



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 November 15, 2018 (the “Application”). The Tenant applied for the return of 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 did not appear.

I explained the hearing process to the Tenant who did not have questions when asked. The Tenant 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.

The Tenant testified that the tenancy ended October 03, 2018. The Tenant testified that the hearing package and evidence were sent to the Landlord by registered mail on November 22, 2018. He testified that the package was sent to the Landlord’s address as stated on the tenancy agreement. He confirmed that the Landlord never told him his address had changed.

I note that the Landlord’s address on a notice to end tenancy issued to the Tenant is listed as the rental unit address.

The Tenant had submitted a photo of the package showing it was sent to the Landlord at the address on the tenancy agreement and returned to the Tenant.

The Tenant had submitted a receipt with Tracking Number 1 on it. I looked this up on the Canada Post website which shows a notice card was left November 26, 2018 and that the item was refused by the recipient December 20, 2018. The package was returned to the sender.

Based on the undisputed testimony of the Tenant, evidence submitted and Canada Post website information, I accept that the Landlord was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”).

I accept based on the tenancy agreement and photo of the returned package submitted that the package was sent to the Landlord’s residence or business address. I accept the undisputed testimony of the Tenant that the Landlord did not advise of a change to his address as noted on the tenancy agreement during the tenancy. I do not find the address on the notice to end tenancy to change my analysis as it is the rental unit address and clearly the Landlord was not residing there or doing business from there when the notice to end tenancy was issued as the Tenant was residing there. I accept the undisputed testimony of the Tenant that the tenancy ended October 03, 2018. The package was sent less than two months after the end of the tenancy. I am satisfied in these circumstances that the address used continued to be the Landlord’s residence or business address.

Based on the undisputed testimony of the Tenant, evidence submitted and Canada Post website information, I accept the hearing package and evidence were sent in more than enough time to allow the Landlord to prepare for, and appear at, the hearing.

The Landlord is not permitted to avoid service by failing to pick up the package or refusing it and is deemed to have received it pursuant to section 90 of the *Act*.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was 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 Tenant. 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 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 Tenant testified as follows and submitted the following evidence.

A written tenancy agreement was submitted as evidence. The tenancy started November 09, 2017 and was for a fixed term ending November 09, 2018. Rent was \$2,000.00 per month due on the first day of each month. The Tenant paid a \$1,000.00 security deposit. The agreement is signed by the Landlord and Tenant.

The tenancy ended October 03, 2018.

The Tenant provided the Landlord with his forwarding address by email September 23, 2018. The Landlord did not reply to the email. The email is submitted as evidence. The Tenant did not provide any further testimony about providing the Landlord with his forwarding address other than by email.

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

A copy of the Notice was submitted as evidence. It is addressed to the Tenant and relates to the rental unit. It is signed and dated July 30, 2018. The effective date on the Notice is September 30, 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 was away from the rental unit for a period. When he came back, the Landlord had a photographer attend the rental unit to take photos. He then received an email from the Landlord on September 21, 2018 with several documents attached including the Notice. He replied and advised the Landlord he would vacate the rental unit early. A copy of the email was submitted as evidence.

The Tenant was never compensated for being issued the Notice.

The Landlord listed the rental unit for sale. It is still listed for sale. The Landlord is also using the rental unit as a short-term vacation rental. His friend, who was staying in the rental unit while the Tenant was away, received emails from the Landlord and Landlord's realtor about showings.

The Tenant advised that the short-term vacation rental ads from February and March 2019 were not served on the Landlord.

The Tenant submitted real estate ads printed September 21, 2018 showing the rental unit for sale.

The Tenant submitted an email from the Landlord's realtor about a photographer coming to the rental unit and future showings. The email is to the Tenant's friend who was living in the rental unit while he was away. It is dated September 11, 2018.

The Tenant submitted an email from the Landlord to him and his friend dated September 11, 2018 stating his realtor will need access to the rental unit.

The Tenant submitted a listing for short-term vacation rentals printed November 15, 2018 showing the rental unit is listed for rent and available in November and December of 2018. There are comments from people who stayed at the rental unit dated October 2018 and November 2018.

The Tenant submitted a listing for short-term vacation rentals printed January 16, 2019 showing the rental unit is listed for rent and available in February and March of 2019. There are further comments from people dated November 2018.

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.

The obligations of a landlord under section 38 of the *Act* are only triggered if a tenant has provided their forwarding address in writing. An address provided on an application for dispute resolution is not sufficient to trigger section 38 of the *Act*.

The Tenant testified that he provided his forwarding address by email. He did not testify that he provided the forwarding address in another manner. Providing the forwarding address by email is not “in writing” as that phrase is used in the *Act*. I would have found the email sufficient if there was evidence the Landlord received it. However, the Tenant said the Landlord did not reply to the email and the Tenant did not point to any evidence showing the Landlord received the email. Therefore, I am not satisfied the Tenant has properly provided his forwarding address such that section 38 of the *Act* was triggered.

I dismiss the Tenant’s application for return of the security deposit **with leave** to re-apply. The Tenant must serve his forwarding address on the Landlord in writing and in accordance with section 88 of the *Act* if he wishes to have the security deposit returned. If the Landlord does not then comply with section 38 of the *Act*, the Tenant can re-apply for return of the security deposit. The Tenant should note the limitation periods set out in section 39 and 60 of the *Act*.

Compensation pursuant to section 51 of the Act

I have not considered the short-term vacation rental ads from February and March of 2019 given they were not served on the Landlord as required by the Rules of Procedure.

The Notice is dated July 30, 2018 and was issued to the Tenant September 21, 2018. Therefore, the current legislation applies to the Notice.

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.

...

(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.

The Notice was issued pursuant to section 49(3) of the *Act*.

Based on the undisputed testimony of the Tenant as well as the email and Notice submitted, I accept that the Landlord served the Tenant with the Notice. I acknowledge that the Notice was sent to the Tenant by email and that this is not a form of service permitted under the *Act*. However, this does not impact my finding that the Tenant was served with the Notice as the Landlord sent it to the Tenant by email and the parties acted on the Notice. The Landlord remains liable under section 51 of the *Act* in the circumstances.

I accept the undisputed testimony of the Tenant that he only received the Notice September 21, 2018.

I find the Tenant was entitled to receive the equivalent of one month's rent pursuant to section 51(1) of the *Act* given he was served with the Notice. I accept the undisputed testimony of the Tenant that he never received the equivalent of one month's rent. In the Application, the Tenant has requested \$1,064.52 being the balance of this amount. I award the Tenant the amount sought.

Based on the real estate ads and emails submitted, I accept that the rental unit was listed for sale in September of 2018. Based in part on the documentary evidence, I accept the undisputed testimony of the Tenant that the rental unit was still listed for sale as of the hearing date.

Based on the listings submitted, I accept that the rental unit was listed for rent on a short-term vacation site in November of 2018 and January of 2019 and that the unit was rented out to people in October and November of 2018.

Listing the rental unit for sale, listing the rental unit for rent on a short-term vacation site and renting the rental unit out on a short-term vacation basis are all inconsistent with the Landlord or Landlord's close family member occupying the rental unit. I have accepted that the Landlord did these things from September to November of 2018 and in January and March of 2019.

The effective date of the Notice is stated as September 30, 2018. This does not comply with the *Act*. The Notice could not have been effective before the end of the fixed term as stated in section 49(2)(a)(iii) of the *Act*. Further, given when the Tenant received the Notice, the corrected effective date under section 53 of the *Act* would have been November 30, 2018.

Based on my findings above, I accept that the Landlord did not use the rental unit for the stated purpose on the Notice for at least six months beginning within a reasonable period after November 30, 2018, the corrected effective date of the Notice. Therefore, the Landlord must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement pursuant to section 51(2) of the *Act*. The Landlord must pay the Tenant \$24,000.00.

As the Tenant was partially 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 \$25,164.52.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of \$25,164.52 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: April 17, 2019

Residential Tenancy Branch