



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with a tenant's application for return of the security deposit and pet damage deposit; and, compensation for damage or loss under the Act, regulations or tenancy agreement. The landlord did not appear at the hearing. The tenant submitted that the hearing documents were sent to the landlord via registered mail within three days of filing. The tenant provided a copy of print-out from the Canada Post website, including a registered mail tracking number, showing registered mail was sent on July 21, 2016 and successfully delivered to the landlord on July 25, 2016. Having been satisfied the landlord was notified of this proceeding I proceed to consider the tenant's claims against the landlord.

Issue(s) to be Decided

1. Has the tenant established an entitlement to return of the security deposit and pet damage deposit?
2. Has the tenant established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenant testified that the tenancy started on or about June 2010 and a security deposit and pet damage deposit totalling \$1,750.00 was paid to the landlord. The tenant testified that the monthly rent of \$1,750.00 was payable on the 15th day of every month. The tenancy ended June 30, 2016.

The tenant's monetary claim against the landlord has two components, as described below:

Return of security deposit and pet damage deposit

The tenant seeks return of the security deposit and pet damage deposit by way of this application. The tenant testified that he sent the landlord his forwarding address via email on July 3, 2016. The tenant stated that the landlord responded by stating he could not find a copy of the written tenancy agreement. The tenant testified that he could not access a copy of the written tenancy agreement either as his ex-spouse likely has it. The tenant stated that the deposits were paid to the landlord by cheque and that the tenant could request a copy of the cancelled cheque.

I ordered the tenant to produce a copy of the cancelled cheque or other proof of payment of the deposits. As of the date of this decision I have not received a copy of the cancelled cheque or other corroborating evidence.

Inadequate notice to end tenancy

The tenant also seeks compensation equivalent to two months of rent because the landlord ended the tenancy in order to demolish the rental unit and the tenant did not receive the benefit of two months of notice. The tenant testified that the landlord sent him an email on May 24, 2016 requesting the tenant vacate by June 30, 2016. The tenant testified that he had paid rent on May 15, 2016 but made no rent payment on June 15, 2016. The tenant acknowledged that he found new accommodation as of July 1, 2016. The tenant explained that he accepted the landlord's email to end the tenancy as he had been aware that the landlord was planning to demolish the rental unit for quite some time and he did not want to get into a confrontation.

I ordered the tenant to produce a copy of the relevant emails. I was provided a copy of an email dated May 24, 2016 where the landlord writes to the tenant:

Finally we got out Development Permit approved today. The city will finalize and issue Development Permit with in this week. Finally we start our project. So please consider this email as "Notice to End Tenancy" and please start looking for a new place. I hope by end of June 2016 you would be able to find and move out to new place."

The tenant responded via email on May 30, 2016, including the following statements:

“Thanks for letting me know. I will accommodate you and make June 30th the last day of tenancy....”

“I understand you intend to demolish the house...”

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Return of security deposit and pet damage deposit

With respect to the tenant's request for return of the security deposit and pet damage deposit, I dismiss this request with leave to reapply for two reasons. Firstly, the tenant did not provide evidence to corroborate the amount of the deposits. I note that included in the emails the tenant had provided me was an email dated July 20, 2016 where he wrote to the landlord about his claims and included the following statement:

“The damage deposit was the standard amount of half months' rent at \$850.00 with a pet deposit of an additional \$850. If I need to, I'll get an image of the cancelled cheque if you require it.”

[My emphasis underlined]

The tenant did not obtain the cancelled cheque at that time and it has not yet been submitted to me as ordered. As such, I am unable to verify the amount of the deposits paid.

Secondly, a landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, to return the security deposit and pet damage deposit to the tenant, reach written agreement with the tenant to keep some or all of the deposit, or make an application for dispute resolution claiming against the deposit. The tenant provided a forwarding address to the landlord via email; however, sending email does not meet the service requirements as provided under section 88 of the Act.

In light of the above, I find the tenant's request for return of the deposits to be premature. I encourage the tenant to send a forwarding address to the landlord, in writing, in one of the ways permitted under section 88 of the Act, along with a copy of the cancelled cheque to show the amount of deposits paid. If the landlord fails to return the deposits to the tenant, reach an agreement with the tenant in writing, or make a claim against the deposits within 15 days of receiving the forwarding address, the tenant may reapply and seek return of double the deposits.

Inadequate notice to end tenancy

As for compensation for receiving a Notice to End Tenancy so that the landlord may demolish the rental unit, I find the tenant entitled to further compensation of \$850.00 as explained below.

Where a landlord intends to demolish a rental unit and has received the necessary permit to do so, the landlord is required to end the tenancy using a 2 Month Notice to End Tenancy for Landlord's Use of Property, in the approved form, as provided under section 49 of the Act. The landlord must give the tenant at least two full months of notice; however, a tenant who receive a 2 Month Notice is entitled to end the tenancy earlier than the two month effective date by giving the landlord 10 days of written notice. Tenants in receipt of a 2 Month Notice are also entitled to compensation equivalent to one month of rent under section 51 of the Act.

Although the landlord did not give the tenant the 2 Month Notice in the approved form, parties cannot avoid the notice requirements under the Act or otherwise avoid their obligations under the Act. Therefore, I find the tenant in this case is entitled to the same benefits as if he had received a 2 Month Notice in the approved form.

From the emails exchanged between the parties on May 24, 2016 and May 30, 2016 it is apparent the tenant accepted the earlier end of tenancy. The tenant also acknowledged that he found new accommodation as of July 1, 2016. Accordingly, I find the tenant did not suffer a loss due to the shorter notice given and I deny his claim for compensation equivalent to two months of rent.

Despite the aforementioned, I find the tenant did not benefit from the compensation payable to a tenant under section 51 of the Act, which is the equivalent of one month of rent. Section 51 of the Act provides that the tenant may to receive the compensation by way of a refund of rent already paid or to occupy in the rental unit for the last month of tenancy without paying rent. In this case, the tenant had the benefit of occupying the rental unit one-half of a month without paying rent. Therefore, I find the tenant entitled

to receive the other half in the form of a payment from the landlord in the amount of \$850.00.

The tenant is provided a Monetary Order in the amount of \$850.00 for the balance of compensation payable to the tenant under section 51(1) of the Act.

Conclusion

The tenant's request for return of the security deposit and pet damage deposit was premature and is dismissed with leave to reapply.

The tenant has been provided a Monetary Order in the amount of \$850.00 for the balance of compensation payable to the tenant under section 51(1) of the Act.

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: February 14, 2017

Residential Tenancy Branch