



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD,

Introduction

On November 11, 2018, the Tenants applied for dispute resolution under the Residential Tenancy Act (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement, and for the return of the security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me.

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

- Are the Tenants entitled to the return of the security deposit?
- Are the Tenant’s entitled to compensation for money owed or damage or loss?

Background and Evidence

The parties testified that the tenancy commenced on December 1, 2017. Rent in the amount of \$1,500.00 was due by the first day of each month. The Tenants paid a security deposit of \$750.00 to the Landlord.

The Tenants testified that they moved out of the rental unit on July 31, 2018 after they received a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated June 16, 2018.

Tenant's Application

Security Deposit

The Tenants are seeking the return of their deposits in the amount of \$1,475.00. The Tenants paid the Landlord \$750.00 for a security deposit.

The Tenants testified that they did not provide their forwarding address in writing to the Landlord at the end of the tenancy. The tenants testified that the Landlord returned \$500.00 of the security deposit to them on August 5, 2018.

Compensation for Breach of Section 51 of the Act

The Tenants testified that the Landlord issued the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated June 16, 2018 ("the 2 Month Notice") in bad faith. The Tenant testified that the Landlord did not move into the rental unit and use the property for herself.

The Tenant testified that the Landlord re-rented the unit to new Tenant beginning December 1, 2018.

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 spouse or a close family member.

The Tenant is seeking compensation of \$18,600.00 which is twelve months of the rent payable under the tenancy agreement.

In reply, the Landlord provided affirmed testimony confirming that she did re-rent the unit out to a new tenant on December 1, 2018. She testified that she having financial hardship and accepted a full time job offer in another town.

The Landlord testified that prior to renting the unit to the new tenants she was travelling to the unit and living in the unit on the weekends. She testified that she had the property listed for sale from June 2018 until the end of October 2018.

Moving Costs

The Tenants are seeking compensation for moving costs in the amount of \$600.00. The Tenants testified it was difficult to move and they had to hire a moving truck at an estimated cost of \$600.00. The Landlord did not provide a copy of an invoice or receipt for payment to the cost of hiring a moving company.

The Landlord had no response to the claim other than stating that the Tenants would have had to move anyway.

Analysis

Section 51 (2) of the Act provides:

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. [my emphasis]

(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.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a Landlord to pay compensation to a Tenant when a Landlord ends a tenancy for Landlords use of property.

The Guideline provides that a Landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

With respect to extenuating circumstances, the Guideline provides the following:

Extenuating Circumstances

An arbitrator may excuse a Landlord from paying compensation if there were extenuating circumstances that stopped the Landlord from accomplishing the purpose or using the rental unit.

The Guideline provides circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

The Guideline provides that the following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

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

Compensation for Breach of Section 51

I find the Landlord failed to use the rental property for the reason stated within the 2 Month Notice for a six month duration. The Tenant's moved out of the rental unit on July 31, 2018, and the Landlord re-rented the unit to new Tenant's on December 1, 2018. Pursuant to section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered section 51(3) of the Act and the Guideline regarding compensation and extenuating circumstances. I find that there is insufficient evidence from the Landlord to support that there are extenuating circumstances present making it unjust

for the Landlord to have to pay compensation. The Landlord indicated she was having financial hardship; however, she chose to end the tenancy and receive no rental income for four months while she lived in the unit on the weekends. The Landlord then decided to rent the unit out to new Tenant's. I find that the circumstances before me are not extenuating circumstances.

I find that the Landlord owes the Tenants \$18,600.00 which is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Security Deposit

Section 38 (1) of the Act provides that within 15 days of the tenancy ending and the date the Landlord receives a forwarding address in writing, the Landlord must repay any security deposit or make an application for dispute resolution to claim against it.

Since I find that the Tenants never provided the Landlord with a forwarding address in writing the Landlord did not have an opportunity to claim against the deposit, and was not obligated to return it.

Since the Landlord now has the Tenant's forwarding address in writing, the Landlord now has 15 days to return the deposit, or the balance of the deposit, or make an application for dispute resolution to keep it. If the Landlord fails to return the security deposit or make a claim, within 15 days of March 14, 2019, the Tenants have leave to reapply for the return of double the deposit.

Moving Costs

The Act does not specifically permit additional moving costs or compensation to be awarded when a Landlord issues a 2 Month Notice in bad faith. The Act specifically allows compensation of 12 months rent payable under the tenancy agreement if the tenancy is ended and the rental unit is not used for the stated purpose for at least 6 months. The Tenant's did not provide proof they suffered a loss by hiring a moving company and did not provide proof of the value of the loss by providing a contract or receipts.

I have already awarded the Tenant compensation under section 51 of the Act. The Tenant's request for additional compensation for moving costs is dismissed.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$18,700.00. 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.

Conclusion

The Landlord did not use the rental unit for the purpose stated within the 2 Month Notice for a six month duration. The Landlord must pay the Tenants the amount of 12 months' rent payable under the tenancy agreement.

The Tenant is granted a monetary order in the amount of \$18,700.00 for the breach of section 51 of the Act and the cost of the filing fee.

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