



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) for the return of the security deposit, for monetary compensation and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and an agent for the Tenant (the “Tenants”) were present for the teleconference hearing and were affirmed to be truthful in their testimony. No one called in for the Landlords during the approximately 35-minute hearing. The Tenants testified that they sent the Notice of Dispute Resolution Proceeding package and a copy of their evidence to each Landlord by registered mail at two different addresses. This includes the service address listed on the tenancy agreement as well as the service address that was listed on the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”).

The Tenant submitted photos of the envelopes that shows the tracking numbers and addresses the packages were mailed to. Entering the tracking numbers on the Canada Post website confirms that all four packages were not claimed and were returned to the sender. The registered mail tracking numbers are included on the front page of this decision.

Despite not being claimed, I find that both Landlords were duly served in accordance with Sections 88 and 89 of the *Act* and are deemed served in accordance with Section 90 of the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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

Is the Tenant entitled to the return of the security deposit?

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Tenants provided undisputed testimony on the tenancy which was confirmed by the tenancy agreement submitted as evidence. The tenancy began on August 1, 2016. Monthly rent as listed on the tenancy agreement was \$1,875.00 and the Tenants stated that rent was increased to \$1,945.00 by the end of their tenancy.

They also noted that a rent increase was provided to raise the rent to \$2,022.80 for October 1, 2018. The Tenants submitted the rent increase notice which states that the increase from \$1,945.00 to \$2,022.80 was to take effect October 1, 2018. However, the Tenants stated that they paid \$1,945.00 for October 2018. The Tenants testified that they moved out on November 1, 2018.

The Tenants testified that they paid a security deposit of \$937.50 at the start of the tenancy and that they have not yet received any amount of the deposit back. They have claimed for \$1,945.00 as the return of double their security deposit, although double the deposit would be \$1,875.00.

The Tenants stated that there was no move-in inspection report completed, but that they participated in a move-out inspection. They also noted that they did not agree to any deductions from their security deposit. They submitted photos of the rental unit into evidence and stated that they left the rental unit reasonably clean.

The Tenants submitted that they provided their forwarding address to the Landlord in writing on November 16, 2018 by posting it on the Landlord's door. They also noted that

following this they texted their forwarding address to the Landlord to ensure it had been received.

The Tenant also applied for \$23,340.00 which is the equivalent of 12 months rent at \$1,945.00 per month. The Tenants testified that this was due to the tenancy ending after receipt of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") and the Landlords not using the property for the stated purpose of the Two Month Notice.

The Tenant submitted the Two Month Notice into evidence. The notice was dated September 5, 2018 and states the following as the reason for ending the tenancy:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

The Tenants testified that the notice was posted on their door on or around September 5, 2018. While the effective end of tenancy date of the Two Month Notice was stated as November 30, 2018, the Tenants testified that they found a new place sooner than this and therefore moved out on November 1, 2018.

The Tenants stated that they were told that the Landlord's son and partner would be moving into the rental unit. They submitted that a neighbour called them in January 2019 to alert them that the rental unit was advertised for rent online. The Tenants stated that they saw the advertisement on January 15, 2019. They submitted the advertisement into evidence and pointed out that the advertisement includes a notation that it was posted 29 days prior.

The advertisement notes the address as similar to that of the rental unit, but with a different last digit. The advertisement also notes that the land size of the residential property is 9749 square feet. The Tenants stated that they had a friend call the number on the advertisement. They submitted the email from their friend dated January 15, 2019. In the email, their friend notes that the person he called informed him that the address was incorrect on the advertisement and the correct address was that of the rental unit. In the email the friend also notes that the person who called him back had the same or similar first name to one of the Landlords.

The Tenants also submitted tax report information for the address of the property stated on the advertisement which notes that the property size is 7272 square feet. The tax report information submitted for the address of the rental unit states that the land size is 9749 square feet. The advertisement for the rental unit lists monthly rent at \$2,475.00.

Analysis

Regarding the Tenant's claim for the return of the security deposit, I refer to Section 38(1) of the *Act* which states the following:

Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the Tenant's undisputed testimony that the tenancy ended on November 1, 2018 and that their forwarding address was provided in writing on or around November 16, 2018 by both written letter and text message. I also accept the Tenant's testimony that he did not agree to any deductions from their security deposit and has not received any amount back.

Therefore, I find that the Landlords had 15 days from November 16, 2018 to return the security deposit or file a claim against it. As I have no evidence before me that the Landlords filed against the security deposit, I find that they were not in compliance with Section 38(1) of the *Act*.

As such, I find that Section 38(6) of the *Act* applies as follows:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that the Tenant is entitled to the return of \$1,875.00, which is the equivalent of double the security deposit amount as stated on the tenancy agreement.

Regarding the Tenant's claim for 12 months compensation under Section 51 of the *Act*, I accept the evidence before me that shows that the Tenant was served with a Two Month Notice on or around September 5, 2019. The notice states that the Landlord or a close family member intends to occupy the rental unit, pursuant to Section 49(3) of the *Act*.

Section 51(2) of the *Act* states the following:

(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.

The Tenant moved out based on the Two Month Notice on November 1, 2018 and the advertisement submitted into evidence shows that the rental unit was advertised for rent in approximately December 2018. Although the address of the rental unit in the online advertisement submitted by the Tenant was off by one number, I accept the testimony and evidence of the Tenants that establishes that this was an error.

In particular, I find that the tax report information establishes that the land size of the rental unit is the same land size reported in the advertisement for the rental unit. I also accept the email evidence from the Tenant's friend that states they called the number and were advised that the rental address was incorrect and were provided with the correct address which matches that of the rental unit.

Therefore, on a balance of probabilities, I find it likely that the advertisement was for the Tenant's rental unit.

As such, I find that the Landlord or a close family member of the Landlord did not occupy the rental unit as stated on the Two Month Notice and instead it was advertised for rent at a higher monthly amount.

I note that Section 51(3) of the *Act* states that a landlord may be excused if there were extenuating circumstances present that prevented the Landlord from using the rental unit for the purpose stated on the Two Month Notice. However, in the absence of any testimony or evidence from the Landlords, I do not have any information that might imply that extenuating circumstances were present.

Accordingly, I find that the Tenant is entitled to the compensation as stated under Section 51(2) which is equivalent to 12 months the monthly rent. Although it seems there was a rent increase around the time the tenancy ended, I accept the undisputed testimony of the Tenant that the last monthly rent paid was \$1,945.00. I also find this amount stated as the previous rent on the notice of rent increase and therefore accept that \$1,945.00 was the monthly rent at the end of the tenancy. The Tenants are awarded compensation in the amount of \$23,340.00.

As the Tenant was successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00.

The Tenant is awarded a Monetary Order in the amount outlined below:

Return of security deposit	\$937.50
Amount to double security deposit	\$937.50
Section 51(2) compensation	\$23,340.00
Recovery of filing fee	\$100.00
Total owing to Tenant	\$25,315.00

Conclusion

Pursuant to Sections 38, 51, 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$25,315.00** as outlined above. The Tenant is provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this 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 *Residential Tenancy Act*.

Dated: May 27, 2019

Residential Tenancy Branch