



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC

Introduction

This hearing was convened in response to an application from the tenants pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- a monetary order pursuant to section 67 of the *Act*;
- a return of the security deposit pursuant section 38 of the *Act*; and
- other unspecified relief.

Both the landlord and the tenants appeared at the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants were represented at the hearing by tenant C.P.(the “tenant”), while translation for the landlord was provided by agent, S.G.

Issue(s) to be Decided

Are the tenants entitled to a return of the security deposit? If so, should it be doubled?

Are the tenants entitled to a monetary award?

Background and Evidence

Undisputed testimony provided to the hearing by the tenant explained that this tenancy began in July 2016 and ended on November 30, 2016. Rent was \$1,000.00 per month, and a security deposit of \$500.00 paid at the outset of the tenancy, continues to be held by the landlord.

The tenant explained that a 2 Month Notice to End Tenancy for Landlord’s Use of Property was issued to tenants in September 2016. The reason cited by the 2 Month Notice was, “The rental unit will be occupied by the landlord or the landlord’s close family member.”

Both parties agree that following the conclusion of the tenancy, the landlord returned \$1,000.00 to the tenants, as they had paid rent in its entirety for the final month of occupation.

Furthermore, both parties agree that on November 30, 2016 the tenants provided the landlord with their forwarding address. During the hearing, the tenant said that they had given the landlord oral permission to withhold \$250.00 as some damage had occurred in the rental unit. The tenant said this was not done, and that the landlord withheld the entire amount of the security deposit. The landlord disagreed with the tenants' version of events and said that \$250.00 was returned to the tenants, when the \$1,000.00 was returned to the tenants.

The tenant said they are also seeking compensation because the rental unit was not used for the purpose stated on the 2 Month Notice. At the hearing, the landlord acknowledged that his mother had fallen ill, and had been unable to travel from India as had originally been intended. He said that because of this unexpected change in circumstance, he re-rented the rental unit to a new tenant.

Analysis

Section 51(1) of the *Act* states, "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." Testimony was provided to the hearing by the tenant that landlord fulfilled this requirement of the *Act* and provided the tenants with \$1,000.00 in satisfaction for a return of the rent they paid in November 2016.

The second portion of section 51 of the *Act* states, "In addition to the amount payable under subsection (1) [above], if 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 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, 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 am satisfied based on the evidence before me and the testimony provided by the tenant that the landlord did not use the rental unit for the purpose stated in the 2 Month Notice to End Tenancy. During the hearing the landlord acknowledged that the suite

was not occupied by a family as had been originally planned. While outside factors may have contributed to the landlord's mother no longer travelling to occupy the rental unit, the fact remains that the tenants vacated the suite because of the issuance of a 2 Month Notice, and the landlord therefore had an obligation to use the rental suite for the purposes stated on the 2 Month Notice for at least 6 months.

Pursuant to section 51 of the *Act*, I find that the tenants are entitled to a monetary order in reflection to the landlord's violation of the *Act*.

The second portion of the tenant's application concerns a return of the security deposit.

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon **receipt of the tenant's forwarding address in writing**. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. **However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages** or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address in November 30, 2016, or following the conclusion of the tenancy on the same day. If the landlord had concerns arising from the damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit. It is inconsequential if damages exist, if the landlord does not take action to address these matters through the dispute resolution process. A landlord cannot decide to simply keep the security deposit as recourse for loss.

The parties disagree on whether \$250.00 was returned to the tenants following the conclusion of the tenancy, but both parties acknowledged that oral permission was given by the tenants allowing the landlord to retain \$250.00 from their security deposit.

While the landlord acknowledged that he kept at least \$250.00 of security deposit because of damage to the suite, no evidence was produced at the hearing that the landlord received the tenant's written authorization to retain all, or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section

38(4)(a) of the *Act*, nor did the landlord receive an order from an Arbitrator enabling her to do so.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenant is therefore entitled to a monetary award in the amount of \$750.00, representing a doubling of the tenant's security deposit that has not been returned, less the \$250.00 that he agreed to allow the landlord to retain.

Conclusion

I issue a Monetary Order in the tenants favour in the amount of \$2,700.00 against the landlord. The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Item	<u>Amount</u>
Penalty for 2 month notice (2 x \$1,000.00)	\$2,000.00
Return of Security Deposit with Penalty (2 x \$500.00) less the \$250.00 for damage	750.00
Total =	\$2,750.00

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: December 18, 2017

Residential Tenancy Branch