



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords did not attend this hearing which lasted approximately 20 minutes. Both tenants attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant, MB (the "tenant") primarily spoke on behalf of both tenants.

The tenant testified that the tenants' application for dispute resolution dated March 3, 2017 was served on each of the landlords by registered mail on March 10, 2017, together with the evidentiary materials. The tenant provided the Canada Post tracking numbers as evidence of service. I find that the landlords were deemed served with the tenants' application package in accordance with sections 88 and 89 of the *Act* on March 15, 2017, five days after mailing.

During the hearing, the tenants made an application requesting to amend the monetary amount of the claim sought. The tenant testified that there were arithmetic errors in calculating the amount claimed. Section 57(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure allow me to amend an application for dispute resolution if the change could be reasonably anticipated. As I find that it could be reasonably anticipated that the

applicant would correct arithmetic errors made in their calculations, I amend the tenants' application to increase the monetary claim from \$5,512.16 to \$7,457.16.

Issue(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to a monetary award for damage and loss?

Should the landlords be ordered to comply with the *Act*, regulations or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The tenants provided undisputed testimony regarding the following facts. This month-to-month tenancy began in August, 2014 and ended on February 4, 2017. The rental unit is the main suite of a detached home. A security deposit of \$950.00 was paid at the start of the tenancy and is still held by the landlords. No condition inspection report was prepared at the start of the tenancy. The monthly rent at the end of the tenancy was \$1,945.00 payable on the first of the month.

The tenants were served with the landlords' 2 Month Notice to End Tenancy dated December 26, 2016 (the "2 Month Notice") on or about that same date. The landlords indicate on the 2 Month Notice that the rental unit will be occupied by the landlord or the landlord's close family member. The 2 Month Notice had an effective date of February 28, 2017.

The tenants gave a written notice to end the tenancy to the landlords on January 19, 2017. The tenants testified that the written notice was served on the landlord by posting on the landlord's door, mailing a copy by post and emailing an electronic version. The tenants said the tenancy will end on February 4, 2017 in the written notice.

The tenant testified that she paid the full monthly rent for January, 2017. The tenant said that she has not paid any rent for the four days in February that they occupied the rental unit. Based on a monthly rent of \$1,945.00 and 28 days in February, the tenant calculates that the daily rent is \$69.46. Therefore, the tenant calculates that the rent for four days of occupancy should be \$277.84. The tenant said they wish to pay the rent by deducting that amount from the monetary award they are seeking.

The tenants moved out of the rental unit on February 4, 2017. The tenants provided the landlord with their forwarding address on February 6, 2017. There was no condition inspection report prepared at the end of the tenancy. The landlords sent the tenants an email on February 15, 2017 stating that they intend to keep the full security deposit and that the tenants owe additional amounts for repairs to the rental unit. The tenants did not consent to have the landlord keep any of the security deposit.

Since the tenancy ended, the tenants have discovered that the rental unit is being advertised for rent. The tenants provided a copy of the online ad, printed on March 15, 2017 and an email conversation with the landlord on February 17, 2017, confirming the rental unit is available, into written evidence. The online ad states that the rental unit is available from February 15th and there is a minimum 1 year lease. The rental price advertised is \$2,900.00. The tenants do not know if the landlord or a close family member ever occupied the rental unit after the tenancy. The tenant testified that the rental building is listed for sale, as at May 4, 2017, the date of the hearing. The tenants do not believe anyone is currently occupying the rental building.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the tenants' undisputed evidence that the tenants provided written notice of the forwarding address on February 6, 2017. I accept the undisputed evidence of the tenants that the landlords failed to return the full security deposit to the tenants within 15 days of February 6, 2017, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlords make an application claiming against the security deposit during that period.

In addition, the tenant testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlords have extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlords have failed to return the tenants' security deposit in full or file an application claiming against the amount within the 15 days of February 6, 2017, provided under section 38(1)(c) of the *Act*. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a \$1,900.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Section 51(1) of the *Act* states that a tenant who receives a 2 Month Notice to end a tenancy for landlord's use of property is entitled to receive the equivalent of one month's rent payable under the tenancy agreement. The section is read in conjunction with section 50 of the *Act* which states:

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property],...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....

...

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

In this case, the effective date of the landlords' notice was February 28, 2017. When the tenants remained in the rental unit after February 1, 2017, the landlords' provision of accommodations for the last scheduled month of this tenancy at no cost was initiated.

However, this did not prevent the tenants from exercising their right provided by section 50(1)(a) to end the tenancy early.

I find that the notice of January 19, 2017 was an effective notice to end the tenancy pursuant to section 50(1)(a) of the Act. Therefore, the tenants are entitled to compensation pursuant to section 51(1) of the Act for the 24 day period from February 5 to February 28, 2017, and can recover a monetary award of \$1,667.16 ($\$1,945 \times 24/28 = \$1,667.16$). The remainder of the tenants' entitlement to compensation pursuant to section 51(1) was comprised of the landlords' omission to charge rent for the first four days of February when the tenants occupied the rental unit.

Section 51(2) of the Act states that if steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date or the rental unit is not used for the stated purpose for at least 6 months the tenants are entitled to a monetary award equivalent to double the monthly rent.

In their 2 Month Notice the landlords' said the reason for the tenancy to end is so that the landlord or the landlord's close family member will occupy the rental unit. I accept the tenants' undisputed evidence that the rental unit was commercially listed for sale and the landlord was seeking new tenants to occupy the rental unit on February 15, 2017. It may be possible that the landlord was seeking tenants to temporarily occupy the rental unit to mitigate loss of rental income. The landlords or the landlords' family members may not have been prepared to immediately occupy the rental unit. However, the requirement of a 1 year lease on the advertisement leads me to conclude that the landlords did not intend to take steps to occupy the rental unit for at least a full year. In addition, the tenants have testified that the rental building is now listed for sale. I find that the actions taken by the landlords, listing the rental unit with a 1 year minimum lease and putting the rental property up for sale, cannot be reconciled with the stated purpose of the 2 Month Notice. Nor is it reasonable to interpret them as temporary measures. I find that, on a balance of probabilities, the tenants have shown that the landlords have not taken steps within a reasonable period to accomplish the stated purpose for ending the tenancy. Therefore, the tenants are entitled to a monetary award of \$3,890.00, double the amount of the monthly rent.

As the tenants were successful in their application they may also recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$7,557.16 under the following terms, which allows the tenants to recover their security deposit, the damage and loss suffered and the filing fee for their application:

Item	Amount
Double Security Deposit	\$1,900.00
1 Month Rent for February, 2017 less 4 days occupancy	\$1,667.16
Double Monthly Rent	\$3,890.00
Filing Fees	\$100.00
Total Monetary Order	\$7,557.16

The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 9, 2017

Residential Tenancy Branch