



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

Both parties attended the hearing and gave sworn testimony. The landlord confirmed they had received the tenant's Application for Dispute Resolution and received the tenant's forwarding address in writing on November 20, 2016. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38;
- b) For compensation for losses suffered due to an illegal Notice to End Tenancy;
and
- c) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to the return of double the security deposit according to section 38 of the Act and to other compensation for illegal eviction?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said he had paid a security deposit of \$700 on June 10, 2016 (receipt provided) and agreed to rent the unit for \$1400 a month. The lease was to be a fixed term for 6 months but the landlord served the tenants 'A Notice to Quit' within 14 days on October 15, 2016. The tenants vacated the unit on October 31, 2016 and provided their forwarding address in writing on November 20, 2016. The landlord agreed these facts were correct. The tenants' deposit has never been returned and they gave no permission to retain any of it.

The tenants are claiming \$2800. \$1400 for illegal eviction and twice the security deposit pursuant to section 38 of the Act ($\$700 \times 2 = \1400). The landlord said neither he nor the tenants knew the legal rules about ending the tenancy. However, he said the tenants

wanted to break the lease because they did not like a realtor showing the unit and they wanted a dog which the strata rules did not allow. The tenants agreed they had conversations about being unhappy with real estate showings but they said they did not want to break the lease. The landlord said he got texts regarding them not wanting to move out in snow in December so they were trying to negotiate a time to move. He said he tried to communicate October 13, 14 and 15, 2016 and when he got no response, he served the Notice To Quit which he thought would solve the problems. The tenant provided evidence that she had texted back on October 13 and 16 but meanwhile they got the Notice on October 16.

When questioned as to why they did not dispute the Notice through the Residential Tenancy Branch, the tenant said they did not know their rights and they panicked and were afraid the landlord might use self help to evict them while they were out so they chose to move. They alleged this put them to hardship so they should be compensated for one month's rent.

The landlord had not filed an Application to claim against the deposit and I advised them in the hearing how to do this within the two year time limit specified in the Act.

In evidence are many text messages, the tenancy agreement, the Notice to Quit and photographs. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

In respect to the tenant's claim for one month's rent in compensation for the illegal eviction, I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the landlord violated the Act by serving an illegal Notice to End Tenancy which he termed 'A Notice to Quit' and gave the tenants 14 days to vacate. It appears from his reasons that he had some causes to which section 47 of the Act would apply. Section 47 of the Act provides the tenants must have one full month's notice. However, I find from the extensive texts in evidence that the tenants were contemplating breaking their

lease and moving or trying to sublet for they were unhappy with the intrusions of a realtor to show the unit. I find insufficient evidence of damages or loss suffered by the tenant by them leaving early on October 31, 2016. Furthermore, the law is in the public domain and I find it is up to the tenant to research their rights and object to an illegal Notice to End Tenancy and thus mitigate any damage or loss that they suffered. Therefore, I find insufficient evidence that the tenants meet the criteria for compensation for loss as set out in section 7 of the Act. I dismiss their claim for a month's rent due to the illegal notice to end tenancy.

In respect to their claim for double their security deposit, I find the *Residential Tenancy 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.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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)).

I find the evidence of the tenant credible that they paid \$700 security deposit on June 10, 2016, served the landlord personally with their forwarding address in writing on

November 20, 2016 and vacated on October 31, 2016. I find they gave no permission for the landlord to retain the deposit and they have not received the refund of the security deposit. I find the landlord agreed with these facts. The landlord has not filed an Application to claim against the deposit. I find the tenant entitled to recover double the security deposit. If the landlord wishes to claim against the tenants for damages or loss, they may file an Application within the legislated time limits and provide sufficient evidence to support their claim

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

Original security deposit (no interest 2016-17)	700.00
Double security deposit	700.00
Filing fee	100.00
Total Monetary Order to Tenant	1500.00

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: February 02, 2017

Residential Tenancy Branch