



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC MNSD OLC LRE FF

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord 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 landlord, pursuant to section 72.

While one of the tenants (the tenant) attended the hearing by way of conference call, the landlord did not. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that he had served the landlord with his application for dispute resolution hearing package ("Application") and evidence by way of registered mail on May 13, 2017. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the Application and evidence on May 18, 2017, five days after mailing.

At the beginning of the hearing the tenant indicated that the tenants had moved out on May 31, 2017. As this tenancy has now come to an end, the tenants' non-monetary portion of the application was withdrawn.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to obtain a return of all or a portion of their security deposit pursuant to section 38?

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

Background and Evidence

This month-to-month tenancy began on April 30, 2017, and ended on May 31, 2017 when the tenant moved out. Monthly rent was set at \$1,600.00. The landlord had collected a security deposit in the amount of \$800.00 at the beginning of the tenancy, and continues to hold this deposit.

The tenant testified in this hearing that he was served a 1 Month Notice to End Tenancy ('1 Month Notice') on May 1, 2017 by email. The tenant testified that the reason provided by the landlord was that the landlord wanted to do renovations, and required the suite to be vacant.

The tenant was shocked by this news, and believed that there were other non-disclosed reasons for ending this tenancy. The tenant believed that the landlord was subletting the apartment, and the owner of the unit may not be aware of the situation. The tenant moved out on May 31, 2017, prior to this hearing, and is seeking compensation equivalent to one month's rent for the landlord's failure to properly end this tenancy in accordance with sections 49 and 88 of the *Act*.

The tenant testified that he had provided evidentiary materials to the landlord and the Residential Tenancy Branch for the purposes of this hearing. I note that at the time of the hearing and this decision that no evidentiary documents have been placed in the file.

Analysis

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit. The tenant testified that he did not provide the landlord with his forwarding address in writing.

The tenants had applied for the return of their security deposit, but did not provide sufficient evidence to support that the landlord was provided with their forwarding address in writing, as required by section 38 of the *Act*. Accordingly, I dismiss the tenants' application for the return of his deposit with leave to reapply. The tenants must provide their forwarding address to the

landlord in writing, and the landlord must, within 15 days of the receipt of that address, either return the tenants' security deposit, or make an application for dispute resolution. If the landlord fails to comply with section 38 of the *Act*, the tenants may reapply. Liberty to reapply is not an extension of any applicable limitation period.

Section 51(1) of the *Act* states that "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." In this case, the tenant testified that they had received a 1 Month Notice to End Tenancy pursuant to section 47 of the *Act*, in which case the compensation provisions of section 51(1) of the *Act* do not apply. As the *Act* does not provide any type of similar compensation to tenants receiving a 1 Month Notice, I dismiss the tenants' application for monetary compensation without leave to reapply.

As the filing fee is a discretionary award given to a successful party after a full hearing on its merits, I dismiss the tenants' application to recover the \$100.00 filing fee.

Conclusion

As this tenancy ended on May 31, 2017, the tenants' non-monetary portion of their application is withdrawn.

The tenants' application for the return of their security deposit is dismissed with leave to reapply.

The tenants' application for monetary compensation or loss is dismissed.

The tenants' application for recovery of the filing fee is dismissed.

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 22, 2017

Residential Tenancy Branch