



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

The Application for Dispute Resolution filed by the Tenant on April 30, 2018 seeks the following:

- a. A monetary order in the sum of \$2800.
- b. An order to recover the cost of the filing fee.

The landlord failed to appear at the scheduled start of the hearing which was 1:00 p.m. on July 11, 2018. The tenant applicant was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the landlord to call in. The landlord failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The tenant was given a full opportunity to present evidence, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the respondent landlord in accordance with the Order of Substituted Service dated May 14, 2018. 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 tenancy agreement that provided that the tenancy would start on May 1, 2015. The rent was \$700 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$700 at the start of the tenancy.

In early 2016 the landlord gave the tenant notice that the tenant would have to move out at the end of April as the rental unit was needed for family purposes. The Notice was in the form of a letter and not in the approved government form required to end the tenancy under section 49 of the Act.

The tenancy ended on April 30, 2016 and the Tenant vacated the rental unit.

The tenant(s) provided the landlord with his forwarding address in writing by text message on May 4, 2018. I determined the landlord received the forwarding address in writing as the landlord responded to the text message. In addition, the tenant provided the landlord with his forwarding address in writing at the end of April 2017.

The landlord returned the security deposit of \$700 in April 2018.

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

The tenants paid a security deposit of \$700 prior to the start of the tenancy on May 1, 2015. I determined the tenancy ended on April 30, 2016. I further determined the tenant provided the landlord with his forwarding address in writing on May 4, 2016 as the landlord responded to the Tenant's text message. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. The landlord returned the security deposit of \$700 in April 2018.

I determined the tenant is entitled to the doubling of the security deposit less the sum return after the 15 day period or the sum of \$700 ($\$700 \times 2 = \1400 less \$700 paid after the 15 day period = \$700).

Tenant's claim under section 51 of the Act.:

The Tenant seeks compensation in the sum of \$700 under section 51(1) of the Act and in addition the sum of \$1400 under section 51(2) of the Act for a total of \$2100. The relevant provisions of section 51 provides as follow:

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.

Section 49 of the Act permits a landlord to end the tenancy upon the giving on a 2 month Notice to End Tenancy in the approved government form. Section 49(7) of the Act provides as follows

49(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

Section 52 of the Act provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e) when given by a landlord, be in the approved form.

The tenant testified the landlord failed to give him the equivalent of one month rent at the end of the tenancy. Further, the rental unit was not used for the stated purpose set out in the Notice as it was re-rented and was not used for family purpose.

After carefully considering all of the evidence I determined the tenant failed to prove this claim. The obligation of the landlord to pay the tenant under section 51 is triggered by the service of a 2 month Notice to End Tenancy under section 49. The giving of a Notice under section 49 requires a landlord to use the approved form. In this case the landlord failed to use the approved form. I determined the Tenant failed to prove he is entitled to this claim as no notice under section 49 has been given.

Monetary Order:

I ordered the landlord(s) to pay to the tenant the sum of \$700 plus the sum of \$100 in respect of the filing fee for a total of \$800.

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 12, 2018

Residential Tenancy Branch