



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for a monetary order for money owed or compensation under the Act, for return of her security deposit, and for recovery of the filing fee paid for this application.

The tenant, her witness, the landlord, and the landlord's daughter/representative attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receipt of the other's evidence prior to the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to a return of her security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The evidence showed that this tenancy began on September 1, 2017, for a monthly rent of \$2,000.00, and a security deposit of \$1,000.00.

The tenant submitted she moved out of the rental unit on March 1, 2019, and returned the key to the rental unit on March 2, 2019.

The tenant's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Return of security deposit	\$1,370.00
2. 12 months' compensation (2 Month Notice)	\$24,000.00
TOTAL	\$25,370.00

The tenant's relevant evidence included, but is not limited to, AirBnB listings for the rental unit, a video from the tenant's witness, Craigslist postings, a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property, and witness statements.

Security Deposit-

The tenant gave evidence that the landlord was provided the tenant's written forwarding address on March 4, 2019, on a piece of paper, by placing it into the mailbox as requested by the landlord. The tenant submitted a copy of the letter to the landlord containing the written forwarding address and a copy of a signed witness letter verifying the delivery of the rental unit key and written forwarding address into the rental unit's mailbox, as requested by the landlord.

The tenant stated that the landlord has returned \$630.00 of her security deposit, explaining that she agreed to a deduction of \$70.00, but the landlord retained \$300.00 for a door closer, to which she did not agree. The tenant submitted she agreed to the \$70.00 as the key to the rental unit was returned a day late.

The tenant is seeking double the balance remaining.

In response to my inquiry, the tenant said there was not a move-in or move-out inspection of the rental unit and there were no move-in or move-out condition inspection reports ("CIR").

Landlord's response-

The landlord, in a written statement, denied receiving the written forwarding address as stated by the tenant and further, submitted the witness letter was not reliable due to their understanding the witness was a spouse/common law, resulting in a conflict of interest.

The landlord submitted further in the written statement that the tenant's negligence caused the door closer arm to break, and that the actual cost was more than \$300.00. The landlord confirmed deducting \$370.00 before returning the tenant's security deposit.

In response to my inquiry, the confirmed there was not a move-in or move-out inspection of the rental unit and or move-in or move-out CIR's.

12 months' compensation (2 Month Notice)-

In support of this claim, the tenant submitted that they received a Two Month Notice from the landlord on or about December 31, 2018, which listed an end of tenancy date of March 1, 2019. The tenant submitted a copy of the Notice, which was signed by the landlord, and as a reason for ending the tenancy, listed that the rental unit will be occupied by the landlord or a close family member of the landlord

The tenant submitted that the landlord approached her in the elevator in December 2018 about signing another year long fixed term tenancy agreement, but the tenant said she wanted only a month to month contract.

The tenant submitted further that she chose to accept that the tenancy was ending and vacated the rental unit on March 1, 2019.

The tenant submitted that the landlord is not and has not used the rental unit for the stated purpose as she noticed the rental unit was listed on Craigslist for re-rent and on AirBnB, all in March 2019. The tenant submitted that the rental unit was advertised for \$400.00 more in monthly rent than she was paying, or \$2,400.00.

The tenant submitted that she moved into another rental unit in the same building and has confirmed that the landlord's daughter did not move into the rental unit.

The tenant submitted that she is entitled to compensation equivalent to 12 months' rent in the amount of \$24,000.00, as the landlord has not used the rental unit for the stated purpose listed on the Notice.

Landlord's response-

In a written submission called Timeline of Events, the landlord wrote that he spoke with his daughter prior to December 23, 2018 and asked what her plans were after finishing her program, as she was unsure whether to stay locally or move to another city outside the province. The landlord writes that he also spoke with his son about moving to the local city.

On December 23, 2018, the landlord writes that when he called his daughter, she mentioned that she would be staying locally and that her brother may move to the local city or her mother may move back to the other city outside the province. Either way, she needed a place to stay. The landlord wrote that he called the tenant to let her know about his kids moving in.

On March 19, 2019, the landlord submitted that his daughter told him to look into AirBnB while she made a decision, which he did by taking out a business license; however, he was informed by the strata that strata bylaws prohibited AirBnB rentals.

The landlord confirmed posting the rental unit on Craigslist for \$2,400.00, but explained that the rental unit was now furnished.

Witness/representative statement-

The landlords' witness said that when her father asked about her plans, she was not sure her mother, with whom she was living, would be staying locally or moving away. The landlords' witness stated that if her mother moved away, she would not be able to afford rent on her own and if her brother moved locally, she and her mother would not have a spare room for him. If the latter was the case, they would need her father's place.

The landlords' witness said that her mother decided to stay in the city in another province and now the landlords' witness is living with another family member, not paying rent as she is helping out with the household.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Security Deposit-

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the deposits within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit and pet damage deposit, pursuant to section 38(6) of the Act.

I do not find the tenant's right to a return of their security deposit has been extinguished in this case.

In the case before me, the undisputed evidence shows that the tenancy ended on March 1, 2019, when the tenant vacated the rental unit. I accept the evidence of the tenant, supported by her signed and dated witness letter confirming delivery of the written forwarding address in the landlord's mail slot, and I find that the landlord received the tenant's forwarding address when it was placed in the mail slot of the rental unit on March 4, 2019.

I do not accept the landlord's argument that the witness should not be accepted due to a conflict of interest as that witness may have been a spouse, as he has given no basis to otherwise contradict the contents. Additionally, if family members have a natural conflict of interest, I would not be able to accept or consider the evidence of the landlord's daughter.

The undisputed evidence shows that the tenant gave authority to the landlord to retain \$70.00 from her security deposit. Therefore, I find the landlord was obligated to return the balance of the tenant's security deposit of \$930.00, or make an application for dispute resolution claiming against the security deposit by March 19, 2019.

In contravention of the Act, the landlord made a further deduction from the tenant's security deposit before returning a portion, without filing an application.

I therefore find the tenant is entitled to a total monetary award of \$1,230.00, comprised of the tenant's remaining security deposit of \$930.00, doubled to \$1,860.00, less the amount of \$630.00 previously returned to the tenant.

12 months' compensation (2 Month Notice)-

In the case before me, the undisputed evidence shows that the landlord issued the tenant a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, and in this case, the landlord listed that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member.

Section 51(2) provides that if 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 if 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 is entitled to compensation equivalent of 12 months' rent under the tenancy agreement. (emphasis added).

Under section 51(3) of the Act, the landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice. In this case, the landlord has not presented any evidence claiming extenuating circumstances.

In this case, I find the landlord engaged in conduct which would not have allowed him to take reasonable steps to accomplish the stated purpose of his close family members moving into the rental unit within a reasonable time. The landlord almost immediately furnished the rental unit and advertised it for vacation rentals. When he was informed by the strata this was not permitted, he listed the rental unit to re-rent, for an increase in monthly rent of \$400.00.

I find it clear the landlord had no concrete plans to use the rental unit for the stated purpose. The landlord's and landlords' witness' statements themselves confirm that the plan was speculative or tentative, dependent on the tenant's mother's plans about

moving or staying locally. The landlord and his daughter's evidence stated that his daughter and/or son may or may not need the rental unit. I therefore determined the landlord was premature when he issued the Notice to the tenant.

I find it reasonable that the landlord would wait until his daughter and/or son had definite plans to move into the rental unit before issuing the Two Month Notice, displacing the tenant.

For the above reasons, I find the landlord submitted insufficient evidence to support or prove the reason listed on his Two Month Notice.

For the above reasons, I therefore find on a balance of probabilities that the landlord did not take steps, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy.

I therefore find the tenant is entitled to monetary compensation equivalent to 12 months' rent.

I therefore grant the tenant a monetary award of \$24,000.00, the equivalent of monthly rent of \$2,000.00 for 12 months.

I also grant the tenant recovery of their filing fee of \$100.00 paid for her application, pursuant to section 72(1) of the Act.

Due to the above, I find the tenant is entitled to a total monetary award of \$25,330.00, comprised of double the balance of her security deposit in the amount of \$1,230.00, the equivalent of 12 months monthly rent for \$24,000.00, and the filing fee of \$100.00.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$25,330.00.

Should the landlord fail to pay the tenant this amount without delay, the tenant may serve the order on the landlord for enforcement purposes. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation for the return of double the balance of her security deposit of \$1,230.00, the equivalent of 12 months' rent of \$24,000.00

and recovery of the filing fee is granted. She has been granted a monetary order for \$25,330.00.

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: August 15, 2019

Residential Tenancy Branch