



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

\

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

The tenant applies for a monetary award for the remainder of a security deposit, for the equivalent of one month's rent as the result of receiving a two month Notice to End Tenancy for landlord use of property, and for the equivalent of one month's rent claiming the landlord has failed to occupy the rental unit for at least six months after the effective date of the Notice.

The *Residential Tenancy Act* (the "Act") provides that a tenant who receives a two month Notice is entitled to compensation of one month's rent and may offset that compensation by foregoing the rent for the final month (s.51(1)). The *Act* also provides that if a landlord ends a tenancy by giving a two month Notice for landlord use of property, he is also liable to pay a tenant the equivalent of one month's rent if he fails to occupy the premises for six months (s.51(2)).

At the start of this hearing the tenant admitted that she had no basis to doubt that the landlord moved in and continues to live there. That portion of the application was dismissed during the preliminary part of the hearing.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the tenant entitled to the equivalent of one month's rent under s.51 of the *Act*? Is she entitled to recover any part of her security deposit?

Background and Evidence

Most of the salient facts are not in dispute. The rental unit is a one bedroom basement suite. The tenancy started in June or July 2016 pursuant to a six month fixed term tenancy agreement at a monthly rent of \$800.00. The tenant paid a \$400.00 security deposit.

At the end of the fixed term the parties signed an agreement for another fixed term ending July 1, 2017 at the same rent. The agreement provided that at the end of the fixed term the tenancy would, by default, continue on.

Both parties contemplated a continuing relationship and were happy with each other as landlord and tenant.

The landlord's circumstances changed. At the end of April 2017 he issued a two month Notice to End Tenancy so that he could move into the basement suite on the effective date of the Notice: July 1 2017.

The tenant found a place to move to before July 1. On May 13, she gave the landlord a written notice purporting to end her tenancy on May 31. The written notice contained her forwarding address.

The tenant moved out at the end of May. She did not pay the rent for June.

The landlord returned \$300.00 of the tenant's \$400.00 security deposit. He kept \$100.00, explaining to the tenant that she failed to take garbage with her when she vacated. He did not have the tenant's consent, written or otherwise, to keep the \$100.00.

Analysis

Section 51, Tenant Compensation

Section 51(1) and (1.1) provide:

(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.

Had the tenant stayed until the July 1 effective date of the Notice, this compensation would have been the June rent, which she did not pay. However, the tenant argues that since she ended the tenancy at the end of May and paid May's rent she should be entitled to the compensation provide for in ss.(1); a return of the last month's rent.

The tenant relies on the proposition that she could end her tenancy earlier than July 1 by giving the written notice she did.

Section 50(1) of the *Act* permits ten day Notices from a tenant in circumstances where a landlord has issued a two month Notice to End Tenancy. It provides:

(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.

This provision applies to "periodic" tenancies. The tenancy in question was not a periodic tenancy; it was a fixed term tenancy. The *Act* treats them separately, defining "period tenancy" as:

"periodic tenancy" means

(a) a tenancy on a weekly, monthly or other periodic basis under a tenancy agreement that continues until it is ended in accordance with this Act, and

(b) in relation to a fixed term tenancy agreement that does not provide that the tenant will vacate the rental unit at the end of the fixed term, a tenancy that arises under section 44

(3) [*how a tenancy ends*];

and “fixed term tenancy” as:

“fixed term tenancy” means a tenancy under a tenancy agreement that specifies the date on which the tenancy ends;

The *Act* does not permit a fixed term tenant to give a ten day Notice to shorten the notice period in a two month Notice.

The tenant was responsible for June rent. By not paying it she has received the compensation provided for in s.51. Her application to recover it must be dismissed.

Security Deposit

Section 38 of the *Act* provides that once a tenancy has ended and once the tenant has provided her landlord with a forwarding address in writing, the landlord must, within the fifteen days thereafter, either repay the deposit or make an application for dispute resolution to keep it.

There are exceptions but none apply here.

If a landlord fails to comply he is penalized by having to pay the tenant an amount equivalent to double the deposit remaining at the end of the tenancy. The purpose of the rule is to prevent a landlord from unilaterally keeping a deposit at the end of the tenancy. In this case the tenancy had ended and the landlord had the tenant's forwarding address in writing by July 1, 2017. He failed to either repay the deposit money or make an application. He has incurred the doubling penalty.

The tenant did not claim the doubling penalty in her application. Residential Tenancy Policy Guideline 17, “Security Deposit and Set off [*sic*]” states that an arbitrator is to impose the doubling penalty even when not claimed, unless at the hearing the tenant declines it. The question was put to the tenant at this hearing and she requested the doubling.

The amount remaining as deposit money at the end of the tenancy was \$400.00. That amount is doubled to \$800.00, less the \$100.00 amount actually paid to the tenant.

Conclusion

The tenant is entitled to a monetary award of \$700.00 plus recovery of the \$100.00 filing fee for this application. She will have a monetary order against the landlord in the amount of \$800.00.

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: January 09, 2018

Residential Tenancy Branch