



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant LT attended the hearing by way of conference call, the landlord did not. I waited until 2:12 p.m. to enable the landlord to participate in this scheduled hearing for 2:00 p.m. 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 she had served the landlord with this application for dispute resolution hearing package ("Application") and evidence by way of Registered Mail on April 9, 2017. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application and evidence on April 14, 2017, five days after mailing. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

Are the tenants entitled to the return of their security deposit?

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

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

Background and Evidence

This 6 month, fixed-term tenancy began on October 1, 2015, and ended on April 1, 2016 when the tenants moved out. The tenants included a copy of the tenancy

agreement in their evidence, which indicated that this tenancy was to end on March 31, 2016, and “at the end of this fixed length of time the tenancy may continue on a month-to month basis or another fixed length of time”. Monthly rent was set at \$950.00. The landlord had collected a security deposit in the amount of \$475.00 at the beginning of the tenancy, and continues to hold this deposit. The tenant LT testified in the hearing that the landlord was possibly provided their forwarded address by text message, but she was unable to confirm as she believes that her boyfriend had done so.

The tenant LT testified that the landlord had notified the tenants by way of an email on January 30, 2016, that this tenancy was to end on March 31, 2016 as the landlord was not renewing the lease. The email stated: “I would sincerely inform that we will not be leasing the unit anymore after the lease-term end on March 31”. The tenants included a copy of this email in their evidence. The tenants moved out on April 1, 2017 as per this email, which the tenants considered to be a 2 Month Notice to End Tenancy for Landlord Use as the landlord indicated he had planned to move into the rental suite. The tenant LT testified that the landlord sold the property, and compensated the tenants only \$500.00.

The tenants are seeking compensation in the amount of double the monthly rent, less the \$500.00 paid to them, as they believe the landlord did not use the property as stated in his notice to them.

Analysis

Landlord may retain deposits if forwarding address not provided

- 39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
 - (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The tenant LT testified in the hearing that she was unable to confirm whether a forwarding address was ever provided to the landlord. In the absence of sufficient evidence to support that a forwarding address was provided to the landlord in writing within one year of the end of this tenancy, I find that the landlord is entitled to keep the deposit, pursuant to Section 39. Accordingly, I dismiss the tenants' application for the

return of their deposit and compensation under section 38 of the *Act*, without leave to reapply.

Section 49 of the *Act* allows for the landlord to issue a Notice to end the tenancy for landlord's use, and states the following:

7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

Although the landlord communicated to the tenants that he required the suite for his own personal use, I find the landlord's email to the tenants did not comply with section 52(e) of the *Act*. The tenants applied for compensation pursuant to section 51 below, which requires that a notice be given under section 49 of the *Act*.

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...

(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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find that the tenants moved out at the end of fixed-term tenancy as requested by the landlord and not as a result of receiving a 2 Month Notice pursuant to Section 49. I find that the notice given to the tenants does not comply with section 52 of the *Act*, and the tenants moved out without applying to dispute this notice. On this basis, I am not allowing the tenants' application for monetary compensation pursuant to section 51 of the *Act* as the tenants agreed to vacate the rental suite and moved out as requested by the landlords in their email, and not on the basis of a Notice given under section 49 of the *Act*.

As the filing fee is normally rewarded to the successful party after a hearing, I dismiss the tenants' application to recover the filing fee.

Conclusion

The tenants' application for the return of their security deposit is dismissed without leave to reapply.

The remainder of the tenants' application 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: August 31, 2017

Residential Tenancy Branch