



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was a hearing with respect to the tenants' application for the return of their security deposit and payment of compensation pursuant to section 51(1) of the *Residential Tenancy Act*. The hearing was conducted by conference call. The named tenant called in and participated in the hearing. The landlord did not attend the hearing although she was served with the application and Notice of Hearing sent by registered mail on August 10, 2016. The documents were also delivered to the landlord by courier on September 10, 2016.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Is the tenant entitled to the return of all or part of her security deposit?

Background and Evidence

The rental unit is an apartment in Richmond. The tenancy began on March 30, 2014 for a fixed term of one year. It continued on a month to month basis after the expiry of the term. The initial monthly rent was \$1,300.00, but the landlord increased the rent to \$1,400.00 after the expiry of the term without giving a proper form of Notice of Rent Increase and despite the fact that the increase exceeded the amount allowed under the *Residential Tenancy Act* and Regulation.

On May 3, 2016 the landlord served the tenant with a one month Notice to End Tenancy. The Notice purported to require the tenant to move out of the rental unit by June 3, 2016. The Notice to End Tenancy for cause given by the landlord was amended by her to state that the Notice was given because the unit needs to be occupied by the landlord or the landlord's close family member. The tenant testified that she paid rent for the month of May and moved out of the rental unit on May 31, 2016. She told the landlord that the Notice form she used was improper and that the landlord was obliged to pay her one month's rent because she was ending the tenancy for landlord's use. The landlord did not refund the rent paid for May.

The tenant said that the landlord made claims that the tenant caused damage to the rental unit and refunded only \$300.00 of her \$700.00 damage deposit. The tenant said the damage was present when the tenancy began except for a bedroom door that was damaged because the landlord could not provide a key to unlock it. The landlord did not prepare a condition inspection report at any time. The tenant has claimed the balance of her security deposit in the amount of \$400.00 and the refund of rent paid for May in the amount of \$1,400.00 as well as the filing fee for her application.

Analysis

The landlord used an improper form of Notice to end the tenancy; she should have served the tenant with a two month Notice to End Tenancy for landlord's use. Instead, she improperly amended a one month Notice to include a ground not covered by the form used. The tenant moved out pursuant to the Notice and I find that she is entitled to the compensation required by section 51(1) to be paid to a tenant who receives a Notice to End Tenancy for landlord's use. The landlord should not be in a better position because she gave an illegal form of Notice than she would be in had she used the correct document and followed the rules laid out in the *Residential Tenancy Act*. I find that the tenant is entitled to a monetary award in the amount of \$1,400.00 being the rent paid for May as compensation equivalent to one month's rent payable under the tenancy agreement.

The tenant has been awarded \$400.00, being the balance of her security deposit and \$1,400.00 compensation pursuant to section 51. She is entitled to recover the \$100.00 filing fee for her application for a total award of \$1,900.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The tenant's application has been granted and she has been awarded the sum of \$1,900.00. 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 09, 2017

Residential Tenancy Branch

