



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On October 31, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package, to the address the Landlord provided on the Mutual Agreement to End a Tenancy and other documents, by registered mail on November 2, 2018 and the Landlord confirmed receipt of this package. In accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that he hand delivered his evidence on January 22, 2019 to the same address that the Landlord provided. He stated that this address was a place of employment and that he left this package with the receptionist who stated that it would be delivered to the Landlord. The Landlord advised that she provided this address because her living situation was in flux and this address was the workplace of her daughter. However, she stated that she did not receive this evidence package as her daughter had gone on vacation. As this was the only address that the Landlord provided to the Tenant for service, I am satisfied that the evidence has been sufficiently served to the Landlord. Consequently, I have accepted this evidence and considered it when rendering this decision.

The Landlord advised that she served her evidence to the Tenant by registered mail on February 15, 2019. Service of the evidence does not comply with the time frame requirements of Rule 3.15 of the Rules of Procedure; however, the Tenant advised that he had reviewed the evidence and was prepared to proceed. 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

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to monetary compensation?
- Is the Tenant 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.

Both parties agreed that the tenancy started on July 1, 2016 and the tenancy ended on September 30, 2018 when the Tenant gave up vacant possession of the rental unit. Rent was established at \$1,976.00 per month, due on the first day of each month. A security deposit of \$950.00 was also paid. A copy of the tenancy agreement was submitted into documentary evidence.

The Landlord advised that she completed a move-in inspection report with the Tenant, but she did not submit a copy of this report as documentary evidence for consideration. She stated that she completed a move-out inspection report with the Tenant and she provided a copy of this report for consideration. During the hearing, the Landlord confirmed that the move-in inspection report was identical in form and content to the move-out inspection report that was submitted for consideration.

The Tenant advised that he mailed a letter to the Landlord on October 12, 2018 and provided his forwarding address in writing. He submitted documentary evidence of the letter corroborating that he provided his forwarding address to the Landlord. The Tenant is seeking a return of double the security deposit as the Landlord did not deal with the security deposit pursuant to Section 38 of the *Act*.

The Landlord confirmed that she received this letter and advised that she provided the Tenant with a written breakdown of the amount that she would be deducting from the Tenant's deposit. She advised that she returned \$177.00 to the Tenant and \$177.00 to the co-tenant, totalling \$354.00, by electronic transfer on October 14, 2018. She stated that she did not have any written consent from either tenant to withhold any amount of the security deposit.

Both parties agreed that a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") was served on April 20, 2018 and the reason the Landlord checked off on the Notice was that "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 Notice indicated an effective end of tenancy date of June 30, 2018; however, the parties agreed to extend the effective end date of the tenancy by signing a Mutual Agreement to End a Tenancy with a new effective date of September 30, 2018. As well, as part of this agreement, both parties agreed that the one-month compensation requirements of Section 51 of the *Act* would be waived in lieu of the extension of the effective date. However, both parties agreed during the hearing that the Notice was not withdrawn or replaced by the Mutual Agreement to End a Tenancy.

The Tenant is seeking compensation in the amount of twelve month's rent because the Landlord did not use the property for the stated purpose on the Notice. The Tenant submitted documentary evidence demonstrating that the Landlord listed the rental unit for sale and subsequently sold the property in November 2018.

The Landlord advised that they fully intended to move into the rental unit and she submitted documentary evidence demonstrating that a close family member did occupy the rental unit after the Tenant vacated the residence. However, the Landlord confirmed that this person could not bear to live in the rental unit, due to unforeseen circumstances, and she confirmed that the rental unit was sold in November 2018.

Analysis

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.

Sections 23(4) and 35(3) of the *Act* state that Landlord must complete a condition inspection report in accordance with the *Residential Tenancy Regulations* (the “Regulations”). Furthermore, Sections 24(2)(c) and 36(2)(c) state that the Landlord’s right to claim against a security deposit is extinguished if the Landlord does not complete the condition inspection reports in accordance with the Regulations. Moreover, Section 20 of the Regulations outlines the specific requirements of the contents of inspection reports.

When reviewing the Landlord’s move-out inspection report, I do not find that this report complies with the Regulations as it does not contain all the information prescribed. As the undisputed evidence is that the Landlord neglected to complete a move-in or move-out inspection report in accordance with the Regulations, I find that the Landlord has extinguished her right to claim against the security deposit.

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*.

Based on the consistent and undisputed evidence before me, a forwarding address in writing was provided in writing by the Tenant on October 12, 2018 by registered mail. Furthermore, the undisputed evidence is that the Landlord returned a total of \$354.00 of the security deposit on October 14, 2018 but did not make an Application to keep the balance of the deposit within 15 days of receiving the forwarding address in writing. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without authority under the *Act* or having either of the co-tenant’s written consent.

As the Landlord did not return the security deposit in full or make an Application to retain it within 15 days of receiving the forwarding address in writing, the Landlord in essence illegally withheld the deposit contrary to the *Act*. Thus, I am satisfied that the Landlord breached the requirements of Section 38. As such, I find that the Tenant has established a claim for a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenant a Monetary Order in the amount of \$1,900.00; however, as the co-tenants had received electronic transfers in the amount of \$354.00 already, I am reducing this monetary award accordingly. As such, I grant the Tenant a monetary award in the amount of **\$1,546.00**.

With respect to the Tenant's claim for compensation owed to him 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 April 20, 2018 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 sold in November 2018. Consequently, I am satisfied that the Landlord has failed to use the rental unit for the stated purpose for at least six months after the effective date of the Notice of June 30, 2018. As such, I am satisfied that the Tenant has substantiated his claim that he is entitled to a monetary award of double the monthly rent pursuant to Section 51 of the *Act*.

As both parties agreed that rent was \$1,976.00 per month, I am satisfied that the Tenant is entitled to compensation as set out in Section 51 of the *Act* in the amount of **\$3,952.00**.

As the Tenant was successful in his 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 Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Item	Amount
Double the security deposit	\$1,546.00
Double one month's rent	\$3,952.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$5,598.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$5,598.00** 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: February 28, 2019

Residential Tenancy Branch