



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSDT, FFT, MNDL-S, FFL

Introduction

This is a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* ("the Act"). The matter was set for a conference call hearing.

On April 1, 2018, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; for the return of a security deposit and or pet damage deposit; and to recover the cost of the filing fee.

On April 23, 2018, the Landlord applied for dispute resolution seeking a monetary order for damage to the rental unit; to keep the security deposit and/or pet damage deposit; and to recover the cost of the filing fee.

Both parties were present at the hearings. At the start of the hearings I introduced myself and the participants.

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.

Preliminary and Procedural Matters

At the start of the original hearing on October 18, 2018, I provided the parties with an explanation on how the hearing will proceed. As part of the explanation the parties were informed that the hearing is not recorded and is not permitted to be recorded. I stated that if either party is recording, I order them to stop now. The Landlord immediately spoke up and stated that he refuses to obey my order to stop recording. The Landlord refused to comply with my verbal order to stop recording the hearing.

The Landlord was informed that the Residential Tenancy Branch Rule of Procedure 6.12 applies to these hearings and that recording a dispute resolution hearing is not permitted. The Landlord again refused to comply with my order to stop recording the hearing. The Landlord was provided the following two options:

- Comply with the rules of procedure and stop recording the hearing and proceed.
- Request an adjournment of the hearing to arrange for a court reporter.

The Landlord chose to request an adjournment. Despite an objection by the Tenant and the requirement under the Rules of Procedure to make an application for a court recorder not less than seven days prior to the hearing, the Landlord's request was granted.

The matter was adjourned and an Interim Decision dated October 18, 2018, was sent to both parties. In the Interim Decision the Landlord was ordered to comply with the following:

- a) prior to the reconvened hearing, provide the Residential Tenancy Branch with proof of the Court Reporter's accreditation;
- b) make all necessary arrangements for attendance by the accredited Court Reporter and their necessary equipment;
- c) pay the cost of the accredited Court Reporter's attendance at the dispute resolution hearing;
- d) pay the cost of the Court Reporter's services and the cost of transcripts; and
- e) provide all parties and the Residential Tenancy Branch with official copies of the transcript.

The Residential Tenancy Branch set a new hearing date giving the Landlord sufficient time to make arrangements to arrange for a court reporter.

The Landlord and Tenant both appeared at the reconvened hearing on January 28, 2019.

At the reconvened hearing the Landlord testified that he never received the Interim Decision. The Landlord testified that the Interim Decision may have been sent to him using email, and he did not receive it. The requirements regarding the recording of the hearing provided within the Interim Decision were read out loud to the Landlord and Tenant. The Landlord was asked if he is willing to proceed without recording the hearing and the Landlord stated that he still wanted to proceed with having the hearing recorded.

The hearing was adjourned. The Landlord and Tenant were informed that if the Landlord fails to make the arrangements and a court reporter does not attend the next hearing, the hearing will proceed. The parties were further informed that if the Landlord insists on recording the hearing, without a court reporter, the Landlord's application will be dismissed and the Landlord will be excluded from participating in the hearing on the Tenant's claims.

On February 4, 2019, the Parties were mailed, through Canada Post, the Interim Decision and Notice of Adjourned Hearing providing them with the date and time of the reconvened hearing.

The Landlord failed to provide the Residential Tenancy Branch with proof of a court reporter's accreditation prior to the start of the reconvened hearing on March 18, 2019.

Both parties appeared on March 18, 2019. The Landlord argued that he has not received the information he needed in order to arrange for a court reporter. The Landlord again argued that I have not provided him with sufficient information. The Landlord was asked to provide an affirmation of truth and he initially refused and said that he wanted to finish his arguments.

The Landlord was informed that disruptive behaviour at the hearing will not be permitted and the Arbitrator has the right to give directions to any person at the hearing. On my third attempt, the Landlord affirmed an oath of truth. The Landlord was asked what steps he has taken to arrange for a court reporter and he responded that he has not taken any steps.

I informed the Landlord that I had previously read him the instructions for obtaining a court reporter at the last hearing. I informed the Landlord that the instructions were the same in both Interim Decisions that were sent to the parties.

The Tenant testified that he anticipated that the Landlord would claim he never received the information, so the Tenant sent a copy of the Interim Decision and the Residential Tenancy Branch Rules of Procedure to the Landlord using registered mail.

At the initial hearing, the Landlord's last minute request to have the hearing recorded was granted. Rather than removing the Landlord from the hearing at that time, the Landlord was granted leniency and was given an opportunity to meet his needs. The Landlord was provided with the information on how to proceed with a court reporter on two occasions and the information was also read aloud to him on January 28, 2019.

On March 18, 2019, the Landlord was asked whether he is prepared to participate in the hearing without recording the hearing and he would not answer as he continued to argue his point about a lack of information. The Landlord was given another opportunity to proceed and he would not agree. The Landlord has refused to proceed with the hearing, without recording the hearing, at three separate hearings.

I asked the Landlord to disconnect and leave the hearing. The Landlord continued to be argumentative. At 9:45 am, I chose to disconnect the Landlord from the hearing. The hearing proceeded on the claims contained within Tenant's application.

After considering the totality of what transpired at the three hearings, I find that the Landlord did not make an honest effort to arrange for a court reporter. It appears to me that the Landlord is looking for reasons to prevent the hearing from proceeding. I find that the Landlord's actions

are a breach of the rules of procedure and are prejudicial to the Tenant who wants to have his claims for compensation heard.

Since the Tenant was present and ready to proceed with his application and was ready to respond to the Landlord's application, and since the Landlord refused to proceed with the hearing, and did not take any reasonable steps to arrange for a court reporter, I dismiss the Landlord's application in its entirety without leave to reapply.

Issues to be Decided

- Are the Tenants entitled to compensation from the Landlord for money owed or damage or loss under the Act, regulation, or tenancy agreement?
- Are the Tenants entitled to the return of double the security deposit?

Background and Evidence

The Tenant was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The Tenant testified that he sent a copy of his documentary evidence to the Landlord using registered mail prior to the hearing.

The Tenant testified that the tenancy began on April 1, 2017, on a one year fixed term basis. Rent in the amount of \$1,150.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid a security deposit of \$575.00 to the Landlord. The Tenant testified that they moved out of the rental unit on February 28, 2018. The Tenants provided a copy of the tenancy agreement.

Tenants' Application

The Tenant is seeking compensation for the following items:

Security Deposit (double)	\$1,150.00
Compensation for 2 Month Notice	\$1,150.00
Compensation for Not Using the Unit for the Stated Purpose	\$2,300.00
Filing fees	\$100.00

Security Deposit

The Tenant is seeking monetary compensation in the amount of \$1,150.00 which is double the amount of the security deposit.

The Tenant testified that the Landlord failed to return the security deposit or make a claim against it by filing for dispute resolution within 15 days of the end of tenancy and the date the Landlord was provided with the Tenant's forwarding address in writing.

The Tenant testified that he provided his forwarding address in writing to the Landlord on February 8, 2018. The Tenant provided a copy of the letter containing his forwarding address.

The Tenant testified that there was no agreement that the Landlord could keep any amount of the security deposit and the Landlord never returned any amount of the security deposit.

The Tenant testified that he participated in a move out inspection with the Landlord.

Compensation for the 2 Month Notice to End Tenancy

The Tenant is seeking compensation in the amount of \$1,150.00.

The Tenant testified that he received a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated December 12, 2017, ("the 2 Month Notice"). The Tenant provided a copy of the 2 Month Notice. The reason for ending the tenancy within the 2 Month Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member

The Tenant accepted the 2 Month Notice and moved out of the rental unit on February 28, 2018.

The Tenant testified that he paid the full amount of rent owing under the tenancy agreement for the months of January 2018, and February 2018. The Tenant testified that he never received compensation from the Landlord in the amount of one month's rent payable under the tenancy agreement.

The Tenant testified that he sent the Landlord an email requesting the compensation that he is entitled too based on the 2 Month Notice, and the Landlord responded that he has rescinded the 2 Month Notice so the Landlord is not responsible to pay compensation to the Tenant. The Tenant testified that at no time did he agree to allow the Landlord to rescind the 2 Month Notice.

Compensation for Breach of Section 51 of the Act

The Tenant testified that the Landlord issued the 2 Month Notice in bad faith. He testified that the Landlord did not use the rental unit for the reason listed in the 2 Month Notice.

The Tenant testified that the Landlord informed him that the Landlord was moving into the rental unit and was turning the unit into a home office.

The Tenant testified that the Landlord posted an advertisement on a local website showing the rental unit was for rent. The Tenant testified that the photographs that were posted show the interior of the rental unit. The Tenant provided a copy of an advertisement from a website showing that the advertisement of the unit was placed on February 11, 2018.

The Tenant testified that a previous neighbor informed him that a new Tenant moved into the rental unit on March 3, 2018.

The Tenant is seeking \$2,300.00 due to the Landlord failing to use the rental unit for the reason contained within the 2 Month Notice.

Filing Fees

The Tenant is seeking to recover the cost of the filing fee, and is seeking to recover the cost of two previous applications. The Tenant testified that he withdrew an earlier application against the Landlord based on an agreement that the Landlord would return the security deposit. The Tenant testified that after withdrew his application, the Landlord refused to return the deposit as agreed.

Analysis

The Landlord was excluded from the hearing due to his refusal to comply with the Arbitrators direction.

Based on all of the above, the evidence and testimony of the Tenant, and on a balance of probabilities, I find as follows:

Security Deposit

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act provides that if a Landlord does not comply with subsection 1, the Landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both.

Based on the undisputed evidence and testimony from the Tenant, I find that the Landlord failed to repay the security deposit or make a claim for dispute resolution to keep the security deposit within 15 days of the tenancy ending and receipt of the Tenants forwarding address in writing.

I find that the Landlord breached his obligations under section 38 of the Act and must pay the Tenant double the amount of the \$575.00 security deposit.

I grant the Tenant monetary compensation in the amount of \$1,150.00.

Entitlement to One Month's Rent

Section 51 (1) of the Act provides 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 the Tenant received a 2 Month Notice from the Landlord and accepted the Notice and moved out of the rental unit. Residential Tenancy Branch Policy Guideline #11 Amendment and Withdrawal of Notices provides that a Landlord or Tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy can only be rescinded or withdrawn with the permission of the person who receives it.

I find that the Tenant did not agree to the rescinding of the 2 Month Notice. The Landlord issued the 2 Month Notice and is responsible for the obligations that stem from its issuance.

In accordance with section 51(1) of the Act, I find that the Landlord failed to compensate the Tenant the equivalent of one month's rent payable under the tenancy agreement.

I grant the Tenant the amount of \$1,150.00.

Entitlement to Two Month's Rent for Not Using the Rental Unit for the Stated Purpose

Compensation provisions of Section 51 of the Act were changed effective May 17, 2018. However, at the time the 2 Month Notice was issued on December 12, 2017, section 51 (2) of the Act provided:

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 find that the Landlord failed to use the rental unit for the purpose stated within the 2 Month Notice for a period of at least six months. I accept the Tenant's testimony and evidence that the

Landlord re-rented the unit to a new Tenant on March 3, 2018; a matter of days after the Tenant moved out.

I find that the Landlord breached section 51(2) (b) of the Act and must pay the Tenants the equivalent of two months' rent payable under the tenancy agreement.

I grant the Tenants the amount of \$2,300.00.

Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenants were successful with their application. The Landlord breached the Act. I order the Landlord to repay the Tenants the amount of \$100.00 for the cost of the application.

The Tenants request to recover the filing fees for two previous applications that were withdrawn by the Tenant are dismissed. The Tenant chose to withdraw the applications and I am not persuaded that the Landlord should bear the costs for the Tenants decision to withdraw.

Conclusion

The Tenants' application for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; for the return of a security deposit and or pet damage deposit is successful. The Landlord breached sections 38, and 51 of the Act.

I grant the Tenants a monetary order in the amount of \$4,700.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

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: March 19, 2019

Residential Tenancy Branch