



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to one month's compensation for having received a notice to end tenancy for landlord's use?

Is the Tenant entitled to two month's compensation because the unit was not used for the purpose indicated on the notice to end tenancy for landlord's use?

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to compensation for an overpayment of utilities?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on January 1, 2016. Rent of \$1,800.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$900.00 as a security deposit. On July 29, 2016 the Landlord served the Tenant with a two month

notice to end tenancy for landlord's use (the "Notice"). The effective date of the Notice was September 30, 2016. The reason indicated on the Notice is that the Landlord or a close family member of the Landlord will occupy the unit.

The Tenant states that while they found a unit prior to September 1, 2016 they intended to retain possession of the unit until the end of September 2016. The Tenant states that they moved out of the unit on September 15, 2016 and left the keys under the rug. The Tenant states that it provided its forwarding address to the Landlord on October 13, 2016. The Tenant describes the delivery of the address directly to Landlord RA on or about noon on that day at the Landlord's residence. The Tenant describes the clothing worn by Landlord RA when she took the letter from the Tenant's hands. The Tenant states that shortly after this delivery the Landlord's secretary called them to arrange pick up of the security deposit. The Tenant states that the Landlord refused to provide the security deposit unless the Tenant signed a document in relation to other matters. The Tenant states that it refused to sign the document.

The Landlord RA denies receiving any forwarding address from the Tenant. Landlord JA states that the Tenant left the unit in a mess, did not return the keys and did not tell the Landlord when they were moved out. The Landlord agrees that security deposit has not been returned and the Landlord has not made an application to claim against the security deposit. The Tenant claims return of double the security deposit in the amount of \$1,800.00.

The Tenant states that the Landlord has not provided the Tenant with the equivalent of one month's rent in lieu of the Notice. The Landlord states that they moved out of the unit without notice to the Landlord and did not pay any rent for September 2016. The Tenant claims \$1,800.00.

The Tenant states that the Landlord did not move into the unit and that the unit was sold prior to the Landlord giving the Tenants the Notice. The Tenant provided a copy of a sale advertisement that they took off the internet site on August 11, 2016. The Tenant

points to the Landlord's evidence of a contract for purchase and sale dated July 28, 2016 and showing a possession date of October 1, 2016. The Tenant claims \$3,600.00. The Landlord states initially that he sold the unit to his uncle. The Landlord then states that his cousin moved into the unit in October 2016 and decided to purchase the unit in December 2016. The Landlord states that the unit was up for sale off and on throughout the tenancy.

The Parties agree that there was a lower tenant sharing the utilities with the Tenant and that the Landlord agreed to reimburse the Tenants with 1/3 of the cost of utilities for the lower tenant's utility usage. The Parties agree that each month the Tenants' rent would be reduced in the equivalent amount of the lower tenant's utility costs. The Tenant states that the Landlord failed to pay the last utilities and claims \$185.42. The Tenant provides the bills for the utilities. The Landlord states that the Tenants are not owed any reimbursement for the utilities as they did not pay any rent for September, did not return the keys and kept possession of the unit.

Analysis

Section 38 of the Act provides that within 15 days after the later 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 for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Although Landlord RA denied receiving the Tenant's forwarding address, the Landlord's denial was faintly and hesitantly stated and did not hold a ring of truth. For this reason and given the detailed description of the delivery of the forwarding address I prefer the Tenant's evidence and find that the Landlord did receive the Tenant's forwarding address. Based on the undisputed evidence that the Landlord neither returned the security deposit nor made an application to claim against the security deposit I find that the Landlord must now pay the Tenant double the security deposit plus zero interest in the amount of **\$1,800.00**.

Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use 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. A tenant may withhold the amount authorized from the last month's rent and that amount is deemed to have been paid to the landlord. As the Tenants did not pay any rent for September 2016 and kept possession of the unit until at least September 15, 2016 I find that the Landlord's compensation payable to the Tenant is deemed to have been paid. I dismiss the claim for one month's compensation.

Section 49 of the Act provides that a landlord may end a tenancy for landlord's use where, inter alia, a landlord who is an individual and if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Act defines a "close family member" as in relation to an individual, the individual's parent, spouse or child, or the parent or child of that individual's spouse. Section 51(2) provides that if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Overall the Landlord's evidence was not convincing and I note that the Landlord gave evidence at the hearing that contradicted its own documentary evidence in relation to when the unit was sold to his cousin. Therefore and given that a cousin of the Landlord moved into the unit and purchased the unit, either before or after the Notice was given to the Tenants and given that the cousin is not a close family member as defined by the Act I find that the unit was not used for the purpose stated in the Notice. As a result I find that the Landlord must now pay the Tenant double the rent in the amount of **\$3,600.00.**

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Based on the undisputed evidence that the Tenants were to be reimbursed for the lower tenant's usage of the utilities and as the Landlord did not dispute any of the bills submitted by the Tenant I find that the Tenant has substantiated its claim to unpaid utilities in the amount of **\$185.42**.

As the Tenant's application has met with substantial success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,685.42**

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$5,685.42**. If necessary, this order may be filed in the Small Claims Court and 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: May 12, 2017

Residential Tenancy Branch