



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on February 5, 2019. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- a monetary order for return of the security or pet deposit; and,
- recovery of the filing fee.

Both sides were present at the hearing. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions. The Tenant stated that she served the Landlord with her Notice of Hearing, application, and evidence by registered mail. The Landlord acknowledged getting this package and did not submit any evidence of his own for this hearing. I find the Tenants sufficiently served the Landlord with their package.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Are the Tenants entitled to compensation for loss or money owed?

Background and Evidence

The Tenants stated that monthly rent was \$1,800.00. The Tenants stated that they received a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on March 5, 2018. The Tenants stated that the Landlord still holds their security deposit in the amount of \$900.00.

The Tenants stated that after receiving the Notice, they paid for April 2018 rent. Then, they found another place to live, and gave their 10 Day Notice to terminate the tenancy early. The Tenants stated that they hand delivered this document to the Landlord on April 9, 2018. A copy of this letter was provided into evidence. This letter states that the Tenants are giving 10 days' notice to leave and end the tenancy on April 19, 2018. The letter also contains the Tenant's forwarding address, for the return of the security deposit. The Tenants also submitted a written proof of service from a witness who was present to confirm that this letter was personally served to the Landlord on April 9, 2018.

The Landlord provided vague information on when and if he received this 10 Day Notice and the Tenants forwarding address in writing (which were in the same letter). The Landlord first stated that he was not there in person to receive it but stated that he received it from his daughter the following day, on April 10, 2018. Then later in the hearing, the Landlord stated that he did not get it at all. The Landlord also indicated that he disagreed with the Tenant's request to move out early and does not feel they should be entitled to the return of their rent since they vacated early. The Landlord also stated that he did not pay back the Tenants security deposit because he did not agree that he should return any rent to the Tenants based on their 10 Day Notice.

The Tenants stated that they are looking for double their security deposit (2x\$900.00) because the Landlord failed to return their deposit within 15 days of the end of their tenancy. The Tenants are also looking for their one month's compensation pursuant to section 51 of the Act. Since they moved out early by way of a 10 Day Notice, they are looking for cash compensation, plus the return of the 11 days rent they paid, but didn't end up using from April 19, 2018 – April 30, 2018. The Tenants stated that they legally ended the tenancy early and since they paid April rent in full, they should be entitled to \$660.00 back for the last part of April 2018 (11 x per diem rate of \$60.00).

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

First, I turn to the Tenants' request to obtain one months' compensation based on the Notice, pursuant to section 51 of the Act and to recover the 11 days rent for April 19-30, 2018.

First, I turn to the following portion of the Act:

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.*

In this case, I find the Landlord is obligated to compensate the Tenants, pursuant to section 51 of the Act, in the amount of \$1,800.00, which is equivalent to one months' rent. This amount is compensable upon the Tenants' receipt of the Notice.

I note that the Tenants provided 10 days' notice that they were going to vacate early, following receipt of the 2 Month Notice on March 5, 2018. The Landlord provided unclear and internally inconsistent testimony on this matter. He appeared at some points to acknowledge getting the letter, which contained the forwarding address in writing, and the Tenants' 10 Day Notice to leave early, and then at another point, he denied getting it. In contrast to this, the Tenant provided clear statements, supported by a written statement from a witness who was present. The Tenants also provided a copy of the letter. I find the Tenant has provided more detailed, consistent, and compelling evidence on this matter, and I have placed more weight on it. I find it more likely than not that the Tenants provided this letter to the Landlord, in person, on April 9, 2018. I find this letter was served on that day, and acted as the Tenant's 10 Day Notice to End the Tenancy Early, as well as their forwarding address in writing.

Ultimately, the tenancy ended on April 19, 2018, which is the effective date of their 10 Day Notice. I find the Tenants gave proper Notice that they would terminate the tenancy early, and I find they legally ended the tenancy on April 19, 2018. I find the evidence sufficiently establishes that the Landlord was in receipt of the 10 Day Notice from the Tenants on April 9, 2018.

I note the 2-Month Notice states that the Tenants may end the tenancy sooner than the date set out in this Notice as long as they give the landlord at least 10 days' written notice and pay the proportion of rent due to the effective date of that notice. Ending the tenancy early does not affect the Tenant's right to the one month compensation above.

Since they paid for April 2018 rent, and never got compensated pursuant to section 51 of the Act, I find the Tenants are entitled to a monetary order in the amount of \$2,440.00 for these items, which represents their free months' rent (\$1,800.00), plus the 11 days rent they paid for but didn't use at the end of April 2018 (\$660.00).

Next, I turn to the Tenant's request for double the security deposit.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the tenancy ended on April 19, 2018, as laid out above. As stated above, I find the Landlord received the letter from the Tenants on April 9, 2018, which is the day they hand delivered it. A copy of this is in evidence, and it clearly lists the Tenants' forwarding address.

Pursuant to section 38(1) of the Act, the Landlord had 15 days after the end of the tenancy (until May 4, 2018) to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord did neither and I find the Landlord breached section 38(1) of the Act. Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the security deposit (\$900.00 x 2).

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I find the Tenants are entitled to a monetary order as follows:

- \$2,440.00 which represents their free months' rent (\$1,800.00), plus the 11 days rent they paid for but didn't use at the end of April 2018 (\$660.00).
- \$1,800.00 for double the security deposit

- \$100.00 for the cost of the filing fee
- **Total: \$4,340.00**

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$4,340.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: February 6, 2019

Residential Tenancy Branch