



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on August 7, 2018 (the "Application"). The Tenants applied for the return of the security deposit, compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing for all Tenants. The Representative and A.B. appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant confirmed the full name of Tenant G.H. and this is reflected in the style of cause.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Representative confirmed the Landlord received the hearing package and Tenants' evidence. The Tenant confirmed the Tenants received the Landlord's evidence and had time to review it.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to the return of the security deposit?
2. Are the Tenants entitled to compensation for monetary loss or other money owed?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant explained the following in relation to the tenancy agreement. The rental unit was a house with four rooms. Tenant A.S. moved into the rental unit in July of 2016 under a sublet

agreement. The sublet agreement ended and Tenant A.S. became a permanent tenant. The Tenant moved into the rental unit January of 2017. At the time, there were two other individuals living in the rental unit that are not named on the Application. Tenant G.H. moved into the rental unit in May of 2017 and Tenant K.S. moved into the rental unit in February of 2018. The Tenant said there was a written tenancy agreement and each time a tenant moved out, their name was scratched out and the name of the new tenant was added. The Tenant agreed that the Tenants were all tenants under one tenancy agreement and that they were joint tenants.

The Tenant testified that each of the Tenants paid a security deposit when they moved into the rental unit. She said her and Tenant A.S. each paid \$250.00 and Tenant G.H. and Tenant K.S. each paid \$300.00. However, both parties agreed the Landlord holds a total of \$1,050.00 as a security deposit for the Tenants. The Tenant testified that the two individuals who lived in the rental unit when she moved in paid separate security deposits which were refunded to them when they moved out.

The Tenant testified that the Tenants vacated the rental unit July 31, 2018 pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Representative agreed with the outline of the tenancy agreement provided by the Tenant. The Representative agreed the Tenants were joint tenants under one tenancy agreement. The Representative did not know about the sublease agreement in relation to Tenant A.S. but did not take the position that there was a sublease agreement at the relevant time.

Both parties agreed the tenancy was a month-to-month tenancy. Both parties agreed rent was \$2,100.00 per month due on the first day of each month.

The Tenant testified that the Tenants received \$416.00 of the security deposit back August 11, 2018. The Representative said this sounds correct.

The Tenant testified that Tenant K.S. moved to a new address and this was provided to the Landlord July 31, 2018. The Tenant advised that K.S.'s new address was included on a Two Month Notice to End Tenancy for Landlord's Use of Property which was given to the Landlord in person July 31, 2018. A copy of this was submitted as evidence.

A text message had been submitted as evidence in relation to a forwarding address for the Tenants. The Tenant testified that this was sent August 2, 2018.

The Representative did not dispute the testimony of the Tenant in relation to the Tenants providing a forwarding address. The Representative agreed the forwarding address was provided July 31, 2018.

The parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end

of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to keep the security deposit.

The parties agreed no move-in inspection was done. The Tenant testified that the Landlord never offered the Tenants an opportunity to do a move-in inspection. The Representative did not know if the Landlord ever offered the Tenants an opportunity to do a move-in inspection. The Representative advised that no Condition Inspection Report was done on move-in.

The parties agreed no move-out inspection was done. The Representative testified that the Tenants just left and it was not clear to the Landlord that they were moving out July 31, 2018. I understood the Representative to say that the Landlord did not offer the Tenants a written opportunity to do a move-out inspection and that the Landlord was under the impression that a verbal inspection with the Tenants was sufficient. The Representative advised that no Condition Inspection Report was done on move-out.

The Tenant testified that she was clear in her message to the Landlord about when the Tenants were vacating the rental unit.

The Representative testified about the reason the Landlord kept part of the security deposit which included outstanding bills and damage to the rental unit.

In relation to the Tenants' request for compensation, this related to a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant testified as follows. On July 1, 2018, the Landlord sent her a text message stating family was moving into the rental unit at the end of September and asking that the Tenants vacate September 30, 2018. On July 16, 2018, she informed the Landlord via text message that the Tenants had found a new place to rent and were moving August 1, 2018. The Landlord told her this was short notice and asked that the Tenants stay. She told the Landlord it was not possible for the Tenants to stay longer as they needed to find a new place to live. On July 31, 2018, the Tenants met with the Landlord and asked him to sign a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant testified that it was her understanding that the Tenants' notice to vacate was sufficient notice because it was 10 days notice. She said it was her understanding that the Tenants could stay until the end of July rent free or receive a refund for July rent. The Tenant testified that July rent was paid and August rent was not paid. The Tenant testified that the Tenants never received a refund for July rent.

A copy of the Two Month Notice to End Tenancy for Landlord's Use of Property provided to the Landlord by the Tenants was submitted as evidence. It is not signed by the Landlord. I asked the Tenant if the Landlord ever signed it and she said it does not appear so. She said she thinks the Landlord refused to sign the document. The Tenant testified that she knows the

Landlord received a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant testified that the first time the Landlord provided the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property on the proper form was when they met with him July 31, 2018. She said the Landlord dated this notice August 29, 2018.

The Representative disputed that the Tenants took a Two Month Notice to End Tenancy for Landlord's Use of Property to the Landlord on July 31, 2018 and that the Landlord refused to sign it. The Representative agreed that the Landlord gave the Tenants a Two Month Notice to End Tenancy for Landlord's Use of Property on July 31, 2018 but pointed out that it was dated September 30, 2018. The Representative testified that the Landlord never asked the Tenants to leave by July 31, 2018 and that the Landlord did not give notice to end the tenancy to the Tenants other than on July 31, 2018.

Analysis

Based on the testimony and agreement of the parties, I find that the Tenants were joint tenants under one tenancy agreement and therefore equally entitled to the return of the entire security deposit.

Security Deposit

Section 38 of the *Residential Tenancy Act* (the "*Act*") sets out the obligations of landlords in relation to security deposits held at the end of a tenancy.

Section 38(1) requires landlords to return the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*. Further, landlords cannot claim against the security deposit for damage to the unit under section 38(1) of the *Act* if they have extinguished their right to claim against the security deposit under either section 24 or 36 of the *Act*.

I find that no move-in inspection was done as the parties agreed on this. I find the Landlord did not provide the Tenants with an opportunity to do a move-in inspection as the Tenant says. The Representative did not know about this but did not dispute the testimony of the Tenant in this regard. There is no evidence before me that the Landlord did provide the Tenants with an opportunity to do a move-in inspection. I accept that the Landlord did not do so. Therefore, I find the Tenants did not extinguish their rights in relation to the security deposit under section 24 of the *Act*.

Further, I find the Landlord did extinguish his right to claim against the security deposit for damage to the rental unit under section 24 of the *Act* as no move-in inspection was done and I

have found that the Landlord did not provide the Tenants with an opportunity to do a move-in inspection.

I find that the Landlord never provided the Tenants with a written opportunity to do a move-out inspection based on the testimony of the Representative. Therefore, I find the Tenants did not extinguish their rights in relation to the security deposit under section 36 of the *Act*.

Based on the testimony of the parties, I find the Tenants vacated the rental unit July 31, 2018 and that the Landlord received the Tenants' forwarding address on July 31, 2018. Therefore, July 31, 2018 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from July 31, 2018 to repay the security deposit or claim against the deposit for something other than damage to the rental unit.

Based on the testimony of the parties, I find the Landlord repaid a portion of the security deposit on August 11, 2018. However, returning a portion is not sufficient. The Landlord was required to return all of the security deposit or claim against the security deposit for something other than damage to the rental unit within 15 days. The Landlord did neither. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

Based on the testimony of the parties, and my findings above, I find that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply in this case.

I note that the outstanding bills and damage to the rental unit are not relevant on this application. If the Landlord felt that he was entitled to keep any portion of the security deposit, he was required to apply for dispute resolution claiming against it. Further, the Landlord was not entitled to claim against the security deposit for damage to the rental unit given he had extinguished his right to do so.

Given the Landlord failed to comply with section 38(1) of the *Act*, and that none of the exceptions apply, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenants pursuant to section 38(6) of the *Act*. Therefore, the Landlord must return \$2,100.00 to the Tenants. The Landlord has already returned \$416.00 to the Tenants and therefore must only return \$1,684.00 to the Tenants. I note that there is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

Compensation based on Two Month Notice to End Tenancy for Landlord's Use of Property

Section 51 of the *Act* sets out the compensation due to tenants when served with a Two Month Notice to End Tenancy for Landlord's Use of Property and states:

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.

...

[emphasis added]

Section 50 of the *Act* outlines the circumstances in which tenants can end a tenancy early when served with a Two Month Notice to End Tenancy for Landlord's Use of Property and states:

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property]...the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

...

[emphasis added]

Section 52 of the *Act* sets out the form and content of notices to end tenancy issued under the *Act* and states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and

(e) when given by a landlord, be in the approved form.

[emphasis added]

The text message sent by the Landlord to the Tenants asking that they vacate the rental unit by September 30, 2018 as family was moving into the rental unit was not a valid notice to end tenancy issued under section 49 of the *Act* as it was a text message and did not comply with section 52 of the *Act*. The text message was not an effective notice to end tenancy and the Tenants were not required to vacate the rental unit based on the text message. Further, the Tenants were not entitled to give 10 days notice to end the tenancy under section 50 of the *Act* as this only applies when tenants have been given a notice to end tenancy under section 49 of the *Act* and the Tenants were not given such a notice in this case.

Given that the Tenants did not receive a notice to end tenancy issued under section 49 of the *Act*, they are not entitled to compensation under section 51 of the *Act*.

I acknowledge that the Landlord did give the Tenants a Two Month Notice to End Tenancy for Landlord's Use of Property on July 31, 2018. This does not change my analysis. This tenancy ended July 31, 2018 due to the Tenants giving notice to end the tenancy and vacating the rental unit. The tenancy ended July 31, 2018, the same date the notice to end tenancy was provided. The tenancy did not end pursuant to the Two Month Notice to End Tenancy for Landlord's Use of Property served on the Tenants on July 31, 2018. In these specific circumstances, I do not accept that the Tenants are entitled to compensation under section 51 of the *Act*.

As the Tenants were partially successful in this application, I grant them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to a Monetary Order in the amount of \$1,784.00.

Conclusion

The Tenants are entitled to a Monetary Order in the amount of \$1,784.00 and I grant the Tenants a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the 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 *Act*.

Dated: January 02, 2019

Residential Tenancy Branch