



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Rezeen Realty Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to one month’s compensation for receipt of a two month notice for landlord’s use?

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy, under written agreement, started on April 1, 2016 for a fixed term to end March 31, 2017 with the requirement that the Tenant move out at the end of the term. Rent of \$1,450.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected the rent for April 2016 of \$1,450.00, a security deposit of \$725.00 and the rent for the last month of the tenancy of \$1,450.00. The Tenant did not move out of the unit at the end of the term and the tenancy continued with the Tenant paying the rent for March 2017. On May 24, 2017 the Landlord served the Tenant with a two month notice to end tenancy for landlord’s use (the “Notice”). The effective date of the Notice was July 31, 2017. The rent for July 2017 was paid by the additional rental funds taken by the Landlord at the outset of the tenancy.

The Tenant states that the Landlord did not provide the equivalent of one month’s compensation to the Tenant for having ended the tenancy with the Notice. The Tenant claims \$1,450.00. The Tenant states

that on July 4, 2017 the Tenant sent the Landlord an email giving notice by email to end the tenancy for July 16, 2017. The Tenant states that the Landlord replied to this email. The Tenant confirms that this email was provided as evidence for this hearing. It was noted during the hearing that the copy of the email provided to the Residential Tenancy Branch could not be opened. The Tenant described verbatim the content of the Tenant's email and the response from the Landlord. The Tenant states that the Landlord returned \$725.00 to the Tenant as a refund of the July 2017 rent and not as the required compensation.

The Landlord agrees that they did not pay the Tenant one month compensation and states that they only paid the Tenant \$750.00 because the Tenant moved out of the unit early. The Landlord states that they did not receive any notice in writing from the Tenant that it would end the tenancy on July 16, 2017 and did not receive any email dated July 4, 2018. The Landlord states that they did receive an email that the Tenant would be moving out before the end of July 2016. The Landlord states that the Parties communicated by email a lot during the tenancy.

The Tenant states that the Parties did not mutually conduct a move-in inspection. The Landlord states that the Tenant did a move-in inspection with another agent of the Landlord and signed the report.

The Tenant states that no move-out inspection was offered by the Landlord. The Tenant states that agent "W" met the Tenant at the unit to collect the keys on July 16, 2017 but did not offer any inspection opportunity. The Landlord states that on July 16, 2018 a team member was at the unit but the Tenant was not present. The Landlord states that a team member called the Tenant on each of the three days previous and made an offer for an inspection. The Landlord states that who, or which member, made the offer is unknown.

The Parties agree that on October 21, 2017 the Landlord returned only \$145.00 of the security deposit to the Tenant. The Tenant claims return of the security deposit and does not waive any entitlement to return of double the security deposit. The Landlord states that the remaining portion of the security deposit was retained by the Landlord for cleaning and other costs. The Landlord states that the Tenant agreed to leave the unit clean and failed to do so. The Landlord states that the Tenant signed an agreement to this effect and provides a copy of an agreement dated October 21, 2017. The Landlord also points to paragraphs 8 and 10 of the Addendum to the tenancy agreement. I note that these paragraphs refer to the Tenant's obligations in relation to insurance, fees and repairs.

The Tenant states that it provided its forwarding address to the Landlord on October 23, 2017 in an email that contained 4 paragraphs. The Tenant confirms that copies of this email were provided as evidence. It

was noted that the copy provided to the RTB by the Tenant could not be opened for the hearing. The Tenant read the contents of that email into evidence. The Tenant states that the Landlord responded to that email and the Tenant read the Landlord's responding email into evidence. The Tenant claims return of the security deposit. The Landlord states that they did not receive any forwarding address from the Tenant until they received the Tenant's application. The Landlord states that they did not return the full amount of the security deposit to the Tenant when they returned a portion earlier because of the Tenant's failure to leave the unit clean.

Analysis

Section 50 of the Act provides as follows:

- (1) If a landlord gives a tenant notice to end a periodic tenancy for landlord's use, the tenant may end the tenancy early by
 - (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
 - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51.

Although the Landlord gives evidence that they did not receive any notice in writing from the Tenant that the tenancy would end on July 16, 2017 considering the Landlord's additional evidence that they did receive an email for a move out before the end of July 2016 I find on a balance of probabilities that the Landlord did receive the Tenant's email notice of that end of the tenancy. Given the undisputed evidence that the Parties mainly communicated by email I find that the email sufficiently fulfilled the requirement to have the notice in writing, to end the tenancy, and to obtain a refund of the rent remaining to the end of the month. As the Landlord already had the last month's rent in advance and as Tenant was entitled to the return of half the rent, I find that this payment does not relieve the Landlord from the additional obligation to pay the compensation required for ending the tenancy for landlord's use as set out below.

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use 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. Based on the undisputed evidence that the Tenant was not given the equivalent of one month's rent as compensation for the Landlord having ended the tenancy for landlord's use I find that the Tenant is entitled to the claim for **\$1,450.00**.

Section 36(1) of the Act provides that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord offered the tenant at least 2 opportunities for the inspection, and the tenant has not participated on either occasion. Given the Tenant's evidence of no offers for a move-out inspection and considering that the Landlord's evidence in relation to the move-out was vague, indirect and did not include evidence of who made the offers for a move-out inspection, I find on a balance of probabilities that no offers for a move out inspection were given and that the Tenant's right to return of the security deposit was not extinguished.

Section 38 of the Act provides 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 the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the Tenant's persuasive evidence in relation to the provision of the forwarding address by email and considering that the Landlord did not dispute receiving the Tenant's evidence package containing the email versions that were read at the hearing, I find on a balance of probabilities that the Landlord did receive the Tenant's forwarding address and did reply to that email of October 23, 2017. Based on the undisputed evidence that only \$145.00 of the \$725.00 security deposit was repaid to the Tenant and that the Landlord made no application for dispute resolution to retain any amount of the security deposit I find that the Landlord must now pay the Tenant double the security deposit plus zero interest in the sum of **\$1,450.00** less the payment already made of **\$145.00**. The Tenant is therefore entitled to return of **\$1,305.00**.

As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,855.00**.

Section 1 of the Act defines a security deposit as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include, inter alia, post-dated cheques for rent. Section 19 of the Act provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. Given the Landlord's evidence of having taken \$1,450.00 at the outset of the tenancy for the last month's rent payable, in addition to the security deposit and the first month's rent, I find that the Landlord collected more as a security deposit for the Tenant's obligations than allowed under the Act. I strongly caution the Landlord against collecting more security than is allowed under the Act in the future.

Finally I note that although the Landlord provides evidence of the Tenant's agreement to leave the unit clean and undamaged, as this evidence is not relevant to the Tenant's claims I decline to consider it. The Landlord remains at liberty to make an application for dispute resolution claiming against the Tenant should the Tenant have caused any damage or loss.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,855.00**. If necessary, this order may be filed in the Small Claims 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: August 1, 2018

Residential Tenancy Branch