



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, MNSD, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$3450.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on December 21, 2018.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a fixed term written tenancy agreement that provided that the tenancy would start on August 15, 2017 and end on September 1, 2018. The rent was \$1150 per month per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$575 and a pet damage deposit of \$575 at the start of the tenancy for a total of \$1150..

In early June 2018 the landlord gave the tenant a 2 month Notice to End Tenancy for landlord use of the property that set the end of tenancy for August 31, 2018.

On July 15, 2018 the tenant gave the landlord a 10 day notice in writing that she was found a new rental unit that she could take possession of on August 1, 2018 and that she would be vacating the rental unit on August 2, 2018. The tenant offered to pay the landlord \$74.19 being the proportionate rent of 2 days in August but the agent for the landlord stated it was not necessary at this time.

The tenancy ended on August 2, 2018. The Tenant provided the landlord with her forwarding address in writing on August 20, 2019.

The landlord failed to pay the equivalent of one month rent and failed to return the security deposit/pet damage deposit.

Tenant's claim under section 51 for the equivalent of one month rent:

Section 50 and 51 of the Act provides as follows:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], 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 [tenant's compensation: section 49 notice].

Tenant's compensation: section 49 notice

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.

...

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

I determined the tenant is entitled to the equivalent of one month rent under section 51(1). The landlord gave a 2 month Notice to End Tenancy for landlord use that set the end of tenancy for the end of August. The tenant gave a 10 day notice as she was entitled to do under section 50 that ended the tenancy on August 2, 2018. The landlord agreed to this and advised the tenant that it was not necessary to pay the 2 days proportionate rent. The landlord failed to pay the equivalent of one month rent. The tenant has established this claim in the sum of \$1150.

Tenant's Application for double the security deposit and pet damage deposit:

Law

The Residential Tenancy Act provides that a landlord must return the security deposit/pet damage deposit to the tenant(s) within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit/pet damage deposit. .

Analysis

The tenant paid a security deposit of \$575 and a pet damage deposit of \$575 for a total of \$1150 at the start of the tenancy. I determined the tenancy ended on August 2, 2019. I further determined the tenants provided the landlord with their forwarding address in writing on August 20, 2018. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives

the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit/pet damage deposit or the sum of \$2300.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$3450 plus the sum of \$100 in respect of the filing fee for a total of \$3550.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail 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 final and binding on both parties.

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: April 11, 2019

Residential Tenancy Branch