agreement exists.

The tenant further testified that the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property by taping it to the door of the rental unit on April 30, 2016, but only served 1 page of the 2-page form. The tenants disputed it, and a hearing was held on June 2, 2016. The tenant testified that the effective date of vacancy on the notice was June 30, 2016 but because the landlord posted it to the door of the rental unit, the effective date of vacancy was incorrect. The tenant also testified that the reason for issuing it was that the landlord intended to occupy the rental unit while renovating his own residence. A copy has been provided and it is dated April 30, 2016 and contains an effective date of vacancy of June 30, 2016. Written on the top of the form is: "Basement needed by landlord and family." During the June 2, 2016 hearing, since the effective date of vacancy was incorrect, the parties agreed to end the tenancy on the correct effective date of July 31, 2016.

On August 17, 2016 the tenants sent a letter by registered mail to the landlord which contained the tenants' forwarding address and requesting return of the security deposit and pet damage deposit. The landlord has not returned any of the deposits and the tenants claim double.

The tenant further testified that the landlord has not used the rental unit for the purpose that the landlord testified to at the June 2, 2016 hearing, and the tenants have provided a letter signed by a person stating that he is the neighbour of the rental unit and that no one has moved into the rental unit. It also states that prospective tenants have questioned the neighbour about living in the neighbourhood, intending to rent. The tenant spoke to the neighbour just before Christmas who advised that the landlord still has not moved into the rental unit and that new tenants will be moving into the rental unit on January 1, 2017.

The tenants claim double the monthly rent, or \$6,000.00, as well as double the security deposit and pet damage deposit, or \$6,000.00, and recovery of the \$100.00 filing fee.

Analysis

The *Residential Tenancy Act* requires a landlord to act in good faith when issuing a notice to end the tenancy for landlord's use of property. A landlord must take steps within a reasonable time after the tenancy ends to use the property for the purpose set out in the notice. In this case, the landlord didn't serve both pages of the 2 Month Notice to End Tenancy for Landlord's Use of Property, so the purpose isn't evident. However, I have read the Decision of the director from the June 2, 2016 hearing, and I accept the undisputed testimony of the tenant that the landlord advised that he would be occupying the rental unit while renovating his own residence. I also accept the letter from the neighbour stating that the landlord, as of November 16, 2016, has not moved into the rental unit. Therefore, I find that the landlord has not used the property for the purpose set out in the notice, and the tenants are entitled to compensation equivalent to 2 months rent, or \$6,000.00.

The *Residential Tenancy Act* also states that a landlord must return a security deposit and any pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. In this case, considering that the landlord has refused registered mail from the tenants, I accept the undisputed testimony of the tenant that the landlord was provided with a forwarding address in writing by registered mail sent on August 17, 2016, which is deemed to have been received 5 days later, or August 22, 2016. The landlord has not returned either deposit, and I find that the tenants have established a claim for double, or \$6,000.00.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$12,100.00.

This order is final and binding and may be enforced.

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: December 29, 2016

Residential Tenancy Branch