



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, MNDC, MNSD, MND, OLC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord filed an Application requesting a monetary order for damage to the rental property, and to keep the security deposit in partial satisfaction of her claim.

The Tenant filed an application for more time to cancel a notice to end tenancy; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement; for the Landlord to comply with the *Act*; for the return of the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. Both parties appeared at the hearing and provided affirmed testimony. The hearing process was explained and the parties were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. The Landlord confirmed that she received a copy of the Tenant’s documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing the Tenant testified that she never received the Landlord's documentary evidence on time and did not receive the same documents that I have before me. The Tenant testified that she received a data stick containing documents and photographs the day before the hearing.

The Landlord provided a monetary order worksheet indicating that she is seeking compensation for repairs and cleaning; however, the worksheet is not sufficiently detailed to provide the specific items for which she is seeking compensation.

The Residential Tenancy Branch Rules of Procedure require that an applicant for dispute resolution provide their documentary evidence to a respondent at least 14 days prior to the hearing. The applicant must also provide the Residential Tenancy Branch the same evidence that was provided to the respondent. A fundamental principle of natural justice is that a party has the right to receive full disclosure of the evidence being considered and must have an opportunity to consider the evidence and respond.

Section 59 of the *Act* requires that an application for dispute resolution include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The director may refuse to accept an application for dispute resolution if full particulars of the dispute are not provided.

I find that the Landlord failed to provide the full particulars of her claim and failed to properly serve the Tenant with a copy of all her documentary evidence within 14 days of the hearing. The Tenant has not had an opportunity to consider all of the Landlord's evidence. For these reasons, the Landlord's application is dismissed with leave to reapply.

Issues to be Decided

- Is the Tenant entitled to compensation for damage or loss under the Act, Regulation, or tenancy agreement?
- Is the Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began in May 2013, as a one year fixed term tenancy that continued thereafter as a month to month tenancy. Rent in the amount of \$1,300.00 was due on the first day of each month. The Tenant paid the Landlord a security deposit of \$650.00.

The Tenant testified that the Landlord issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated June 1, 2017, ("the 2 Month Notice"). The Tenant accepted the 2 Month Notice and moved out of the rental unit on July 27, 2017.

The reason indicated within the 2 Month Notice for ending the tenancy is:

The Landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

Tenants' Application

The Tenant is seeking compensation from the Landlord in the amount of \$2,600.00 because the Landlord did not issue the 2 Month Notice in good faith and immediately re-rented the unit to somebody else. The Tenant is also seeking the return of double the amount of the security deposit for the Landlord's failure to return the security deposit in accordance with the legislation.

The Tenant testified that prior to moving out she met with the Landlord who offered that the Tenant could stay living in the rental unit if she agreed to pay a higher amount of rent. The Tenant testified that she declined the offer because she could not afford it.

The Tenant testified that the Landlord entered into a new tenancy agreement on July 27, 2017, with Mr. SA. The Tenant testified that Mr. SA informed her that he had a rental agreement and was living there and doing work for the Landlord. The Tenant provided a signed letter dated September 10, 2017, from Mr. SA that indicates he moved in to the rental unit on July 29, 2017, on a verbal contract to pay \$500.00 per month rent. The letter indicates that the Mr. SA could work off a portion of the rent by doing chores on the property. The Letter indicates that no repairs or renovations had been on the home as of September 10, 2017, the date of his letter.

The Tenant testified that she provided the Landlord with her forwarding address in writing on July 25, 2017. The Tenant testified that provided her address to the Landlord via mail. The Tenant testified that there was no written agreement that the Landlord could retain any amount of the security deposit. The Tenant submitted that the Landlord has failed to return her deposit or make a claim to keep it within 15 days of receiving her forwarding address.

In response, the Landlord testified that she did not return the Tenant's deposit because the Tenant owes her money for the labour and cost to dispose of garbage. The Landlord testified that the Tenant gave her a forwarding address via mail on August 30, 2017. The Landlord testified that she met with the Tenant on August 25, 2017, and made a verbal agreement with her that the Landlord could keep the security deposit. The Landlord testified that the agreement is not in writing.

The Landlord testified that she agreed for Mr. SA to move into the rental unit at the beginning of August 2017, in exchange for working on the property. She testified that he was not qualified to do the work so he left on August 31, 2017.

In response, the Tenant testified that the Landlord's testimony that they met on August 25, 2017 is false. She testified that they met on July 25, 2017, and the Landlord offered that she could

stay in the unit if she paid a higher rent. The Tenant testified there was no verbal agreement that the Landlord could keep the security deposit.

Analysis

Section 51 (1) of the Act states that 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.

Section 51 (2) of the Act states:

*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.*

Section 38 (1) of the Act states 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 any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

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.

Based on all of the above, the evidence and testimony of the parties, and on a balance of probabilities, I find as follows:

Compensation for Breach of Section 49 of the Act

I find that the Landlord ended the tenancy of the Tenant because she indicated that she had all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

I find that at the end of July 2017, while the Tenant was moving out, the Landlord entered into a tenancy agreement for Mr. SA to live in the rental unit in exchange for money and or work. I find that the renovations did not begin until sometime after September 10, 2017. I find that the Landlord did not issue the 2 Month Notice in good faith because she re-rented the unit to a new Tenant. I find that since the Landlord re-rented the unit, the renovations to the unit did not

require the rental unit to be vacant. I find that the Landlord did not end the tenancy for the stated purpose within the Notice. I find that Pursuant to section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of double the monthly rent payable under the tenancy agreement.

I find that the Landlord owes the Tenant \$2,600.00.

Security Deposit

I find that the Tenant provided her forwarding address in writing to the Landlord on July 25, 2017. I find that the Landlord's testimony on this issue makes no sense. If the parties agreed verbally that the Landlord could keep the security deposit on August 25, 2017; as alleged by the Landlord, why the Tenant would then provide her forwarding address to the Landlord on August 30, 2017. I find that there was no verbal agreement.

Regardless of whether the Landlord received the Tenant's forwarding address on July 25, 2017, or August 25, 2017, the Landlord did not make an application to keep the security deposit until November 17, 2017.

The Landlord did not apply for dispute resolution within 15 days of receiving the Tenant's forwarding address.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit. I order the Landlord to pay the Tenant the amount of \$1,300.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$4,000.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord rented the unit to a new Tenant after issuing a 2 Month Notice To End Tenancy For Landlord's Use Of Property stating that vacant occupation was required for renovations. I find that Pursuant to section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of double the monthly rent payable under the tenancy agreement.

The Landlord breached section 38 of the Act by failing to return or claim against the security deposit within 15 days of receiving the Tenant's forwarding address. The Landlord must pay the Tenant double the amount of the security deposit.

The Tenant is awarded the cost of the \$100.00 filing fee.

I grant the Tenant a monetary order in the amount of \$4,000.00. This monetary order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) 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 19, 2018

Residential Tenancy Branch