Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant, the landlord, the landlord's agent, and the landlord's advocate appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail but did not know on what date. The landlord confirmed receipt of the dispute resolution package, along with the tenant's evidence, in early September 2018. The landlord was aware of the application made by the tenant and had an opportunity to prepare for the hearing. The landlord confirmed receipt of the notice of dispute resolution and evidence and agreed that the package was received within the timelines as prescribed in the Residential Tenancy Branch Rules of Procedure. Therefore, I find that the landlord was served with the dispute resolution package and evidence in accordance with the *Act*.
The tenant testified that she did not receive the landlord's evidence, and the landlord could not recollect the exact date on which the evidence was served, or the method by which it was served. The landlord agreed that the evidence provided was not related to the substantive issue which forms the basis of the tenant's application. As the landlord's evidence was not

disclosed to the tenant, and since the landlord agreed that it was unrelated, I will not consider the landlord's evidence as part of this application.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a monetary award for the return of all or a portion of their security deposit? If so, should it be doubled?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that the tenancy began on December 29, 2016, and a security deposit of $425.00 was provided to the landlord and continues to be held by the landlord. The initial monthly rent was set at $850.00, and during the course of the tenancy, was increased to $915.00, and remained at that amount at the end of the tenancy. The monthly rent was payable on the first day of each month. The subject rental property is a basement suite in a single-family home.

The tenant testified that on April 10, 2018, the landlord served her with a Two Month Notice to End Tenancy for Landlord's Use with an effective date of June 15, 2018 (the "Two Month Notice"). The tenant confirmed receipt of the Two Month Notice on April 10, 2018.

The Two Month Notice stated the following reason for ending this 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).

Both parties agreed that pursuant to the Two Month Notice, the tenant received one months' free rent from the landlord, by withholding payment of rent for the month June 2018, which represented the final month of the tenancy.
The tenant testified when the landlord served the Two Month Notice in April 2018, the landlord conveyed that her cousin from Calgary would be moving-in to the rental unit, and that formed the basis of the landlord's decision to issue the Two Month Notice.

The tenant asserted that the she and her co-tenant vacated the rental unit on June 30, 2018. The tenant provided that on July 06, 2018, she provided her forwarding address in writing, requesting the return of her deposit, by placing a document with the forwarding address in the landlord's mailbox. The tenant testified that the document included her new phone number, which the landlord could use to contact the tenant, since the tenant had a new phone number at that time.

The tenant provided that on the August 02, 2018, the landlord called the tenant at the tenant's new phone number to inform her that there was mail for the tenant which had arrived at the rental unit. The tenant attended the rental unit in August 2018 to collect the mail, and at the same time, knocked on the door of the rental unit to ask the occupant of the unit at that time if she could search the unit for keys that she left at the rental unit. The tenant testified that the occupant s of the rental unit at that time were not relatives of the landlord; rather, the tenant found the landlord had re-rented the unit to new tenants.

The tenant testified that she searched online using an online site of a local paper which serves the area in which the rental unit is located, and found an electronic advertisement which depicts the details of the rental unit that she had vacated, and listed the rental unit advertised for a higher rent, in the amount of $1,100.00, and included the landlord's phone number as a contact number. The tenant was not able to provide a copy of this advertisement as evidence, but verbally relayed the information as part of her testimony.

The tenant testified that after vacating the rental unit, the tenants agreed that the landlord could retain $100.00 of the security deposit for carpet cleaning. The tenant testified that the parties mutually agreed to the landlord holding only $100.00. The tenant seeks a return of the balance of the security deposit in the amount of $325.00.

The tenant also seeks compensation under the *Act* to be compensated an amount equal to two months' of the monthly rent paid at the time she vacated the rental unit, since the landlord failed to comply with the reasons for which the Two Month Notice was issued. Therefore, the tenant seeks $1,830.00, which represents double the monthly rent of $915.00 paid with respect to the tenancy.

The landlord testified that her cousin from Calgary had intended to move-in to the rental unit, and that formed the basis of her decision to end the tenancy with the tenants by issuing the Two Month Notice on April 10, 2018. The landlord provided additional evidence to convey that, at some point after the Two Month Notice had been issued, the landlord's cousin informed her that they would not be able to move-in to the rental unit.

The landlord was not certain as to the date on which the cousin provided this information, and could only recollect that it was at some point in either April 2018 or May 2018. The landlord did not provide testimony as to why this information was not relayed to the tenants.

The landlord testified that the tenants had caused the hydro usage to result in a very high hydro bill towards the end of the tenancy, and that she had received noise complaints from neighbours due to the tenants using tools for the purpose of commercial activity. The landlord asserted that repairs and renovations were needed to the cabinets, countertops, toilets, kitchen faucet and the kitchen sink. The landlord testified that the carpets had to be cleaned twice.

The landlord agreed that the rental unit had been re-rented to new tenants at some point in July 2018, since the landlord's cousin decided to not move-in to the rental unit. The landlord could not recall the exact date on which she entered into a new tenancy agreement with the new tenants, other than to convey that is was in July 2018.

Analysis

Based on the Two Month Notice entered into evidence and the testimony of both parties, I find that service of the Two Month Notice was effected on the tenants on April 10, 2018, in accordance with section 88 of the *Act.*

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit. Section 49 of the *Act* provides the following definition for a close family member:

> **49** (1)In this section:
> **"close family member"** means, in relation to an individual,
> (a)the individual's parent, spouse or child, or
> (b)the parent or child of that individual's spouse;

On the date the Two Month Notice was served on the tenants, section 51(1) of the *Act* stated 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 this component of the compensation owed to the tenants was adhered to, as the tenants withheld the monthly rent for June 2018, which was their final month of occupancy of the rental unit.

On the date the Two Month Notice was served on the Tenants, section 51(2) 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Both parties provided testimony which affirms the following:

1) The landlord issued the Two Month Notice for the purpose of having her cousin move-in to the rental unit.

2) The landlord's family member did not move-in to the rental unit, rather, the landlord re-rented the rental unit in July 2018 by entering into a new tenancy agreement with new tenants.

Based on the foregoing, I find that the landlord did not adhere to section 49 of the *Act* at the time the Two Month Notice was issued, since the landlord did not intend to have a close family member occupy the rental unit. A cousin of the landlord is not included in the definition of "close family member" as defined under the *Act*. Therefore, I find that the landlord did not have sufficient grounds to issue the Two Month Notice in an effort to end the tenancy pursuant to the Two Month Notice.

However, despite the landlord issuing a Two Month Notice to End Tenancy that, in essence, was invalid which did not require the tenant to vacate the rental unit, I find that the tenant relied on that notice as if the landlord had issued a valid notice and as such she remains entitled to any and all compensation allowed for receiving such a notice and/or the landlord's failure to comply with the reasons set forth in it.

I further find that the landlord did not adhere to section 51 of the *Act*, as the landlord entered into a new tenancy agreement with new tenants in July 2018 subsequent to the previous tenants vacating the rental unit on June 30, 2018. The reasons given on the Two Month Notice served to the tenants was that a close family member of the landlord will occupy the rental unit. Since the landlord provided testimony to confirm that this did not occur, and that she entered into a new tenancy agreement with new tenants, I find that the landlord has provided affirmed testimony that she violated the provisions of section 51 of *Act*.

Based on the foregoing, I find that pursuant to section 51 of the *Act*, the landlord must compensate the tenants by paying them an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. Therefore, the landlord is to pay the tenants $1,830.00, which represents double the amount of the monthly rent, of $915.00, owed under the tenancy at the time the tenants vacated the rental unit.

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy, or upon receipt of the tenant's 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 tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address on July 06, 2018, or following the conclusion of the tenancy. If the landlord had concerns arising from the purported damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit.

It is inconsequential if damages exist, if the landlord does not take action to address these matters through the dispute resolution process. A landlord cannot decide to simply keep the security deposit as recourse for loss.

While the parties acknowledged that a verbal agreement was reached with respect to the landlord being able to retain a portion of the deposit for carpet cleaning, the amount that the parties agreed to is contested. I prefer the tenant's testimony that the parties agreed that the landlord could retain $100.00 of the security deposit for carpet cleaning.

However, no evidence was produced at the hearing that the landlord received the tenant's written authorization to retain all, or a portion of the remaining balance of the security deposit, in the amount of $325.00, to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the *Act*, nor did the landlord receive an order from an Arbitrator enabling her to do so.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenant is therefore entitled to a monetary award in the amount of $650.00, representing a doubling of the unreturned portion of the tenant's security deposit ($325.00 x 2).

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

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of $2,580.00 against the landlord. The tenant is provided with a Monetary 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.

Item	**Amount**
Doubling of Return of Security Deposit (2 x $325.00)	$650.00
Penalty for 2 Month Notice (2 x $915.00)	1,830.00

Recovery of Filing Fee	100.00
Total =	$2,580.00

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: January 07, 2019

Residential Tenancy Branch