



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of all or part of the pet damage deposit or security deposit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

One of the tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The tenant also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

All evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically compensation for the landlord's failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The tenant testified that this month-to-month tenancy began on August 1, 2017 and ended on November 30, 2017. Rent in the amount of \$1,050.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy, the

previous owner transferred to the landlord a security deposit on behalf of the tenants in the amount of \$515.00 and no pet damage deposit was collected. The rental unit is a basement suite, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord had served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property which was effective on November 30, 2017, and the tenants moved out in accordance with that notice, although it was expensive, and the tenants are a low income family. The tenant remained in touch with the neighbouring tenants in the upper level of the rental home who collected the tenants' mail after they moved out. They advised that a lady and her daughter moved in, but not the owner, and the tenant's mother and sister met them. The neighbouring tenants in the upper unit later advised that 2 men moved in after the lady and her daughter moved out.

The tenant further testified that on March 2, 2018 the tenant sent to the landlord a letter outlining the utilities paid by the tenant and asking for the balance of the security deposit to be returned to the tenants. The tenants' forwarding address was on the envelope that the letter was contained in, and a copy of the letter has been provided as evidence for this hearing. The tenant sent it to the address of the landlord that's contained in the tenancy agreement and also to the address of the rental unit.

The landlord has not returned any portion of the security deposit to the tenants and has not served the tenants with an Application for Dispute Resolution claiming against the security deposit, and the tenants waited 15 days before making this application.

The tenant's witness testified that she is the tenant's sister, and the other tenant named in this dispute is their father.

The witness attended at the rental unit after the tenants had vacated to collect mail, and met the neighbouring tenants in the upper unit several times. In December, 2017 the witness also met a lady who had a daughter, and the lady and the witness spoke to each other in Spanish. The lady said that she had met the neighbouring tenant upstairs and said that the owner did not live there.

The witness was present when the tenant asked the neighbouring tenant in the upper unit who had actually moved into the basement suite. The neighbouring tenant replied that the woman and daughter moved out and 2 men moved in. The witness believes that was in April. To say that the owner moved in is a blatant lie.

The landlord's agent testified that when the owner bought the house the parties entered into a new written tenancy agreement, and the tenants were told that eventually the new

owner would be moving in. At that time, the landlord was travelling back and forth to China. The tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property and the tenants were given the last month's rent for free.

The landlord does not live there full time, but did move into the rental unit on December 7, 2017. The landlord still travels to China for 2 weeks, but needs a place to come back to. Painters and cleaners have been there.

Both parties have also provided strings of text messages as evidence for this hearing.

Analysis

Firstly, with respect to the security deposit, the *Residential Tenancy Act* is clear, that a landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to repay the security deposit in full to the tenant or make an Application for Dispute Resolution claiming against it within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

In this case, I am satisfied that the tenants provided the landlord with a letter, and the envelope contained the tenants' forwarding address. The tenant sent the letter to the address of the landlord contained in the tenancy agreement as well as the address of the rental unit. The Tenant's Application for Dispute Resolution was served by registered mail to the landlord, which was obviously received by the landlord. The *Act* specifies that documents served by mail are deemed to have been served 5 days later. The landlord's agent did not dispute that the letter was received, and I find that the landlord received the letter on March 7, 2018 and the tenancy ended on November 30, 2017. The landlord did not return the security deposit and did not make an Application for Dispute Resolution and therefore, I find that the tenants have established a claim for double the amount, or \$1,030.00.

With respect to the balance of the tenants' claim, the landlord's agent testified that the landlord doesn't stay full time at the rental unit, but occupies it when in the Country, and that painters and housekeepers have been there since the tenancy ended. That may very well be the case, however I also accept the testimony of the tenant and witness that, perhaps only while out of the country, the landlord has re-rented the rental unit.

The *Act* sets out compensation required where a landlord fails to use a rental unit for the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property within a reasonable time after the effective date of the notice, and continually for at least 6 months. That compensation is the equivalent of 2 months rent payable under the tenancy

agreement. I find that the tenants have established that claim, and I order the landlord to pay \$2,100.00 compensation to the tenants.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,230.00.

This order is final and binding and may be enforced.

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 18, 2018

Residential Tenancy Branch