



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 Tenant on December 05, 2018 (the “Application”). The Tenant applied for the return of double the security deposit, compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with N.M. to assist given a language barrier. The Landlord advised at the outset that she was not calling any witnesses during the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant had submitted evidence prior to the hearing. The Landlord had not. I addressed service of the hearing package and Tenant’s evidence and the Landlord confirmed she received these.

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. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to compensation for monetary loss or other money owed?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following in relation to a tenancy agreement. There was a verbal tenancy agreement between the Landlord, her husband and the Tenant. The tenancy started April 01, 2015 and was a month-to-month tenancy. Rent at the end of the tenancy was \$800.00 per month due on the first day of each month. The Tenant paid a \$300.00 security deposit. The tenancy ended May 01, 2018.

The Landlord testified that the Tenant agreed verbally during the tenancy that she could keep the security deposit towards unpaid rent. The Tenant denied agreeing to this. Both parties agreed the Landlord has not returned the security deposit to the Tenant.

The parties agreed the Landlord received the Tenant's forwarding address in writing on May 01, 2018.

The parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant 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 Landlord acknowledged that she did not provide the Tenant with two opportunities to do a move-in inspection.

The Tenant testified that no move-out inspection was done. The Landlord testified that it was done verbally. The Landlord acknowledged that she did not provide the Tenant with two opportunities to do a move-out inspection.

The Tenant sought one month's rent compensation pursuant to section 51 of the *Residential Tenancy Act* (the "Act") based on being issued a Two Month Notice to End Tenancy for Landlord's Use of Property.

A copy of the Two Month Notice was submitted as evidence. It is addressed to the Tenant and a second individual. The parties disagreed about whether this person was a tenant. The Tenant advised that the individual did not want to be involved in the Application.

The Two Month Notice is signed by the Landlord and dated April 17, 2018. The effective date on the Two Month Notice is June 16, 2018. The grounds for the Notice are that the rental unit will be occupied by the Landlord or the Landlord's close family member.

The Tenant testified as follows. The Landlord told him that her daughter was moving into the rental unit and that he needed to move out. The Tenant told the Landlord he wanted a Two Month Notice. He completed the Two Month Notice pursuant to a discussion with the RTB about the situation. He took the Two Month Notice to the Landlord to sign on April 17, 2018. The Landlord signed the Two Month Notice and it was delivered back to the Tenant. The following day he provided the Landlord a written notice that he was moving May 01, 2018. He vacated May 01, 2018. He paid rent up until May 01, 2018. The Landlord never compensated him one month's rent.

The Landlord testified as follows. She agrees the Tenant completed the Two Month Notice. A family member brought the Two Month Notice to her to sign and she signed it April 17, 2018. She told the family member to give the Two Month Notice back to the Tenant. The Tenant then told her he was moving. She does not recall if the Tenant gave written notice. The Tenant had paid rent until May 01, 2018. She did not give the Tenant one month's rent compensation because she called the "rental place" and was told she did not have to.

N.M. testified as follows. The Landlord gave the Tenant verbal notice that her daughter was moving in. The Landlord told the Tenant at least three months prior. The Tenant brought up the written documentation. The Tenant was not pressured to move out. The Tenant and second individual on the Two Month Notice were pressuring the Landlord to sign documentation. The Landlord was pressured into signing the Two Month Notice. She had an asthma attack because of the situation.

N.M. testified that the Tenant and second individual were standing at the door of the Landlord's residence when she signed the Two Month Notice. She confirmed the Landlord was in her own residence at the time and that her nephew was with her.

I note that when I pointed out to the Landlord and N.M. that they had submitted no evidence supporting the position that the Landlord was pressured into signing the Two Month Notice, N.M. started referring to possible witnesses. I advised the Landlord and N.M. that I would not allow them to call witnesses given they had indicated at the start of the hearing that they were not calling witnesses.

The Tenant denied that he pressured the Landlord into signing the Two Month Notice.

Analysis

Security Deposit

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord 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*.

I do not accept that the Tenant agreed verbally during the tenancy that the Landlord could keep the security deposit towards unpaid rent. The Landlord submitted no evidence in support of this position. I would expect such an agreement to be written or there to be some documentation of such an agreement. Further, it does not make sense that a landlord would allow a tenant to use a security deposit towards unpaid rent during the tenancy when the purpose of the security deposit is for the landlord to hold an amount that can be used towards monies owing or damage caused to the rental unit at the end of the tenancy.

The Landlord acknowledged that she did not provide the Tenant with two opportunities to do a move-in or move-out inspection. Therefore, I find the Tenant did not extinguish his rights in relation to the security deposit under sections 24 or 36 of the *Act*.

There is no issue that the Tenant vacated the rental unit May 01, 2018 and provided the Landlord with his forwarding address the same day. Therefore, May 01, 2018 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from May 01, 2018 to repay the security deposit or claim against it. There is no issue

that the Landlord did not repay the security deposit or claim against it. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

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

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 Tenant pursuant to section 38(6) of the *Act*. Therefore, the Landlord must return \$600.00 to the Tenant. 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 a tenant 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.

...

Section 50 of the *Act* outlines the circumstances in which a tenant 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...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.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51...

I find the Tenant did receive the Two Month Notice from the Landlord. N.M. submitted that the Landlord was pressured into signing the Two Month Notice. I do not accept this given the following circumstances. The Landlord was in her own house at the time. She was not alone but with her nephew. Her nephew is the one who brought her the Two Month Notice to sign. The Tenant and second individual were at the door and did not come into the residence. The Landlord signed the Two Month Notice and told her nephew to give it back to the Tenant. These circumstances do not amount to undue pressure or duress. The Landlord could simply have chosen not to sign the Two Month Notice and closed the door.

I note that the Landlord submitted no evidence supporting the submission that she was pressured into signing the Two Month Notice. I would expect a party who is alleging such pressure to submit some evidence to support their position. I place little weight on the testimony of N.M. as corroborative evidence given she was present for the hearing and either spoke for the Landlord or heard the Landlord's testimony prior to providing her own.

I acknowledge that I did not allow the Landlord to call witnesses on this issue. I asked the Landlord at the outset of the hearing if she was calling witnesses and she said she was not. Parties are expected to appear at the hearing ready to present their case. They are expected to have submitted the relevant evidence they wish to rely on and have relevant witnesses ready and prepared to testify. Here, the Landlord did not have the relevant witnesses ready and prepared to testify and therefore I declined to hear from them. I note that the issue of the Two Month Notice was clearly an issue before me in the Application. If the position of the Landlord was that she was pressured into signing the Two Month Notice, the Landlord should have submitted evidence and prepared to call witnesses relevant to this issue. In the absence of sufficient corroborative evidence, I do not accept that the Landlord was pressured into signing the Two Month Notice.

I note too that if the Landlord wanted the tenancy to end because her daughter was moving into the rental unit, which is what the parties stated during the hearing, the proper avenue to do so was to issue the Two Month Notice. Verbal notice that her daughter was moving in was not sufficient to end the tenancy and the Tenant had no obligation to move out pursuant to that verbal notice. The Tenant was entitled to insist on receiving the Two Month Notice and could have remained in the rental unit in the absence of such notice.

I acknowledge the Tenant has the onus to prove the claim pursuant to rule 6.6 of the Rules of Procedure. I find the Tenant has shown the Landlord signed the Two Month Notice on her own accord by producing the Two Month Notice with the Landlord's signature on it. I do not find that the Tenant must prove that he did not pressure the Landlord into signing the Two Month Notice when the only evidence on this point is the uncorroborated verbal testimony of the Landlord.

I find the Landlord served the Tenant with the Two Month Notice when she signed it and told her nephew to give it back to the Tenant. At this point, section 51 of the *Act* was triggered. The Tenant was entitled to receive the equivalent of one month's rent payable under the tenancy agreement.

I acknowledge that the Tenant gave notice and moved out early. He was entitled to do so under section 50 of the *Act*. Doing so did not affect the compensation requirement under section 51 of the *Act*.

There is no issue that the Tenant paid rent up until the date he vacated. There is no issue the Landlord never compensated the Tenant as required. The Tenant is entitled to this compensation and I award the Tenant the \$800.00 requested.

I note that the Landlord is not relieved of her obligations under section 51 of the *Act* because she was not aware of the obligation or because she called the "rental place" and was told she did not have to compensate the Tenant. Both landlords and tenants are expected to know their rights and obligations under the *Act* and a failure to know these rights and obligations does not justify failing to comply with the *Act*. Further, the information about compensation is included in the Two Month Notice which the Landlord chose to sign and provide back to the Tenant.

As the Tenant was successful in this application, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to a Monetary Order in the amount of \$1,500.00.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of \$1,500.00 and I grant the Tenant 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: March 14, 2019

Residential Tenancy Branch