



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on September 12, 2016 for the return of double her security and pet damage deposits, and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), the regulation or tenancy agreement.

The Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Landlords during the 22 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenant.

The Tenant testified the Landlords were each served with a copy of the Application and the Hearing Package on September 12, 2016 by registered mail. The Tenant was unable to provide the Canada Post tracking numbers into evidence as she did not have them at the time of this hearing. However, the Tenant testified the Canada Post website shows the documents were received and signed for by the Landlords a couple of days later after they were mailed.

Based on the undisputed evidence before me, I accept the Landlords were served the required documents for this hearing pursuant to Section 89(1) (c) of the Act.

Issue(s) to be Decided

- Is the Tenant entitled to the return of her security and pet damage deposits? If so, should the amount of be doubled?
- Is the Tenant entitled to monetary compensation pursuant to Sections 50 and 51 of the Act as a result of the Landlords ending the tenancy?

Background and Evidence

The Tenant testified that this tenancy began on November 1, 2012 for a fixed term of one year which then continued on a month to month basis thereafter. Rent under the signed tenancy agreement was \$1,075.00 payable on the first day of each month. The Tenant paid the Landlords a \$537.50 security deposit and a \$537.50 pet damage deposit, which are herein referred to as the "Deposits", on October 13, 2016 which the Landlords continue to hold.

The tenancy was ended by the Landlords when they served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice"). The 2 Month Notice was not provided into evidence but the Tenant testified it was served to her on June 30, 2016 and had a vacancy date of September 1, 2016. The reason for ending the tenancy indicated was for the owner's son's occupancy.

The Tenant testified that pursuant to the provisions under the 2 Month Notice, she withheld rent for August 2016. The Tenant testified that the Landlords challenged her authority to do this even though the 2 Month Notice allowed for this. The Tenant testified that pursuant to the provisions of the 2 Month Notice she also ended the tenancy early by giving the Landlord a ten day written notice. The Tenant testified that she sent the Landlords a text message informing them she would be ending the tenancy early on August 16, 2016 but the Landlords would not acknowledge or accept it. The Tenant testified that she then emailed and mailed the Landlords a letter dated August 5, 2016 which informed the tenancy was going to be ended early on August 16, 2016. This letter was provided into evidence and also detailed the Tenant's forwarding address for the return of her Deposits. The Tenant testified that later she received a voicemail from the Landlord acknowledging service of the letter.

The Tenant now claims double the return of her Deposits in the amount of \$2,150.00 as well as pro-rated rent the Landlords owe her as a result of the tenancy being ended early in the amount of \$520.20. The Tenant also claimed for one month's rent but acknowledged this was a clerical she made on the Application.

Analysis

Firstly, I turn my mind to the Tenant's Application for monetary compensation under the 2 Month Notice. Section 49(3) of the Act allows a landlord to end a tenancy for owner occupancy. I accept the Tenant was served with the 2 Month Notice and that it was the Landlords that initiated the ending of this tenancy using this remedy under the Act.

Page 2 of the 2 Month Notice and the Act provides a tenant with various rights after they have been served with a 2 Month Notice. Specifically, Sections 50 and 51(1) of the Act state:

Tenant may end tenancy early following notice under certain sections

50 (1) *If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by*

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

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.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

[Reproduced as written]

I find the Tenant accepted the 2 Month Notice and then exercised her right to end the tenancy early by providing the Landlords with written notice on August 5, 2016 to end the tenancy on August 16, 2016. Section 53 of the Act allows a notice period to self-correct to a time period that complies with the Act. Section 90(a) of the Act provides that a document which is mailed to another party is deemed to have been received five days later.

Based on the undisputed evidence before me, I find the Tenant correctly ended the tenancy early with written notice pursuant to her right under Section 50(1) (a) of the Act. I find that when the Tenant sent the Landlords her written notice to end the tenancy on August 5, 2016, under the Act, it is deemed to have been received by the Landlords on August 10, 2016. Therefore, I find the end of tenancy date provided by the Tenant of August 16, 2016 would have corrected to August 20, 2016 which is the earliest date the Tenant could have correctly ended the tenancy early.

I also find the Tenant correctly obtained her compensation under the 2 Month Notice for August 1 to August 20, 2016 period by withholding rent pursuant to Section 51(1.1) of the Act. However, as the Tenant vacated early without obtaining all of her compensation for the entire month of August 2016 through the continuation of withholding rent, I find the Landlord is liable for the Tenant's remaining amount of compensation for August 20 to August 31, 2016 in the amount of \$381.45 $((\$1,075.00 / 31 \text{ days}) \times 11 \text{ days})$. This is because Section 50(3) of the Act states that a tenant's right to compensation is not affected even if the tenant gave notice to end the tenancy early and that a tenant is entitled to the equivalent of one month's compensation under the 2 Month Notice. I find that this relief puts the Tenant in a position where she will now have received compensation equivalent to one month's rent payable by the Landlords under the Act.

Secondly, I turn my mind to the Tenant's claim for the return of her Deposits. The Act contains comprehensive provisions on dealing with a tenant's Deposits. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the Tenant's undisputed evidence that the Landlords were provided with her forwarding address in the August 5, 2016 letter to end the tenancy early, which I determined was deemed to have been received by the Landlords on August 10, 2016. As, I have made a finding that the tenancy ended on August 20, 2016, the Landlords would have had until September 4, 2016 to deal properly with the Tenant's Deposits pursuant to the Act.

There is no evidence before me that the Landlords made an Application within 15 days of the ending of the tenancy or obtained written consent from the Tenant to keep it. Therefore, I find the Landlords failed to comply with Sections 38(1) and 38(4) (a) of the Act.

The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies. The Deposits were held in trust for the Tenant by the Landlords. At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of Deposits or to deductions to be made from them, the landlord must file an Application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that a landlord feels they are entitled to keep the Deposits, based on unproven claims. A landlord may only keep Deposits through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the tenant.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the Deposits. Based on the foregoing, I find the Tenant is now entitled to double the return of her Deposits in the amount of \$2,090.00. As the Tenant has been successful in this matter, I also award the Tenant the filing fee of \$100.00 pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenant is \$2,631.45 (\$2,090.00 + \$381.45 + \$100.00).

The Tenant is issued with a Monetary Order which must be served on the Landlords. The Tenant may then enforce this order in the Small Claims Division of the Provincial Court as an order of that court if the Landlords fail to make payment in accordance with the Tenant's written instructions. The Landlords may also be liable for any enforcement costs. Copies of this order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlords breached the Act by failing to deal properly with the Tenant's Deposits and not paying her full compensation for ending the tenancy with the 2 Month Notice. Therefore, the Landlords are ordered to pay the Tenant \$2,631.45. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 07, 2017

Residential Tenancy Branch

