



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, MNSD, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order disputing a 2 month Notice to End Tenancy dated April 27, 2018 and setting the end of tenancy for June 30, 2018.
- b. A monetary order in the sum of \$1300 for double the security deposit.
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The tenant stated she filed an Amendment to her Application to her Dispute Resolution on May 16, 2018 seeking a monetary order for the equivalent of two months rent. The landlord stated she was never served with that Amendment. I was not able to find the Amendment in the materials filed by the Tenant. I determined the tenant failed to prove she served this Amendment. However, the landlord agreed that the tenant is entitled to the equivalent of one month rent under section 51(1) of the Act and consented to adding this to the tenant's monetary claim.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on May 16, 2018. I find that the Amendment seeking an order for double the security deposit was sufficiently served on the landlord on June 18, 2018. Prior to the hearing the Tenant amended her Application for Dispute Resolution to provide that she was no longer seeking an order to cancel the 2 month Notice to End Tenancy. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on February 23, 2017. The rent was \$1300 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$650 prior to the start of the tenancy.

At the end of April 2018 the landlord served a 2 month Notice to End Tenancy on the Tenant setting the end of tenancy for June 30, 2018.

The Tenant paid the rent for May 2018. On May 16, 2018 the tenant gave the landlord written notice that she would be vacating the rental unit at the end of May.

The tenancy ended on May 31, 2018. .

The tenant(s) testified she provided the landlord with her forwarding address in writing on May 31, 2018 at the time the Condition Inspection was completed.

The landlord attempted to give the Tenant a cheque in the sum of \$1950 on June 14, 2018 (which included \$1300 for the equivalent of one month rent and \$650 for the security deposit) but the tenant refused to accept the tender.

Analysis:

Section 51 of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

51 (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.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

The landlord agreed the Tenant was entitled to the equivalent of one month rent under section 51(1) of the Act as she was served with a 2 month Notice to End Tenancy. I do not accept the submission of the Tenant that she is entitled to a further one month free rent on the basis that she left prior to the end of tenancy date on June 30, 2018. I determined the tenant was entitled to one month free rent and she could stay in the rental unit rent free for her last month or the landlord was obligated to pay to the Tenant the equivalent of one month rent after she vacated. The Tenant paid the rent for May and vacated at the end of May. As a result I determined the landlord is obligated to refund the equivalent of one month free rent and the tenant is entitled to \$1300 for this claim.

In addition, the Tenant sought an order for the doubling of the security deposit.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

I determined the tenant failed to prove that she is entitled to the doubling of the security deposit. The landlord tendered \$650 (included in the \$1950 cheque) for the security deposit within 15 days of the end of the tenancy. The tenant refused this tender. While the security deposit is still owing to the Tenant I determined the tenant is not entitled to claim the doubling of the security deposit as the landlord's tendered the full deposit within 15 days of the end of the tenancy.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1950. I dismissed the claim for the cost of the filing fee as this sum was tendered within 15 days of the end of the tenancy.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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: July 10, 2018

Residential Tenancy Branch