



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary award for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution dated November 20, 2017 and evidence. Based on the undisputed evidence I find that the landlord was served in accordance with sections 88 and 89 of the *Act*.

While the landlord made reference to documentary evidence they claimed was served on the tenant and submitted to the Residential Tenancy Branch the tenant testified that they had not received any materials. There are no records that the landlord submitted written evidence to the Branch. The landlord was unable to provide a Canada Post tracking number for the evidence package they claimed was served. As advised to the landlord at the hearing I am unable to consider documentary evidence that was not received by the other party or the Branch. The landlord was permitted to provide evidence through oral testimony.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee for their application from the landlord?

Background and Evidence

The parties agreed on the following evidence. This periodic tenancy ended on June 30, 2017 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated April 10, 2017 (the "2 Month Notice"). Prior to ending the monthly rent was \$1,500.00 payable on the first of each month. A security deposit of \$850.00 was paid at the start of the tenancy.

The 2 Month Notice provides that it is being issued as, all of the conditions for sale of the rental unit have been satisfied and the purchaser has requested that the notice be issued as they or a close family member intend to occupy the rental unit. The respondent is the purchaser of the rental property. The 2 Month Notice was issued by the previous property owner.

The tenant testified that they vacated the rental unit on June 30, 2017. The tenant provided their forwarding address in writing to the landlord on June 26, 2017 by email. The full security deposit for this property of \$850.00 was returned to the tenants by e-transfer on July 19, 2017. No condition inspection report was prepared at the end of the tenancy.

The landlord testified that after the tenants vacated the rental unit they intended to occupy the property but found that considerable renovations, cleaning and repairs were required. The landlord said that while they used some of the facilities in the rental property such as the kitchen, they did not reside there. The landlord said that renovations were undertaken and they continued for several months. The landlord said that the renovations were completed in January, 2018. The landlord testified that upon completion they came to the decision that they would need to sell the rental property. The landlord said that the sale of the property completed by the end of January, 2018. The landlord testified that they used the rental property but resided in a separate address.

Analysis

Pursuant to section 19 of the Act, a landlord may not require or accept a security deposit that is greater than one half of the monthly rent. If a landlord accepts a deposit

that is greater than the amount of half a month's rent the overpayment may be deducted from the monthly rent. In this case the monthly rent for the tenancy was \$1,500.00. Therefore the maximum security deposit acceptable was \$750.00. I find that of the \$850.00 payment made by the tenant, \$750.00 was the security deposit and the remaining \$100.00 an overpayment.

Section 38 of the *Act* requires the landlord to either return the 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

In the case at hand the parties gave undisputed testimony that the tenant provided a forwarding address in writing on June 26, 2017. The landlord returned the amount of \$850.00, the equivalent of the full security deposit plus \$100.00, on July 19, 2017, outside of the 15 days provided under the *Act*. Accordingly, I find that the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, of double the value of the security deposit of \$750.00, less the amount already paid to the tenant. Therefore, I issue a monetary award in the amount of \$650.00 to the tenants against the landlord.

Section 51(2) of the *Act* states 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.

In the 2 Month Notice the issuing landlord indicated that the tenancy is ending as the conditions for sale have been satisfied and the purchaser or a close family member will occupy the rental unit. The landlord testified that since the tenancy ended on June 30, 2017 to the time when the rental property was sold to a third party, they did not reside in the rental unit. The landlord provided the reasons why they did not occupy the unit including the condition of the suite, the need for considerable renovations and repairs, and the potential danger to family members. The landlord said that they did use the

rental unit as they made use of some facilities like the kitchen and the surrounding property.

I accept the evidence of the parties that the rental property was not occupied by the landlord or their family. While I accept the evidence that the landlord used some of the facilities on the property, I find that is insufficient to declare that the landlord achieved the stated purpose of occupying the rental unit. Therefore, I find that the tenants are entitled to a monetary award of \$3,000.00, double the amount of the monthly rent.

As the tenants were successful in their application they may also recover the \$100.00 filing fee.

Conclusion

I issue a monetary award in the tenants' favour in the amount of \$3,750.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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 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 4, 2018

Residential Tenancy Branch