



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not participate in the conference call hearing, which lasted approximately 15 minutes. Tenant LW attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant SS did not attend, however tenant LW (the "tenant") confirmed she had had authority to speak on behalf of tenant SS.

The tenant testified that the landlord was personally served with the tenants' application for dispute resolution hearing package, including an amendment on March 24, 2018, at the rental unit. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application on March 24, 2018, the day it was served.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants authorized to obtain a return of all or a portion of the security deposit?

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the testimony of the tenant, the tenancy began on July 1, 2015 on a fixed term until July 1, 2016 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,350.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$675.00 at the start of the tenancy, which the landlord still retains in trust.

The tenant testified that on September 1, 2017, the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") with an effective date of November 1, 2017. The tenant testified that the grounds to end the tenancy cited in that 2 Month Notice were;

- all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit

The tenant testified that both tenants complied with the 2 Month Notice and vacated the rental unit on November 1, 2017. The tenant testified that the house was not sold; it remained on the market until mid-May 2018. It is the tenants' position that the landlord did not issue the 2 Month Notice in good faith, and therefore seeks compensation equivalent to double the monthly rent.

The tenants seek the return of their security deposit, doubled. The tenant testified that the landlord did not complete move-in or move-out condition inspection reports and for this reason, is entitled to double the security deposit. The tenant testified that the forwarding address was provided March 24, 2018 as part of the hearing package.

Analysis

Under section 49 of the *Act*, a landlord may end a tenancy if all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give a 2 Month Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

Since the issuance of the 2 Month Notice, changes to the *Act* affecting compensation have come into effect. However at the time this 2 Month Notice was issued, section 51(2)(b) of the *Act* established that if steps had not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or the rental unit was not used for the stated

purpose for at least six months beginning within a reasonable period after the effective date of the notice the landlord must pay the tenant double the monthly rent.

In this case, because the landlord issued a 2 Month Notice for the sale of the rental unit with an effective date of November 1, 2017 the purchaser became obligated to move into the unit or allow a close family member to move into the unit by April 30, 2018. Although the tenant claimed that this did not occur, I find the tenants failed to substantiate this claim with any documentary or substantive evidence. For this reason, I dismiss this portion of the tenants' claim with leave to reapply.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

Although the tenants' forwarding address is on their application for dispute resolution form and formed part of their hearing package, this does not meet the requirement of separate written notice. The tenants must serve the landlord with their forwarding address in writing by way of registered mail. I dismiss this portion of the tenants' claim with leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the 100.00 filing fee paid for the application.

Conclusion

The tenants' entire claim is dismissed with leave to reapply.

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 15, 2018

Residential Tenancy Branch