



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On June 25, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On October 9, 2018, the Tenant submitted an Amendment to their Application for Dispute Resolution seeking to increase the amount of monetary compensation they are seeking pursuant to Section 67 of the *Act* and seeking a return of the security deposit pursuant to Section 38 of the *Act*.

The Tenant attended the hearing with K.M. as her advocate. The Landlord attended the hearing with R.G. and D.G. as his agents. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by registered mail on June 28, 2018 and the Landlord confirmed that he received this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that she served her evidence, including a CD, and her Amendment to the Landlord by registered mail on October 11, 2018. He confirmed that he received this package and that he could view the contents of the CD. As this complies with the service requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and considered it when rendering this decision.

The Landlord advised that he served his evidence to the Tenants by registered mail and the Tenant did not pick up this package. As service of the evidence complies with the service requirements of Rule 3.15 of the Rules of Procedure, and based on Section 90 of the *Act*, I am satisfied that the Tenant has been deemed to have received this evidence. As such, I have accepted this evidence and considered it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to monetary compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2003 and that the tenancy ended on August 31, 2017 when the Tenants vacated the rental unit. Both parties agreed that a security deposit of \$350.00 was paid. However, the Landlord stated that rent was \$750.00 per month, and was routinely paid in two installments spread throughout each month. The Tenant confirmed that she paid rent in two installments each month, but she stated that she paid \$400.00 in each installment, for a total of \$800.00 per month. Neither party submitted evidence with respect to the amount of rent that was paid each month.

All parties agreed that the Landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") to the Tenants on June 21, 2017 and the reason the Landlord checked off on the Notice was because "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 effective date of the Notice was August 31, 2017.

The Landlord advised that he served the Notice as his daughter was experiencing marital difficulties and would be moving into the rental unit with her children. The Tenant advised that she was surprised by the Notice and when she talked to the Landlord, she was advised that the Landlord's daughter was getting divorced and would be moving in. However, the Landlord ended up re-renting the rental unit on November 1, 2017.

The Landlord stated that he received possession of the rental unit on September 1, 2017 and that the rental unit was not left in good condition. As such, they spent time cleaning the unit and renovating it in anticipation of the daughter moving in. However, by mid-October when the rental unit was ready to be occupied, the Landlord's daughter decided to attempt to reconcile her marriage and did not move into the rental unit. The Landlord then re-rented the rental unit on December 1, 2017.

The Tenant made her initial Application on June 25, 2018 and outlined in the details of dispute that she was seeking "2 months rent, our moving cost, and our change of address", totalling \$2,276.36. She then made an Amendment to the Application on October 9, 2018 adding to her compensation claim of the security deposit and 12 months' rent. The Landlord confirmed that he was not aware of the Tenant's request for the security deposit until he received the Amendment in October 2018, which included the Tenant's letter with her forwarding address in writing. The Tenant confirmed that the letter dated September 26, 2018 and served to the Landlord in October 2018 was the first time she provided her forwarding address in writing; however, she contends that her Application in June 2018 should suffice as her forwarding address in writing.

Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing,

to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

While the Tenant contests that the date she made the Application was the date she provided the Landlord her forwarding address in writing, I do not find that this meets the requirements of a separate written notice, especially given that there was no indication in the Application that the Tenant was seeking a return of the deposit. As such, I am satisfied that the Tenant only provided a forwarding address in writing in October 2018 when it was served with the Amendment.

I find it important to note that Section 39 of the *Act* states that the Landlord can keep the deposit if a forwarding address in writing is not provided within one year of the tenancy ending. Furthermore, the *Act* states that in this instance the Tenant's right to a return of the deposit is also extinguished. As the undisputed evidence is that the tenancy ended on August 31, 2017 and as the Tenant did not provide a forwarding address in writing until October 2018, I am satisfied that the Landlord is allowed to keep the deposit and the Tenant's claim for this is dismissed.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenant's claims for the cost of the movers and the change of address, the Tenant was advised that there are no provisions within the *Act* to compensate her for these types of claims. As such, these claims were dismissed in its entirety.

With respect to the Tenant's claim for compensation owed to her as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on June 21, 2017 and Section 51 of the *Act* at the time the Notice was served reads in part as follows:

51 (2) *In addition to the amount payable under subsection (1), if*

(a) 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

(b) 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 also find it important to note that Section 51 of the Act changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

51 *(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

(a) 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

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

When reviewing the totality of the evidence before me, at the time the Notice was served, the applicable Act stated that once the Notice is served, the Tenant is entitled to the amount of two months' rent if the Landlord does not use the property for the stated purpose on the Notice. This provision is irrespective of whether the Notice was served in good faith as this requirement pertains to the updated legislation. Had this Notice

been served after the legislation changed on May 17, 2018, Section 51(2) requires that the Tenant be entitled to 12 months' compensation and Section 51(3) allows for consideration of the compensation to be excused in extenuating circumstances.

Based on the undisputed testimony of both parties, the consistent evidence before me is that the rental unit was re-rented on December 1, 2017. Consequently, I am satisfied that the Landlord has failed to use the rental unit for the stated purpose for at least six months. As such, I am satisfied that the Tenant has substantiated her claim that she is entitled to a monetary award of double the monthly rent pursuant to Section 51 of the *Act*.

When establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided." Both parties disputed how much rent was owing per month. However, the onus is on the Applicant to prove the validity of her claim and the Tenant did not provide any evidence establishing that rent was \$800.00 per month. As such, I am satisfied that the two months' compensation is based on a figure of \$750.00 per month. Consequently, I find that the Tenant is entitled to compensation as set out in Section 51 of the *Act* in the amount of **\$1,500.00**.

As the Tenant was successful in her claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Double one month's rent	\$1,500.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,600.00

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$1,600.00** 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: November 8, 2018

Residential Tenancy Branch