



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNDC, MNSD, FF
Tenant: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by both landlords and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 49, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided are whether the tenant is entitled to a monetary order for return of the security deposit; for compensation for repairs; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began in June 2014 for a monthly rent of \$2,300.00 due on the 1st of each month with a security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00. The parties agreed that during the tenancy the rent was increased to \$2,400.00 and that the tenancy ended by August 31, 2016.

The parties agree that the landlord verbally advised the tenant in June 2016 that they wanted the tenant to move out of the rental unit so that they could move into it. The parties also agreed that at no time did the landlords give the tenant a written 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenant submitted that on July 4, 2016 he texted the landlord to inform them that he would be moving out of the rental unit no later than September 1, 2016.

The parties agree that the landlords did not request and the tenant did not pay any rent for the month of August 2016 at the time that rent would have been due for that month

or at any time. The landlords submitted that they believed they would just apply the deposits against the rent for the tenant's last month. The tenant submitted that he was entitled to not have to pay rent for the month of August 2016 as compensation for having to move out of the rental unit for the landlords to move.

The tenant submitted he verbally provided his forwarding address to the landlords on August 27, 2016. The landlords testified that they did not receive the tenant's forwarding address until they received his Application for Dispute Resolution. The landlords could not recall the specific date they received the tenant's Application but agreed it was in mid-September 2016.

I note the tenant submitted his Application for Dispute Resolution to the Residential Tenancy Branch on September 16, 2016 and the landlords submitted their Application on September 27, 2016.

The parties also agreed that the tenant is entitled to receive \$441.00 from the landlords for repairs to the garage door of the residential property.

Analysis

I accept the agreement of both parties that the tenant is owed \$441.00 from the landlords for the garage door repairs.

Section 49 of the *Act* allows a landlord to end a tenancy if, among other reasons, the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. A notice to end tenancy under this section must comply with the requirements set out in Section 52 of the *Act*.

Section 52 requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

While the *Act* allows the landlord to end a tenancy so that they might occupy the unit a Notice to End Tenancy is only an actual enforceable notice if it complies with Section 52. Section 52 requires such a notice to be in writing and in the approved form available on the Residential Tenancy Branch website.

Based on the testimony of both parties I find that while both parties were aware of the landlords' intention to end the tenancy and the reasons they intended to do so, at no time did the landlords issue a 2 Month Notice to End Tenancy for Landlord's Use of Property required under Section 49 and 52.

Section 51 of the *Act* states that a tenant who receives a notice to end 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.

Since I have found that landlords never did issue a 2 Month Notice pursuant to Section 49 that complied with the requirements of Section 52; I find the tenant never received such a notice and was not required to end the tenancy. Therefore, I find the tenant is not entitled to any compensation for receiving a 2 Month Notice to End Tenancy under Section 49 allowed pursuant to Section 51.

Despite the landlord's failure to collect rent for the month of August 2016 the obligation to ensure rent is paid in any given month of a tenancy is placed on the tenant. As I have determined the tenant is not entitled to any compensation as allowed under Section 52 or the equivalent of 1 month's rent, I find the tenant is obligated to pay rent for the month of August 2016.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address in writing, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept that the tenant may have verbally told the landlords his forwarding address as per his testimony and that it is possible that the landlords have forgotten that he gave it to them. However, the requirement is for the tenant to provide the landlords with his forwarding address in writing.

As a result I accept the landlords' submission that they received the tenant's forwarding address in writing when they received the tenant's Application sometime between September 16, 2016 and September 27, 2017. If the landlords received the forwarding address on September 16, 2016 then they would have had until October 1, 2017 to file their claim and they did so on September 27, 2016.

As such, I find the landlords have complied with the requirements set forth in Section 38(1) and the tenant is not entitled to double the amount of the security and pet damage deposits, pursuant to Section 38(6).

Based on the above, I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of \$2,500.00 comprised of \$2,400.00 rent owed and the \$100.00 fee paid by the landlords for their Application. I also find the tenant is entitled to \$541.00 comprised of \$441.00 garage door repairs owed and the \$100.00 filing fee paid by the tenant for his Application. Therefore, setting one claim against the other, I find the landlords are entitled to compensation totalling \$1,959.00

I order the landlords may deduct this amount from the security deposit held in the amount of \$2,300.00 in satisfaction of this claim and return the balance of \$341.00 to the tenant.

Conclusion

Based on the above, I grant a monetary order to the tenant in the amount of **\$341.00**. This order must be served on the landlords. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: March 15, 2017

Residential Tenancy Branch