



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

The tenant applies for a monetary award for “wrongful eviction” and to recover her \$400.00 security deposit.

Both parties attended the hearing, the landlord represented by her daughter Ms. L. S., and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

At the start of the hearing Ms. L. S. related the difficulty her mother had trying to secure a face to face hearing of this dispute. The landlord Ms. G H. is 90 years old and has hearing difficulties. The Residential Tenancy Branch apparently denied her request for a face to face hearing, insisting on a doctor’s letter confirming her hearing difficulty, which Ms. G.H. could not arrange in time . Ms. L.S. stated that her mother could not be at this hearing because she was visiting a friend but, with her mother’s written statement having been filed, she would proceed on her mother’s behalf and forego further attempts to have this matter heard in person.

Issue(s) to be Decided

Is the landlord obliged to return the security deposit? Has the landlord “wrongfully evicted” the tenant by failing to use the rental unit for landlord use for at lease six months beginning within a reasonable period after the February 1, 2019 effective date of the Notice?

Background and Evidence

The rental unit is a one bedroom basement suite. The landlord lives upstairs. There is no written tenancy agreement. The parties agree on the basics of the tenancy. It started in August 2018. The rent was originally \$800.00 per month but was quickly raised by agreement to \$950.00 when the tenant's boyfriend moved in with her and she acquired use of a part of the garage. The tenant paid a \$400.00 security deposit which the landlord still holds.

There is a dispute about pets and about the condition in which the tenant left the rental unit, but in my view they are not relevant to the issues in this dispute because firstly, the pet is now long gone and secondly, the landlord has not brought her own application claiming cleaning or repairs costs. It should be noted that she is free to do so at any time within two years after the ending of this tenancy.

In or around November 2018 the landlord served the tenant with a two month Notice to End Tenancy claiming that the landlord or a close family member intended to move in. The tenant did not challenge the Notice and moved out by the February 1, 2019 effective date.

As Ms. L.S. explains it, she had suffered a diminution of her work income and in an effort to save money, she, the landlord's daughter, would take up residence in the basement, thus the Notice.

Ms. L.S. moved in to the basement suite but had second thoughts about whether this was saving her or her mother any money. She decided to advertise the basement suite for rent and was successful in finding a new tenant for the rental unit commencing May 1, 2019. There is a suggestion that she was aware she would be obliged to live in the rental unit of six months but she thought the six months ran from the day the Notice to End Tenancy was issued.

The tenant provided the landlord with her forwarding address in writing in April 2019. There was some discussion about what took her so long to do so after vacating the rental unit in February, but the reasons are not particularly relevant. The forwarding address in writing was provided within the year. Had it not been, the deposit money would have been forfeited to the landlord under s. 39 of the *Residential Tenancy Act* (the "Act").

On receipt of the tenant's forwarding address the landlord felt that the tenant owed her money for the way the rental unit was left and so she did not return any deposit money to the tenant.

Analysis

Failure by the Landlord to Use the Rental Unit for Six Months

Section 51(2)(c) of the *Act* provides:

(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 evidence shows that the tenant's allegation is correct that the landlord or a close family member did not use the rental unit for at least six months beginning within a reasonable time after the effective date of the Notice. Though Ms. L.S. moved in immediately, she only used the rental unit for three months and new tenants were found.

Subsection 51(3) offers the prospect of relief from this penalty in certain circumstances. It provides:

(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 landlord's mistake, or rather the mistake of her daughter and agent Ms. L.S. was to calculate the six month period from the date of the Notice rather than the date the Notice became effective to end the tenancy (*note: the Notice was not provided by either party and its date and date of its service on the tenant are unknown). That is a mistake about the law and cannot be considered an extenuating circumstance. It is a fundamental principle that everyone is taken to know the law.

I find the landlord is in breach of s. 51(2) and is responsible to compensate the tenant the equivalent of twelve months' rent.

The Security Deposit

Section 38 of the *Act* provides that once a tenancy has ended and once the tenant has provided her landlord with a forwarding address in writing, the landlord must, within the next 15 days, either repay the deposit money or make an application to keep all or a part of it. If the landlord fails to comply she is liable to account to the tenant for double the amount of the deposit money.

In this case the landlord is in clear violation of s. 38. She received the tenant's forwarding address in writing in April and still has not returned the deposit money or applied for dispute resolution to keep it.

However, the tenant has not requested double the deposit in her application. Residential Tenancy Policy Guideline 17, "Security Deposit and Set off [*sic*]" provides that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, I am to order a return of double the deposit. The tenant did not waive the doubling penalty in her application and specifically declined to waive it when asked at this hearing.

The tenant is entitled to \$800.00; double the amount of her security deposit.

Conclusion

The tenant is entitled to an award of twelve months rent in the amount of \$11,400.00 being the equivalent of twelve months' rent and \$800.00 being double the deposit money.

However, the tenant has limited her claim to \$5000.00 in her application. I therefore award her \$5000.00 plus \$400.00 being the doubled amount of the deposit, awardable even when not claimed, plus recovery of the \$100.00 filing fee.

The tenant will have a monetary order against the landlord for the total amount of \$5500.00.

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 13, 2019

Residential Tenancy Branch