



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KINGDOM INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for a monetary order of \$4,154.84 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee. The tenant is seeking compensation of two month's rent due to the landlord failing to comply with the reason stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 26, 2018 ("2 Month Notice") for a minimum of six months as required by the *Act*. The tenant is also seeking the return of double the security deposit as the landlord has failed to return it to the tenant. In addition, the tenant is seeking the return of a paint deposit, a portion of rent that the tenant claims is owed due to being served a 2 Month Notice, and a \$500.00 incentive offered by the landlord to move out early.

The tenant, an agent for the corporate landlord ("agent"), and a support person for the landlord ("support person") attended the teleconference hearing. The tenant and agent gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The agent confirmed that the landlord was served with the tenant's documentary evidence and that the landlord had the opportunity to review that evidence prior to the hearing. The agent also confirmed that the landlord did not serve the tenant with any documentary evidence in response to the tenant's application. No service issues were raised during the hearing.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

During the hearing, the service address of the landlord was confirmed by the parties and for ease of reference has been included on the cover page of this decision.

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation under the *Act*? If so, in what amount?
- Is the tenant entitled to the return of double their security deposit under the *Act*?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 1, 2013, and reverted to a month to month tenancy after May 5, 2018. Monthly rent during the tenancy was \$900.00 per month. The tenant paid a security deposit of \$450.00 at the start of the tenancy which the landlord continues to hold.

The tenant's monetary claim of \$4,154.84 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Double the return of the security deposit	\$900.00
2. Return of paint deposit	\$200.00
3. One month rent compensation for 2 Month Notice (less 5 days the tenant remained in rental unit)	\$754.84
4. Incentive promised by landlord to leave earlier than effective date on 2 Month Notice	\$500.00
5. Penalty of 2 months' rent for failing to comply with reason stated on the 2 Month Notice	\$1,800.00
TOTAL	\$4,154.84

Regarding item 1, the tenant is seeking double the return of their \$450.00 security deposit as the tenant testified that she provided her forwarding address and the landlord has yet to return the security deposit and has not claimed against it. The agent confirmed that the landlord received the tenant's written forwarding address on May 7, 2018, and did not return the security deposit as the agent found an employee stealing from the landlord company. The agent stated that the landlord company was not in a financial position to return the deposits including the paint deposit, which will be dealt with further below. The agent stated that her company was "going downhill" due to the employee theft.

Regarding item 2, the tenant is seeking the return of the \$200.00 paint deposit that the tenant paid the original landlord at the start of the tenancy. The agent confirmed that the paint deposit was forwarded to the landlord company when the landlord purchased the rental unit from the previous owners. The agent also confirmed that the \$200.00 paint deposit has not been returned due to a lack of funds.

Regarding item 3, the tenant is seeking \$754.84 which the tenant explained is for May 2018 rent that was supposed to be paid to the tenant for vacating early as agreed between the parties. The parties agreed that the agent requested for the tenant to vacate by May 1, 2018 and the parties eventually agreed on May 5, 2018 and that in doing so, the landlord would provide an additional \$500.00 incentive in addition to the compensation required when serving a 2 Month Notice. The incentive will be discussed further below. As May has 31 days, the \$900.00 monthly rent is divided by 31 days, which is a daily rent rate of \$29.03 per day. The \$29.03 daily rent rate is then multiplied by 5 days, which totals \$145.15. Then \$145.15 is subtracted from the \$900.00 rent for a total of \$754.85, which is one cent off from the tenant's amount listed above. The agent confirmed that the tenant was not given any monetary compensation for the period of May 6-31, 2018, inclusive.

Regarding item 4, the parties agreed during the hearing that the agent offered the tenant an incentive of \$500.00, which was in addition to the compensation required by the *Act*, if the tenant could vacate by May 1, 2018. The parties also confirmed that as the tenant could not vacate by May 1, 2018, that the landlord would still pay the tenant the incentive if the tenant could vacate by May 5, 2018. The tenant did vacate the rental unit on May 5, 2018. The agent confirmed that the tenant was not paid the \$500.00 incentive due to a lack of funds.

Regarding item 5, the tenant is seeking the amount of \$1,800.00, which is double the monthly rent due to the landlord failing to comply with the reason stated in the 2 Month

Notice. The tenant was served with the 2 Month Notice with an effective vacancy date of May 31, 2018. The 2 Month Notice indicates the reason to end tenancy as:

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

The agent testified that the landlord rented the rental unit to a family friend for \$1,350.00 effective June of 2018. The agent confirmed that the family friend was not related to the agent or landlord.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

In the matter before me, the tenant has the onus of proof.

Item 1 - The tenant is seeking double the return of their \$450.00 security deposit as the tenant testified that she provided her forwarding address and the landlord has yet to return the security deposit and has not claimed against it. The agent did not dispute that the landlord had received the forwarding address from the tenant. The agent confirmed that it was not returned due to a lack of funds. Section 38 of the *Act* applies and states:

Return of security deposit and pet damage deposit

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

[Emphasis added]

Based on the above, I find the tenant has met the burden of proof. I find the landlord breached section 38 of the *Act* by failing to either return the tenant's security deposit of \$450.00 in full within 15 days of May 7, 2018, which is the date the agent confirms being served with the tenant's forwarding address, or at least filing a claim towards the security deposit. The landlord did neither. Therefore, I grant the tenant **\$900.00** as claimed for double the \$450.00 security deposit.

Item 2 - The tenant is seeking the return of the \$200.00 paint deposit that the tenant paid the original landlord at the start of the tenancy. There is no dispute that the paint deposit was forwarded by the previous owners to the landlord and that the landlord failed to return the paint deposit. The agent stated that the reason was due to lack of funds. As there is no hardship clause in the *Act*, I find the landlord is liable to return the \$200.00 paint deposit. The landlord has no authority under the *Act* to retain such a deposit. Therefore, I find the landlord breached the tenancy agreement and I grant the tenant **\$200.00** as claimed for this item.

Item 3 – The tenant has claimed \$754.84 which the tenant explained is for May 2018 rent that was supposed to be paid to the tenant for vacating early as agreed between the parties. The parties confirmed that the earlier date of May 5, 2018 was agreed upon by the parties that the tenant would vacate the rental unit based on the incentive which will be discuss further below. Section 51 of the *Act* applies and states:

Tenant's compensation: section 49 notice

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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), **that amount is deemed to have been paid to the landlord.**

(1.2) **If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.**

[Emphasis added]

Based on the above, I find the tenant is entitled to compensation in the amount of \$754.85 as I have calculated above which is comprised of \$900.00 for May 2018 rent less the 5 days at \$29.03 per day which totals \$754.85. Therefore, I find the tenant has met the burden of proof and is owed **\$754.85** as claimed for this item.

Item 4 - The parties agreed during the hearing that the agent offered the tenant an incentive of \$500.00, which was in addition to the compensation required by the *Act*, if the tenant could vacate by May 1, 2018. The parties also confirmed that as the tenant could not vacate by May 1, 2018, that the landlord would still pay the tenant the incentive if the tenant could vacate by May 5, 2018. Based on this agreement between the parties which the parties agreed to during the hearing, I find that this incentive agreement is binding and enforceable and became a part of the tenancy agreement terms. Therefore, I find the landlord breached the tenancy agreement and the tenant has met the burden of proof. I grant the tenant **\$500.00** for the incentive as a result.

Item 5 - The tenant is seeking the amount of \$1,800.00, which is double the monthly rent due to the landlord failing to comply with the reason stated in the 2 Month Notice. The tenant was served with the 2 Month Notice with an effective vacancy date of May 31, 2018. The 2 Month Notice indicates the reason to end tenancy as:

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

The agent testified that the landlord rented the rental unit to a family friend for \$1,350.00 effective June of 2018. The agent confirmed that the family friend was not related to the agent or landlord. Section 51(2) of the *Act* applies and states:

(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.

[Emphasis added]

Given that the landlord re-rented the unit for substantially more rent to someone that I find does not meet the definition of close family member as set out in the 2 Month Notice, I find the tenant has met the burden of proof. Therefore, I grant the tenant **\$1,800.00** as claimed for this item.

As the tenant's application was successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*. The tenant has established a total monetary claim of **\$4,254.85** as described above. I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of **\$4,254.85** accordingly.

I caution the landlord not to breach the *Act* or use the rental unit for a different reason other than what is stated in the 2 Month Notice in the future.

Conclusion

The tenant's application is successful.

The landlord has failed to comply with the reason stated in the 2 Month Notice for at least six months from the effective date of the 2 Month Notice contrary to the *Act*. The tenant has met the burden of proof and has established a total monetary claim of \$4,254.85. The tenant has been granted a monetary order pursuant to section 67 of the *Act*, in that amount. This order must be served on the landlord by the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned as noted above.

The decision will be emailed to the parties as noted above, and the monetary order will be emailed to the tenant for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 23, 2019

Residential Tenancy Branch