



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit and for monetary compensation in the amount of one month of rent.

The Tenant and both Landlords were present for the duration of the teleconference hearing. The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding and a copy of the Tenant's evidence. The Landlords did not submit any evidence prior to the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

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

Is the Tenant entitled to monetary compensation in the amount of one month of rent?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on May 1, 2015 and the Tenant moved out on April 30, 2018. Monthly rent at the end of the tenancy was \$676.00 and a security deposit of \$200.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the tenancy details.

The parties were also in agreement that the Tenant's \$200.00 security deposit has not been returned and that the Tenant did not provide written permission for the Landlords to withhold any amount from the deposit.

The Tenant provided testimony that she received a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on March 28, 2018. The Two Month Notice, dated March 27, 2018 was submitted into evidence.

The Tenant testified that a few days after receiving the Two Month Notice she received a letter from the Landlords advising her that if she left by the end of April 2018, she would receive one month of rent compensation.

The Tenant sent the Landlords a letter confirming she would move out by the end of April 2018 and provided a forwarding address at this time. The Tenant did not remember the date the letter was provided, but stated that it was approximately 5 days after receiving the Two Month Notice.

However, the Tenant submitted that in her letter she stated she would move out at the end of May 2018 in error, so she sent a follow-up letter clarifying that she meant the end of April 2018. The Tenant also testified that after she did not receive her security deposit back, she mailed the Landlords a second letter that included her forwarding address.

The Landlords testified that they did not receive a second letter, but they did receive the first letter in April 2018 that included a forwarding address for the Tenant.

The Tenant confirmed that she paid rent for April 2018 and never received one month of rent compensation as promised. The Landlords agreed that they did not provide the Tenant with one month of rent compensation.

Both the Tenant and the Landlords could not recall if a walk-through inspection was conducted at the beginning of the tenancy. However, the Landlords testified that if it had

been done, nothing was recorded in writing and the inspection was completed verbally only.

The Landlords stated that they provided two letters to the Tenant in which they asked her when would be a good time to conduct a move-out walkthrough of the home. They stated that she ripped the first letter up, which led them to believe she was walking away from the security deposit. No Condition Inspection Reports were submitted into evidence.

The Tenant stated that she had provided confirmation of her booked travel plans to the Landlords when she provided notice of vacating at the end of April 2018. However, she testified that the letter she received from the Landlords regarding a time for the inspection suggested a time that was after she would already be out of the city.

The Tenant stated that at this time the relationship between herself and the Landlords had deteriorated to the point where they were only communicating through writing. As such, she stated that she reacted in anger and tore up the letter. She stated that the letter provided the time for the walk-through inspection and also advised her that if she was not in attendance she would not receive the security deposit back.

The Landlords were in agreement that the Tenant paid rent for April 2018 and that they did not provide her with the one month of rent compensation after serving the Tenant with the Two Month Notice to end the tenancy.

Analysis

The standard of proof in a dispute resolution proceeding is based on a balance of probabilities, meaning that it is more likely than not that the event occurred as described through the testimony and evidence.

As the Tenant has filed for the return of her security deposit, I refer to Section 38(1) of the *Act*:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Although the parties were not aware of the exact date the Tenant's forwarding address was provided, based on the submissions of both parties, I find that this was provided before April 30, 2018 when the Tenant vacated the rental unit.

As such, the Landlords had 15 days from April 30, 2018 to repay the security deposit or file a claim against it. As the parties were in agreement that the Landlords are still in possession of the security deposit and I have no evidence before me that they filed a claim against the deposit, I find that they were not in compliance with Section 38(1) of the *Act*.

In accordance with Section 38(6) of the *Act*, if a landlord does not comply with Section 38(1), the tenant must be paid double the security deposit. As I have determined that the Landlords did not comply with Section 38(1), I find that the doubling provision under the *Act* applies and the Tenant is therefore entitled to a return of \$400.00.

However, as the Landlords claimed that the Tenant waived her right to the security deposit by not participating in an inspection at move-out, I find it relevant to refer to Section 17 of the *Residential Tenancy Regulation* (the "*Regulation*") which states the following:

- 17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
 - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

I also reference Section 36(1) of the *Act* which states the following:

- 36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) [2 opportunities for inspection], and
 - (b) the tenant has not participated on either occasion.

Although the parties were not in agreement as to how the Landlord requested the Tenant participate in a move-out inspection, I find insufficient evidence to establish that the Landlord provided two opportunities for inspection, including suggested dates and times, and that the second opportunity was provided on the approved form.

I also note that the Landlords' testimony was that they provided two letters to the Tenant asking her when would be a good time to meet for the move-out inspection, instead of proposing times as outlined in Section 17(1) of the *Regulation*. The parties were in agreement that a written Condition Inspection Report was not completed at move-in.

Based on the above analysis, I determine that the Tenant did not extinguish her right to the return of the deposit and is in fact entitled to the return of double the deposit in accordance with Section 38(6) of the *Act*.

As for the Tenant's claim for one month of rent compensation, I find that the Two Month Notice was issued in accordance with Section 49(3) of the *Act*. Section 51(1) of the *Act* states the following:

- 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.

As per the above, I find that the Tenant was entitled to one month of rent compensation, regardless of whether she moved out one month prior to the effective end of tenancy date of the notice. Therefore, I find that the Tenant is entitled to an amount of \$676.00 pursuant to Section 51(1) of the *Act*.

A Monetary Order will be issued to the Tenant in the amount outlined below:

Return of security deposit	\$200.00
Amount to double security deposit	\$200.00
One month rent compensation	\$676.00
Total owing to Tenant	\$1,076.00

Conclusion

I grant the Tenant a **Monetary Order** in the amount of **\$1,076.00** for one month of rent compensation, pursuant to Section 51(1) of the *Act*, and the return of double the security deposit, pursuant to Section 38(6) of the *Act*. The Tenant is provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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 13, 2018

Residential Tenancy Branch