



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$1280. .

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing by registered mail to where the landlord resides on June 15, 2017.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on April 1, 2014. The rent at the time the tenancy ended was \$750 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$350 at the start of the tenancy.

On February 28, 2017 the landlord gave the tenant a 2 month Notice to End Tenancy that set the end of tenancy for May 28, 2017. The Act provides that the Notice must be set for the end of the rental payment period. The Act self corrects and improperly dated Notice. In this case the end of tenancy date is May 31, 2017.

On April 28, 2017 the tenant gave the landlord written notice ending the tenancy on May 8, 2017. The tenant vacated the rental unit on May 7, 2017 and returned the keys at that time. .

The tenant(s) provided the landlord with his/her their forwarding address in writing on April 28, 2017. The security deposit has not been returned. The landlord has not filed an Application for Dispute Resolution and does not have a monetary order against the tenant. The parties have not agreed in writing that the landlord can retain the security deposit.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenant paid a security deposit of \$350 at the start of the tenancy in April 2014. I determined the tenancy ended on May 7, 2017. I further determined the tenant provided the landlord with her forwarding address in writing on April 28, 2017. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$700.

In addition the tenant seeks the sum of \$580.64 being the prorated amount of 24 days for the month of May under section 50 and 51 of the act.

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], 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, and
 - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant'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]*.

Tenant's compensation: section 49 notice

51 (1) 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

Section 51 of the Act provides that where a tenant is given a 2 month Notice to End Tenancy the tenant is entitled to the equivalent of one month rent. This can be applied to the last month's rent or a payment from the landlord. Section 50 provides that a tenant can end the tenancy early on giving 10 days notice. In this case the tenant gave a 10 day Notice that ended the tenancy on May 8, 2017. The tenant has not had the use of the rental unit for the entire month of May and is entitled to a payment from the landlord of the pro rated remaining 24 days in May after she vacated. I determine the tenant is entitled to \$580.64 for this period.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1260.64.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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: August 10, 2017

Residential Tenancy Branch