



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue- Who is the Landlord?

Both respondents agree on the following facts. The respondents are co-owners of the subject rental property and are separated spouses. The subject rental property is a basement suite in the family home. Respondent S.H. moved out of the family home in 2017. Respondent S.H. is the only person listed as the landlord on the tenancy agreement.

Respondent S.H. testified that since he is the only person listed as a landlord on the tenancy agreement with the tenant, that he alone is the landlord and that respondent D.H. is not the landlord.

Respondent D.H. testified that while her name is not on the tenancy agreement, she acted as the landlord, collected the security deposit from the tenant, declared her income from the rental suite on her income taxes, completed the move out inspection report with the tenant and completed all landlord duties on the subject rental property such as ice and snow removal.

Section 1 of the *Act*, defines a landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I find that respondent D.H. is a landlord as defined by the *Act* as she is a co-owner of the rental unit and permitted occupation of the rental unit under the tenancy agreement. Respondent D.H. is also a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit.

Service

The tenant testified that both landlords were individually served a notice of dispute resolution package by registered mail in February of 2018. The tenant testified that both packages were addressed to the family home. The tenant testified that landlord S.H. did not provide him with a new address for service. Landlord D.H. confirmed receipt of the dispute resolution package on February 8, 2018. I find that the landlord D.H. was served with this package on February 8, 2018, in accordance with section 89 of the *Act*.

Landlord S.H. testified that he did not receive the dispute resolution package and only learned of today's hearing when the Residential Tenancy Branch sent him an e-mail reminding him of the service deadlines. Landlord S.H. testified that he is separated from landlord D.H. and was not living with her when the dispute resolution packages were served. Landlord D.H. testified that she did not receive a dispute resolution package addressed to landlord S.H. I find that landlord S.H. was not served in accordance with section 89 of the *Act* and I therefore dismiss the tenant's claims against landlord S.H. with leave to reapply.

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2016 and ended on January 31, 2018. A security deposit of \$450.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Landlord D.H. (the "landlord") testified that rent was originally \$875.00 per month but that without her knowledge, landlord S.H. issued the tenant a rent increase which increased the monthly rent payable to \$905.00.

Landlord S.H. and the tenant testified that rent at the end of the tenancy was \$905.00.

The landlord testified that she served the tenant with a Two Month Notice to End Tenancy for Landlord's Use, with an effective date of January 31, 2018 (the "Two Month Notice") in November of 2017 but could not recall if she posted it in the tenant's mailbox or if she hand delivered it. The tenant testified that the landlord personally served him with the Two Month Notice on November 30, 2017. The Two Month Notice was entered into evidence.

The Two Month Notice stated the following reason for ending the tenancy:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The landlord testified that after she separated from landlord S.H., he did not provide her with the tenant's rent money and that without that income, she could not afford to keep the tenant in the suite because the costs associated with having a suite were not covered.

The landlord testified that when she served the tenant with the Two Month Notice she planned on using the subject rental property for her and her children's use. The landlord testified that she runs a piano teaching business out of her home and that when she has clients, she sends her kids down to the suite. The landlord testified that since the tenant moved out the subject rental suite, the suite has been exclusively used by her and her children.

The tenant testified that the real reason he was evicted was that he paid his rent to landlord S.H. instead of the landlord. The tenant testified that he should therefore be entitled to receive two months' rent as compensation for wrongful eviction. The tenant testified that he had no reason to believe that the subject rental property has been used for anything other than the landlord's family since he moved out.

Both parties agree that the tenant was not provided with one month's free rent.

Both parties agree that a move in condition inspection and inspection report was conducted on March 29, 2016. Both parties agree that a move out inspection and inspection report was conducted on February 3, 2018.

Both parties agree that the tenant did not clean the rental property when he moved out and left a large stain on the carpet. The tenant testified that he was agreeable to paying

for the cost of having professionals clean the carpet and the subject rental property but that he never received receipts for this cleaning from the landlord and did not agree to deduct a specific amount from his security deposit.

The landlord testified that on February 5, 2018 she sent the tenant an e-mail advising him that the cost of the carpet cleaning was \$173.88 and that the estimated cleaning cost was \$220.00. The landlord testified that the tenant did not reply to this e-mail. The tenant testified that he did not approve the deductions because no receipts were provided. The landlord testified that she has not yet had the subject rental suite properly cleaned. In the hearing the tenant agreed to deduct \$173.88 for the carpet cleaning from his security deposit but did not agree to deduct funds for cleaning as no receipt was provided.

Both parties agreed that the tenant e-mailed each landlord his forwarding address on January 30, 2018. Both landlords confirmed receipt of the January 30, 2018th e-mail. Both landlords testified that they did not return the tenant's security deposit.

Analysis

Tenant's Compensation: Two Month Notice

Based on the testimony of the landlord and the tenant, I find that the tenant was personally served with the Two Month Notice on November 30, 2017, in accordance with section 88 of the *Act*. I find that the tenant vacated the subject rental property on the corrected effective date of the Two Month Notice, that being January 31, 2018 pursuant to the Two Month Notice.

Section 51(1) of the *Act* states that 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.

I find that, pursuant to section 51(1) of the *Act*, the tenant is entitled to receive from the landlord, one month's rent in the amount of \$905.00. Which landlord issued the rent increase does not change the fact that a rent increase was issued, and the tenant paid a higher rent and is entitled to receive that higher rent as compensation from the landlord for issuing the Two Month Notice, pursuant to section 51(1) of the *Act*.

In November of 2017, when the Two Month Notice was issued, section 51(2)(a) and (b) of the *Act* stated that in addition to the amount payable under subsection (1):

- if 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
- 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 find that steps have been taken to accomplish the stated purpose for ending the tenancy under section 49, that being using the subject rental property for the landlord and her childrens' personal use. I find that the subject rental property has been used for the stated purpose for more than the last 6 months. I find that the tenant is not entitled to compensation under section 51 of the *Act*.

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the testimony of both parties. The tenancy ended at the end of January 2018. The tenant provided both landlords with his forwarding address via e-mail on January 30, 2018. While this does not conform with the service requirements set out in section 88 of the *Act*, I find the forwarding address is sufficiently served pursuant to section 71(2) of the *Act* because both landlords

confirmed receipt of the tenant's forwarding address on or around January 30, 2018. The landlords did not return the security deposit or make an application for dispute resolution to claim against it.

Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to double his security deposit less the cost of carpet cleaning which the tenant agreed to deduct during the hearing. The tenant is entitled to the following amount as per the below calculation: \$450.00 (security deposit) x (2) = \$900.00 – \$173.88 (carpet cleaning) = \$726.12.

While both parties acknowledge that the tenant did not clean the subject rental property and that the tenant owed something for that cleaning, the tenant did not provide the landlord with written authorization to deduct a specific amount from his security deposit. A general acknowledgement that some amount of money is owed is not authorization to deduct a specific amount from the damage deposit.

While the landlord did write an e-mail to the tenant setting out the cost of carpet cleaning and the expected cost of cleaning, the tenant did not respond or provide authority to deduct a specific amount from the security deposit. Without written authorization to deduct a specific sum of money from the security deposit, the landlord was required make an application to the Residential Tenancy Branch if she wanted to retain the tenant's security deposit, which she did not do.

As the tenant is successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant under the following terms:

Item	Amount
One months' free rent	\$905.00
Doubled security deposit	\$900.00
Less carpet cleaning	-\$173.88
Filing Fee	\$100.00
TOTAL	\$1,731.12

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: September 25, 2018

Residential Tenancy Branch