



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT, MNDCT, MNSD

Introduction

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

- a. A monetary order in the sum of \$3400
- b. 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.

I find that the landlord served a 2 month Notice to End Tenancy in the approved form in person on the Tenant on January 27, 2018. I find that the landlord served a 10 day Notice to End Tenancy in the approved form on the Tenant in person on February 2, 2018. I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on May 17, 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 written tenancy agreement that provided that the tenancy would start on October 1, 2017 and continue on a month to month basis. The rent was

\$1700 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$850 at the start of the tenancy.

The landlord served a 2 month Notice to End Tenancy on the Tenant on January 27, 2018 for landlord use.. Neither party produced a copy of the 2 month Notice. However, both confirmed it was in the approved government form.

The tenant failed to pay the rent for February when due. On February 2, 2018 the landlord served a 10 day Notice to End Tenancy on the Tenant. The tenant failed to dispute the Notice to End Tenancy or pay the arrears within the 5 days that would void the Notice. The tenant vacated the rental unit on February 12, 2018.

I accept the tenant's testimony that he provided the landlord with his forwarding address in writing on February 14, 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 tenant paid a security deposit of \$850 on October 1, 2017. I determined the tenancy ended on February 12, 2018. I further determined the tenant provided the landlord with his forwarding address in writing on February 14, 2018 although the landlord disputed this testimony.. 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.

I do not accept the submission of the landlord that the landlord had the right to retain the security deposit on the basis that the tenant failed to sufficiently clean the rental unit. The landlord has the right to file a claim against the tenant for the failure to sufficiently

clean but the landlord has lost the right to bring a claim against the security deposit as more than 15 has expired since the tenancy ended and the landlord received the tenant's forwarding address in writing.

As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$1700.

The tenant seeks a claim under section 51(1) of the Residential Tenancy Act for the equivalent of one month rent. This section 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.

(2) 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.

I do not accept the submission of the landlord that the tenant forfeited his right to claim the equivalent of one month rent because the tenant failed to pay the rent for February when due. The tenant's failure to pay the rent when due and his failure to dispute the

10 day Notice to End Tenancy may have given the right to the landlord to seek an Order of Possession. However, in my view the right to claim the equivalent of one month rent is triggered by the service of a 2 month Notice to End Tenancy. The Tenant stayed in the rental unit for 12 days from February 1, 2018 to February 12, 2018.. This must be deducted from the tenant's claim for the equivalent of one month's rent. As a result I determined the tenant has established a claim against the landlord for the equivalent of one month rent less the proportionate share of the time he resided in the rental unit for a total of \$971.43 (\$1700 rent divided by 28 days for February multiplied by 16 days = \$971.43).

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$2671.43 plus the sum of \$100 in respect of the filing fee for a total of \$2771.43.

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 23, 2018

Residential Tenancy Branch