



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a tenant's application for return of double the security deposit and pet damage deposit and compensation equivalent to two months of rent payable under section 51(2) of the Act, as amended. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit?
2. Is the tenant entitled to compensation under section 51(2) of the Act because the landlord did not use the rental unit for the reason stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*?

Background and Evidence

The one year fixed term tenancy started May 15, 2015 and continued on a month to month basis thereafter. The tenant paid a security deposit of \$787.50 and a pet damage deposit of \$250.00. The tenancy was required to pay rent of \$1,575.00 on the first day of every month. On August 5, 2016 the landlord issued a *2 month Notice to End Tenancy for Landlord's Use of Property* to the tenant with a stated effective date of November 1, 2016. The tenant vacated the rental unit on October 23, 2016 and participated in the move-out inspection that was held on October 30, 2016.

Below, I have summarized the party's respective positions with respect to each of the tenant's claims against the landlord.

Return of double the security deposit and pet damage deposit

The parties participated in a move-out inspection together on October 30, 2016 and a condition inspection report was prepared. The tenant provided her forwarding address to the landlord in writing on that date.

The tenant stated she did not receive a copy of the move-in or move-out inspection report. The landlord was less certain and believes she may have emailed it to the tenant or left it for the tenant to pick up.

The tenant did not give the landlord written authorization to retain any part of the deposits. The landlord did not refund any part of the deposits to the tenant and did not file an Application for Dispute Resolution to claim against the deposits. The landlord stated that she thought her obligation was to put the tenant on notice as to her claims against the deposits. The parties were in agreement that the landlord emailed the landlord on November 15, 2016 whereby the landlord expressed concerns over the condition of the rental unit and estimated costs to rectify the property. The tenant did not respond to the email. The tenant explained that she did not respond because she was not in agreement with compensating the landlord for the issues raised by the landlord. The landlord took the tenant's non-response to mean the issue was resolved.

The landlord stated that she thought her claims for damage would be addressed during this proceeding. The landlord was informed that she may make a claim for compensation by filing an Application for Dispute Resolution but that her time limit for making a claim against the deposits has expired.

Tenant's compensation payable under section 51(2) of the Act

The 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") served upon the tenant indicates the landlord's reason for ending the tenancy is that:

"the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)."

The parties were in agreement that the tenant did receive compensation equivalent to one month of rent when the landlord refunded the October 2016 rent to her at the end of the tenancy.

The tenant submitted that the landlord did not use the rental unit for the stated purpose after the tenancy ended. The tenant pointed to text messages of October 18, 2016 where the landlord informed the tenant she was going to have an open house for prospective tenants on the weekend of October 22 and 23, 2016. The tenant questioned that since the tenancy was supposed to be ending so the landlord could occupy the rental unit. The landlord responded by stating she would be occupying the rental unit once her current residence sold. The tenant also had concerns about an open house being on that weekend since she had movers coming and the rental unit was not in a condition to show. The landlord was of the position that adequate notice had been given so the open house would proceed.

The landlord acknowledged that she did show the rental unit to prospective tenants or "roommates" on October 19, 2016 and again on the weekend of October 22 and 23, 2016 but described them as individual showings and not an "open house".

The landlord explained that when she gave the tenant the 2 Month Notice the landlord's current residence was for sale and it was anticipated that her residence would be selling and the landlord would be moving into the rental unit. However, her residence did not sell and the landlord decided to get "roommates" for two of the bedrooms in the rental unit due to financial reasons and that she or her son would occupy the third bedroom. The landlord stated she offered the tenant a one month extension to moving out but the tenant declined the offer. Starting December 1, 2016 two roommates moved into the rental unit, paying rent of \$700.00 and \$600.00 respectively and the third bedroom was occupied by her and/or her 21 year old son. The tenant questioned whether the landlord's son occupied the rental unit as he goes to school in another country. The landlord stated that her son would use it because he was going back and forth to school.

The landlord testified that her current residence was taken off the sales market at Christmas time in December 2016 but that she re-listed it in the spring and it recently sold. The landlord plans to move into the rental unit starting July 1, 2017.

The tenant provided the following documentary evidence: a copy of the 2 Month notice; and, various text messages exchanged between the parties between the dates of June 22, 2016 and November 1, 2016.

The landlord did not provide any documentary evidence for this proceeding.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to the two components of this claim.

Return of double security deposit and pet damage deposit

As provided in section 38 of the Act, a landlord has 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit and/or pet damage deposit to the tenant, reach written agreement with the tenant to keep some or all of the deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

The parties were in agreement that the landlord was provided the tenant's forwarding address in writing on October 30, 2016 and the tenant did not provide written authorization for the landlord to make any deductions from her deposits. A tenant's silence or non-response is not equivalent to written authorization when a landlord seeks to make deductions from a tenant's deposit. Accordingly, I find the landlord was obligated to either refund the deposits to the tenant or file an Application for Dispute Resolution to claim against them within 15 days of October 30, 2016, or November 14, 2016. Since the landlord did neither I find the landlord is now obligated to pay the tenant double the deposits. Therefore, I grant the tenant's request for return of double the security deposit and pet damage deposit, or \$2,075.00

As the parties were informed during the hearing, the landlord remains at liberty to file her own Application for Dispute Resolution to seek compensation against the tenant.

Tenant's compensation payable under section 51(2) of the Act

Where a tenant receives a *2 Month Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act, the tenant is entitled to compensation pursuant to section 51 of the Act. Section 51 contains two separate provisions for compensation. First of which is compensation payable under section 51(1) for receiving the 2 Month Notice and this compensation is equivalent to one month's rent. Secondly, compensation may be payable to the tenant under section 51(2), in addition to compensation payable under section 51(1), where the landlord does not use the rental unit for the purpose stated on the 2 Month Notice. Compensation under section 51(2) is

intended to dissuade landlords from issuing a 2 Month Notice to end a tenancy for a reason not permitted under the Act or in bad faith.

The tenant has received the compensation payable under section 51(1) and is seeking compensation pursuant to section 51(2) of the Act. Accordingly, the issue for me to determine is whether the tenant is entitled to additional compensation provided under section 51(2) of the Act.

Section 51(2) provides:

(2) In addition to the amount payable under subsection (1), 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.

[my emphasis added]

Section 49 provides for a variety of reasons a landlord may end a tenancy for landlord's use. Accordingly, I find the application of either paragraph (a) or (b) of section 51(2) depends on the reason given for ending the tenant. In this case, the landlord indicated the reason for ending the tenancy was so that she or her spouse or a close family member could occupy the rental unit. So as to dissuade landlords from ending a tenancy for an ulterior motive and occupy the rental unit for a brief period of time before re-renting the unit, I find the application of (b) is most appropriate where the reason for ending the tenancy is that the landlord has indicated the landlord or close family member will occupy the rental unit.

The landlord claims that two individuals she met after posting an advertisement on-line began occupying two of the bedrooms in the rental unit on December 1, 2016 and that her son has occupied the third bedroom. I find the landlord's submission that her son would choose to live with two strangers while he was home from school to be unlikely and unsupported. I also highly doubt the landlord occupied a bedroom with people she met over the internet rather than her own residence. Also of consideration is that the

landlord did not provide a copy of the on-line advertisement, the tenancy agreement with the “roommates” and the landlord did not call the roommates or her son to testify. As of the hearing date the two “roommates” are still occupying the rental unit and the landlord acknowledged that she does not plan to occupy the rental unit until July 1, 2017. Therefore, I reject the landlord’s version of events and I find the tenant’s submission that the landlord, or the landlord’s close family member, did not occupy the rental unit starting within a reasonable amount of time after the tenancy ended.

In light of the above, I find the tenant is entitled to additional compensation from the landlord as provided under section 51(2) of the Act and I grant the tenant’s request for compensation of \$3,150.00

Filing fee and Monetary Order

Given the tenant’s success in this application I further award the tenant recovery of the \$100.00 filing fee paid for this application.

Provided to the tenant is a Monetary Order in the total amount of \$5,325.00 [calculated as \$2,075.00 + \$3,150.00 + \$200.00] to serve upon the landlord and enforce as necessary.

Conclusion

The tenant was successful in this application and has been provided a Monetary Order in the sum of \$5,325.00 to serve and enforce upon the landlord.

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: June 13, 2017

Residential Tenancy Branch