



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee for the application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant appeared and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served their application for dispute resolution dated December 5, 2018 on the landlord by registered mail sent on December 6, 2018. The tenant provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's application and evidence on December 11, 2018, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The tenant gave evidence regarding the following facts. This periodic tenancy began in or about July 2007. The monthly rent at the end of the tenancy was \$950.00, payable on the first of each month. A security deposit of \$425.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at either the start or the end of the tenancy.

The tenancy ended on April 30, 2018 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated February 25, 2018. The reason provided on the 2 Month Notice for the tenancy to end is that, all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to issue the notice as they, or a close family member, intend to occupy the rental unit. A copy of the 2 Month Notice was submitted into documentary evidence.

The tenant submits that despite being issued a 2 Month Notice, they paid the full amount of rent for the duration of the tenancy. The tenant said that while they have provided the landlord with a forwarding address the landlord has not returned the security deposit for this tenancy.

The tenant further submits that after vacating the rental unit the building was demolished and a new building is being erected on the site. The tenant testified that as far as they are aware, the rental unit has never been occupied by either the purchaser of the property or their close family member.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit.

I accept the tenant's evidence that this tenancy ended on April 30, 2018 and the tenant provided the landlord with a forwarding address prior to that date. I accept the tenant's evidence that they have not provided written authorization to the landlord that they may

retain any portion of the security deposit for this tenancy. I accept the undisputed evidence that the landlord has not returned the security deposit in full nor have they filed an application to retain the deposit.

Furthermore, the tenant testified that no condition inspection report was prepared at any time for this tenancy. Pursuant to section 24 of the *Act*, a landlord who fails to prepare a condition inspection report in accordance with section 23 extinguishes their right to claim against the security deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days from April 30, 2018. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$950.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(1) provides that a tenant who receives a 2 Month Notice to End Tenancy for Landlord's Use is entitled to receive the equivalent of one month's rent payable under the tenancy agreement.

The tenant gave evidence that they paid the full amount of rent for the duration of the tenancy and did not withhold any amount. I find that pursuant to section 51 of the *Act* the tenant was entitled to the equivalent of one month's rent as they were served with the landlord's 2 Month Notice. As such, I find that the tenant is entitled to a monetary award in the amount of \$950.00.

Section 51(2) of the *Act* states 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.

In their 2 Month Notice the landlord indicated that the tenancy is ending as all of the conditions of sale have been satisfied and the purchaser has asked the landlord in writing to issue the notice as they, or a close family member, intend to occupy the rental unit.

I accept the tenant's evidence that since the tenancy ended the rental unit has not been occupied by the purchaser or their close family member and instead the property has been demolished to allow for the construction of a new building. The tenant has provided sufficient evidence through their testimony and photographs of the site. I find that the rental unit has not been used for the purposes stated on the 2 Month Notice. Consequently, I find that the tenant is entitled to a monetary award in the amount of \$1,900.00, the equivalent of double the monthly rent.

As the tenant's application was successful the tenant is also entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act (\$425.00 x 2 = \$950.00)	\$950.00
Recovery of One Month's Rent as per section 51(1) of the Act	\$950.00
Double the Monthly Rent as per section 51(2) of the Act	\$1,900.00
Filing Fee	\$100.00
Total Monetary Order	\$3,900.00

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 28, 2019

Residential Tenancy Branch