



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

The landlord's agent (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

The tenant had an assistant attend the hearing to provide support but no testimony was given from them.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidentiary package which were left at the landlord's door on February 09, 2018. As the landlord acknowledged service of the Application, I find that the landlord is duly served pursuant to section 71 (c) of the *Act*, which allows an Arbitrator to find a document sufficiently served for the purposes of the *Act*.

The landlord confirmed that they did not submit any evidence to the tenant or to the Residential Tenancy Branch.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a monetary award for the return of all or a portion of their security deposit?

Background and Evidence

The tenant provided written evidence that this tenancy began on September 01, 2013, with a monthly rent of \$2,550.00 due on the first day of each month and a security deposit in the amount of \$1,000.00. The landlord and the tenant agreed that the monthly rent was reduced to \$2,058.00 as the terms of the agreement were mutually amended.

A copy of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice), dated for January 2016 was also included in the tenant's evidence. On the second page of the Two Month Notice the landlord has indicated that:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse.

In addition to the above, the tenant provided in evidence;

- A copy of an e-mail from the tenant to the landlord dated January 01, 2016, regarding the landlord's wife advising the tenant in December 2015 that the landlord's family was intending on moving into the rental unit in 2016 and the tenant informing the landlord they would not move until served with proper notice;
- A copy an e-mail exchanged between the tenant and the landlord dated February 10 and 11, 2016, in which the landlord and tenant discuss a 'for sale' sign in front of the house and times for showing the rental unit to potential buyers;
- A copy of an e-mail from the tenant to the landlord dated March 11, 2016, in which the tenant advises the landlord that they are vacating the rental unit in 10 days and that the landlord will owe the tenant for ten days rent from March 22, 2016, to March 31, 2016. The e-mail indicates that a hard copy of this e-mail will be left in the mailbox for the landlord; and
- A copy of an e-mail from the tenant to the landlord dated March 18, 2016, in which the tenant confirms that they are owed \$663.87 due to vacating the rental unit before the end of the month as compensation for the Two Month Notice. The tenant further states they are deducting the amount of \$264.62 for a water bill the

tenant owes to the landlord and are only seeking \$399.25 after this deduction. The e-mail also requests the return of the tenant's security deposit in the amount of \$1,000.00 and provides a forwarding address.

The tenant testified that they provided their forwarding address to the landlord by e-mail on March 18, 2018, and also left a hard copy of the e-mail in a mailbox that was used for service of documents to the landlord at the time. The tenant stated that she has not received her security deposit back from the landlord. The tenant submitted that she also has not received compensation in rent owed for vacating the rental unit early based on the Two Month Notice.

Although the tenant initially stated that she was seeking compensation equal to one month's rent in compensation, the tenant could not confirm that she paid the monthly rent for March 2016.

In addition to the above, the tenant submitted that she is also owed compensation as the landlord gave her a Two Month Notice for their family moving into the rental unit but that the landlord never actually moved into the rental unit at any time.

The landlord confirmed that she did receive the tenant's forwarding address and stated that she gave the tenant \$700.00 of the \$1,000.00 security deposit back. The landlord admitted that she had no evidence to support this statement as the tenancy ended a long time ago and that she did not have the tenant's agreement in writing to retain any portion of the tenant's security deposit.

The landlord stated that they ended up buying another house that they moved into instead of the rental unit. The landlord submitted that they moved into another house as they could not stay where they were at due to not knowing when the tenant was going to move out of the rental unit.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 49 of the *Act* establishes that a landlord may issue a Two Month Notice when the landlord intends on occupying the rental unit. Section 50 (1) (a) of the *Act* states that a tenant may end a tenancy early by 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. Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end tenancy under section 49 of the *Act* 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.

Having reviewed the evidence, affirmed testimony and based on a balance of probabilities, I find that the tenant did not pay the monthly rent for March 2018 as permitted by the Two Month Notice for compensation from the landlord. I find that the tenant clearly indicated the compensation they were seeking, in the two e-mails dated March 11, 2018, and March 18, 2018, as being the remainder of the month after the tenant's 10 day notice to end tenancy took effect, deducting what was owed for a water bill.

As e-mail is not a recognized method of service under the *Act* and the tenant did not demonstrate that the landlord received it, I find that the landlord was served with tenant's notice to end tenancy that was left in the mailbox on March 11, 2016, in accordance with section 88 of the *Act*. I find that the tenant's 10 day notice was deemed served to the landlord on March 14, 2016, three days after being left in the mailbox in accordance with section 90 of the *Act*. I further find that, based on the landlord receiving the tenant's notice on March 14, 2016, that the effective date of the tenant's notice to end tenancy was March 24, 2016, in accordance with section 50 (1) (a) of the *Act*.

As the Two Month Notice was served in January 2016, I find that the effective date of the Two Month Notice is March 31, 2016, and based on the above, I find that the landlord was obligated to compensate the tenant in the amount of \$464.73 $((\$2,058.00/31 = \$66.39) \times 7 \text{ days})$ which is the remainder of one month's rent payable under the tenancy agreement after the tenant's notice to end tenancy took effect. I accept the tenant's evidence and testimony that \$264.62, the amount for the water bill, is deducted from the \$464.73 owed to the tenant as indicated above.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

As the landlord did not provide any evidence or testimony that they paid any compensation to the tenant for the Two Month Notice, I find that the tenant is entitled to a monetary award in the amount of \$200.11 for the remainder of one month's rent in compensation owed pursuant to sections 49 and 51 (1) of the *Act*.

As the Two Month Notice was served in January of 2016, I find that Section 51 (2) of the *Act*, that was in force prior to May 17, 2018, stipulates that a landlord must pay the tenant, in addition to the one month's rent in compensation, an amount that is equivalent to two times the monthly rent if steps have not been taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy, or the rental unit is not used for that stated purpose for at least six months' duration.

I find that the second page of the Two Month Notice that was served to the tenant from the landlord and provided in evidence also indicates the same information regarding the landlord being responsible to pay an amount equal to double the monthly rent if the landlord does not do what they have stated they would do for at least six months.

Having reviewed the evidence and affirmed testimony, I find that it is undisputed that the landlord did not take any steps to move into the rental unit and did not actually use the rental unit for the stated purpose on the Two Month Notice. Although the landlord stated that they had bought a new place due to not knowing when the tenant was going to move, I find that the tenant did not dispute the Two Month Notice and actually vacated the rental unit prior to the end of March 2016. I find that the fact that the landlord had the rental unit for sale as of February 10, 2016, as indicated in the e-mail exchange of March 2016, demonstrates that the landlord did not serve the Two Month Notice to the tenant in good faith and did not take any steps to use the rental unit as indicated on the Two Month Notice.

Based on above, I find that the landlord is obligated to compensate the tenant as required under section 51 (2) of the *Act* that was in force prior to May 17, 2018. Therefore, I find the tenant is entitled to a monetary award in the amount of \$4,116.00, the equivalent of two month's rent payable under the tenancy agreement.

Section 38 (4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain an amount to pay a liability or obligation of the tenant. I find that there is no evidence or testimony to show that the landlord had the tenant's agreement in writing to retain any portion of the tenant's security deposit.

If the landlord does not have the tenant's agreement in writing, section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Having reviewed the evidence and affirmed testimony, I accept the tenant's testimony that they provided their forwarding address to the landlord on or about March 18, 2016 and again on February 09, 2018, in the Application. Even if the landlord had disputed service of the tenant's forwarding address in March of 2016, I find that the landlord was obligated to either return the security deposit or make an application for dispute resolution by February 24, 2018, 15 days after receiving the tenant's Application.

I find that there is no evidence that the landlord applied for dispute resolution within 15 days of the tenancy ending on March 24, 2016, or at any point, to retain a portion of the security deposit as required under section 38 (1) or that they actually returned any portion of the security deposit to the tenant. I find that, based on the above and a balance of probabilities, I prefer the tenant's testimony and evidence and I accept that the landlord did not return any portion of the tenant's security deposit to them.

Section 38 (6) of the *Act* stipulates that a landlord who does not comply with section 38 (1) of the *Act* may not make a claim against the security deposit or any pet damage deposit and must pay double the amount of the security deposit, pet damage deposit or both, as applicable.

Pursuant to section 38 (6) of the *Act*, I find that the landlord must pay the tenant double the security deposit. Therefore, I find that the tenant is entitled to a monetary award of \$2,000.00, comprised of double the security deposit (\$1,000.00 x 2).

Conclusion

The tenant is successful in their Application.

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the tenant's favour in the amount of \$6,316.11, which is comprised of \$200.11 for the remainder of one month's rent in compensation for March 2016, \$4,116.00 for double the monthly rent due to landlord not moving into the rental unit and \$2,000.00 for double the return of the security deposit.

The tenant is provided with this Order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 03, 2018

Residential Tenancy Branch