



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of double the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord’s compliance - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on September 4, 2017 in accordance with Section 89 of the Act. Postal evidence indicates that the Landlord collected the mail. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials on September 9, 2017. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The tenancy of an upper suite in a house started on October 1, 2016 and ended on July 31, 2017. The Landlord lives in the lower suite of the house. Rent of \$1,700.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$850.00 as a

security deposit and \$425.00 as a pet deposit. No mutual move-in or move-out inspection was offered by the Landlord. On July 1, 2017 the Landlord served the Tenants with a two month notice to end tenancy for landlord's use (the "Notice"). The reason set out on the Notice is that the landlord is a family corporation and a person owning voting share in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. On July 20, 2017 the Tenants gave notice to end the tenancy for July 31, 2017. Full rent had been paid for July 2017.

The Tenants provided their forwarding address to the Landlord on July 20, 2017 with their notice to end tenancy. The Tenants state that on December 11, 2017 the Landlord returned \$1,151.00 of the combined security and pet deposit to the Tenants retaining the remaining \$124.00 without the Tenants' written authorization. The Tenants claim the return of double the combined security and pet deposit. The Landlord never paid the Tenants the compensation for having ended the tenancy with the Notice and the Tenants claim \$1,700.00.

On the move out day the Landlord informed the Tenants that the unit would be advertised for rent. The Tenants provide an audio recording of the Landlord and copies of online advertisements of the rental unit. The Tenants claim compensation of the equivalent of two month's rent or \$3,400.00 for the failure of the Landlord to use the unit as stated in the Notice.

On July 20, 2017 the Landlord became agitated when the Tenant delivered their notice to end the tenancy. The Landlord ripped up the papers being handed to the Landlord and also reached into the Tenant's pockets to tear up other papers. On July 30, 2017 at 12:30 a.m. the Landlord turned his music up loud and yelled at the Tenants. The police were called and the music was turned down. The next morning at 6:30 a.m. the Landlord again turned the music up loud. This was the Tenant's move out day. The Tenants argue that this is harassment and claim \$500.00. The Tenants claim their moving costs due to the Landlord ending the tenancy on a false basis.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the

security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence of the provision of the forwarding address, no evidence that the Landlord made an application to claim against the security deposit and the undisputed evidence of Landlord's failure to return the full security and pet deposit to the Tenants I find that the Tenants are entitled to return of double the combined security and pet deposit plus zero interest of **\$2,250.00**. Deducting the returned amount of **\$1,151.00** leaves **\$1,099.00** owed to the Tenants.

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy for 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. Based on the undisputed evidence of the service of the Notice and that the Landlord failed to pay the Tenants the required amount I find that the Tenants are entitled to the compensation of **\$1,700.00**.

Section 51(2) of the Act provides that if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy for landlord's use 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. Based on the undisputed evidence that the Landlord rented the unit out to the public after the end of the tenancy I find that the Tenants have substantiated that nothing was done by the Landlord to use the unit as stated in the Notice. The Tenants are therefore entitled to **\$3,400.00**.

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". As there is only evidence of a couple of incidents that occurred practically at move-out I find that the Tenants have not substantiated that the Landlord harassed the Tenant and I therefore dismiss this claim for compensation.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. The remedy under the Act for a baseless notice to end tenancy is to dispute the notice. The Tenants have already been compensated for the Landlord not using the unit as stated in the Notice. There is no evidence that the Landlord caused the Tenant to move out of the unit by not complying with the Act, regulation or tenancy agreement. For these reasons I find that the Tenants have not substantiated their claim for moving costs and I dismiss this claim.

As the Tenants have been primarily successful with its application I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$6,299.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$6,299.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 27, 2018

Residential Tenancy Branch