Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with a tenant's application for a Monetary Order for doubling of the security deposit and compensation payable to tenants where a landlord does not use the rental unit for the purpose stated on a *2 Month Notice to End tenancy for Landlord's Use of Property*, as provided under section 51(2) of the Act. 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.

At the outset of the hearing, I heard that the parties had participated in a dispute resolution proceeding a few days prior, on October 30, 2017, to deal with the Landlord's Application for Dispute Resolution that was filed on May 18, 2017 (file number referenced on the cover page of this decision). The parties provided consistent testimony that during that hearing there was some discussion that would be relevant to the tenants' entitlement to doubling of the security deposit; however, the parties were uncertain as to whether that Arbitrator would make a determination on that matter and the parties had not yet received the decision for that proceeding. I informed the parties that I would continue to hear evidence with respect to the tenants' entitlement to doubling of the security deposit and confirm that such a determination was not made as part of the October 30, 2017 proceeding before issuing this decision.

Upon review of the Residential Tenancy Branch records, including the decision issued by the Arbitrator presiding over the October 30, 2017 hearing, I note that the previous dispute resolution proceeding dealt with a landlord's application for compensation from the tenant but that the landlords had not requested retention of all or part of the security deposit. The full amount of the security deposit was refunded to the tenant by e-transfer in late May 2017. I also note that in the decision the Arbitrator did not record evidence or make any finding pertaining to the tenants entitlement to doubling of the security deposit and provided the landlords with a Monetary Order against the tenant. Accordingly, I shall make the determination as to whether the tenants are entitled to doubling of the security deposit by way of this decision.

On another procedural note, neither party had produced a copy of a written tenancy agreement. The landlords appearing before me purchased the property from the former landlord and the former landlord did not provide the current landlords with a copy of a written tenancy agreement. The landlords expressed reservations that there were two co-tenants under the tenancy agreement based on information provided to them by the former owner in the contract of purchase and sale. The tenant stated that she had only recently located her copy of the tenancy agreement and that both co-tenants are named as tenants on the tenancy agreement. The landlords chose not to pursue this issue further after I explained that co-tenants are jointly and severally liable and entitled to benefits under the Act and that the landlords' obligation to pay the tenants compensation, if any, would not be any different if there was one tenant or two co-tenants. As I explained to the parties, should a Monetary Order be issued against the landlords with this decision, the landlords are at liberty to send payment to one tenant in satisfaction of the Monetary Order and it will be upon the tenant in receipt of the funds to distribute the funds among the co-tenants.

Issue(s) to be Decided

1. Are the tenants entitled to doubling of the security deposit, as provided under section 38(6) of the Act?
2. Are the tenants entitled to additional compensation because the landlords did not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*, as provided under section 51(2) of the Act?

Background and Evidence

The tenancy started in December 2007 or 2008 with the former landlord. At the end of the tenancy the rent was $2,096.00 payable on the first day of every month. The tenancy came to an end pursuant to a *2 Month Notice to End Tenancy for Landlord's Use of Property* with an effective date of April 30, 2017.

The former landlord collected a security deposit of $950.00 which was transferred to the current landlords with the purchase of the residential property. A move-in inspection report was not prepared by the former owner. The landlord did not invite the tenant(s) to participate in a move-out inspection and a move-out inspection report was not prepared.

Claim for double security deposit

The tenant testified that she gave a forwarding address to the landlord on a piece of paper on April 28, 2017 or April 29, 2017. The landlord acknowledged receiving the letter in the mailbox on April 29, 2017. The letter included the tenant's new physical address and a post office box number.

On May 10, 2017 the tenant sent the landlord an email to the landlord to inform the landlords that the post office box number she had provided on April 29, 2017 was incorrect and the tenant provided the correct post-office box number. During the hearing, the landlord acknowledged receiving the email after May 15, 2017.

On May 10, 2017 the tenant mailed a letter, via regular mail, to the landlord to provide the landlords with the correct post office box number. The landlord acknowledged receiving the letter on May 15, 2017.

Late in the day of May 28, 2017 the landlord sent an e-transfer to the tenant for a refund of the security deposit in the full amount, plus interest, in the sum of $978.71. The tenant received the email for the e-transfer shortly after midnight on May 29, 2017.

The tenant is of the poso9tion the landlord must pay the tenants double the security deposit because the landlords did not refund the security deposit within 15 days of receiving the corrected post office box number on May 10, 2017.

The landlord was of the position that the landlord did what was required in filing an Application for Dispute Resolution on May 18, 2017 and refunding the security deposit on May 28, 2017. The landlord pointed out that the corrected post-office box number was not received until May 15, 2017.

The landlord was of the position that in filing the landlord's Application for Dispute Resolution on May 18, 2017 the landlord was within the time limits for filing a claim against a security deposit based on the deadline calculator on the Residential Tenancy Branch website. The landlord also explained that the landlord's application was not filed sooner than May 18, 2017 because the landlord had noticed damages and junk left at the property and had been in communication with the tenant in an effort to resolve these issues.

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

The *2 month Notice to End Tenancy for landlord's Use of Property* ("2 Month Notice") that brought the tenancy to an end provides the following reason for ending the tenancy: "the rental unit will be occupied by the landlord or the landlord's close family member…"

Both parties provided consistent submissions that the residential property has four floors and that during the tenancy, the landlords occupied the two uppermost floors and the rental unit consisted of the main floor and a basement level accessed by an interior staircase.

After the tenancy ended the landlords reconfigured a wall or walls at the entrance of the units so that the main floor was joined with and accessed by the two upper floors by an interior staircase and the basement level was separated from the main floor, creating a separate basement suite created. The landlords re-rented the basement suite after the tenancy ended after the reconfiguration was made and have been using the main floor for their own use, along with the two upper floors.

The landlord explained that their family was growing with another child and they needed more space for their family than that provided by the two upper floors only. The landlords and their close family members began using the main floor area shortly after the tenancy ended and continue to do so every day for their ordinary living actives.

The tenant did not dispute that the landlords are using the main floor of the house and suggested that the tenants are entitled to compensation since the landlords are not using the entire rental unit for their own use, namely the basement level which was re-rented.

Analysis

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

Double security deposit

As provided in section 38(1) of the Act, a landlord has 15 days, from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, to return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security 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 under section 38(6) of the Act.

In this case, the tenancy ended on April 30, 2017 and the tenant had not provided the landlord with written authorization to make deductions from or retain the security deposit. Accordingly, I find the critical issue to determine is the date the tenant provided a forwarding address to the landlord in writing.

The parties provided consistent evidence that the landlord received a forwarding address in writing from the tenant on April 29, 2017; however, this document contained an incorrect post office box number. The landlords received a corrected post office box number in writing on May 15, 2017 by way of a mailed letter, as acknowledged by the landlord. I did not consider the tenant's submission that the landlords received the corrected forwarding address on May 10, 2017 since this was an email communication only and the date of receipt of the email was not proven by the tenant and email communication is not one of the permissible ways to serve a document. Therefore, I determine that May 15, 2017 was the date the landlord received a corrected post office box number. The landlords made an Application for Dispute Resolution on May 18, 2017 and refunded the security deposit, in full, on May 29, 2017 based on the tenant's evidence (a copy of the email she received with the e-transfer) and the landlord's written submissions.

If the landlords are considered to be in receipt of a written forwarding address on April 29, 2017 and the tenancy ended April 30, 2017 the landlords would have until May 15, 2017 to refund the security deposit or make a claim against it and the landlords failed to do so. If the landlords are considered to be in receipt of a written forwarding address on May 15, 2017 then the landlords refunded the security deposit within time. Thus, I must determine the date the landlords are considered in receipt of a written forwarding address.

The landlord submitted that based on the deadline calculator on the Residential Tenancy Branch website, the landlords met their time deadline; however, the calculator determines deadlines based on the dates a person enters into the calculator. The date the landlord entered into the calculator is unknown and as explained above, if the landlord entered May 15, 2017 the calculator would have indicated the landlords were within time. The crux of this dispute is to determine the date the landlords received a forwarding address from the tenant, in writing.

The Landlord's Application for Dispute Resolution was filed on May 18, 2017 provides the tenants correct post office box number so it is clear the landlord waited until after receiving the letter of May 18, 2017. However, up until May 15, 2017 the landlord had no reason to question the address provided on April 29, 2017 and it is apparent that no action was taken by the landlord to either file or refund the deposit by May 15, 2017. Also of consideration is that the landlord did not rely upon the mailing address for refunding the security deposit as this was done electronically.

In light of the above, I find that having received a written forwarding address from the tenant on April 29, 2017 the landlords should have filed the landlord's Application for Dispute Resolution on or before May 15, 2017 or refunded the security deposit to the tenant on or before May 15, 2017. Since the landlords did not, I find the landlords must pay the tenants double the security deposit. Therefore, I grant the tenant's request for doubling of the security deposit.

In calculating the tenants' award, I take into account that the landlords paid the tenant $978.71 already. I also note that the accrued interest on the security deposit is nil. Accordingly, the tenants' award is calculated as follows:

Double security deposit ($950.00 x 2)	$1,900.00
Less: amount already received by tenant	(978.71)
Award to tenants	$ 921.29

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

When a landlord ends the tenancy for landlord's use of property the landlord is bound to use the rental unit for the purpose stated on the 2 Month Notice. Otherwise, the landlord must pay the tenant additional compensation equivalent to two month's rent, as provided under section 51(2) of the Act. This compensation is payable in addition to the compensation paid or payable under section 51(1) which the tenant has already received from the landlord.

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]

To determine whether the tenant is entitled to compensation under section 51(2) I must be satisfied that the landlord, or the landlord's close family member, did not occupy the rental unit for at least six months after the tenancy ended.

This case is somewhat unique in that the area of the rental unit that was rented to the tenants under the tenancy agreement was split and reconfigured after the tenancy ended by way of altering the configuration of a wall or walls in the entry area. I heard unopposed submissions that a basement suite was separated from the main floor after the tenancy ended and the basement suite was re-rented. Since the landlord must occupy the rental unit after the tenancy ended to avoid paying the tenants additional compensation, I find it appropriate to determine what is meant by "rental unit".

Under section 1 of the Act, tenancy agreement "means an agreement, whether written or oral, express or implied, between a landlord and tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit". Under section1 of the Act, rental unit "means living accommodation rented or intended to be rented to a tenant".

From what I heard from the parties, it was apparent to me that the parties had a single tenancy agreement requiring the tenant(s) to pay a single amount of rent for the entire rental unit, which consisted of the main floor and the basement level. In other words, the parties did not have two separate tenancy agreements: one for each floor of the property. Accordingly, I find that in order for the landlords to obtain occupation of the main floor of the house, the landlords would have to end the tenancy since the landlords

cannot take over a part of the rental unit and leave the tenancy intact. To do so would be a breach of contract and the Act. In this case, one Notice to End Tenancy brought the tenancy to an end, which I find is consistent with my finding that one tenancy agreement existed for the two floors rented by the tenant and I find that it was appropriate to end the tenancy so that the landlord could obtain occupation of the main floor.

With respect to use of the main part of the house, the landlords submitted undisputed evidence that they and their children use the main floor for their own use, shortly after the tenancy ended and they continue to do so. Therefore, I accept that the landlords have occupied the main floor of the house for at least six months after the tenancy ended. Since the main floor was a significant portion of the rental unit, I find the landlords occupied the rental unit after the tenancy ended for at least six months.

While I was presented undisputed evidence that the landlords re-rented the basement suite, I find the occupation of the basement suite is not overly relevant considering the landlords have occupied a significant portion of what was “the rental unit” for at least six months after the tenancy ended.

In light of the above, I find the tenants are not entitled to further compensation under section 51(2) of the Act and I dismiss this portion of the tenants’ claim.

Conclusion

The tenants were partially successful in their application and have been provided a Monetary Order in the amount of $921.29 to serve and enforce upon the landlords.

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: November 21, 2017

Residential Tenancy Branch